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To the United States House of Representatives, Committee on Energy and Commerce
Subcommittee on Environment

"A Decade Later: A Review of Congressional Action, Environmental Protection Agency Rules, and Beneficial Use Opportunities for Coal Ash"

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Introduction

Chairman Griffith, Ranking Member Tonko, and Members of the Environment Subcommittee, thank you for the opportunity to testify before you today. My name is Michelle Freeark, and I serve as Executive Director of Regulatory Affairs and Corporate Services of Arizona Electric Power Cooperative (AEPCO). I am testifying today to provide my own insights as a co-op leader but am also representing the National Rural Electric Cooperative Association (NRECA) and the nearly 900 electric cooperatives across the country that are members of NRECA.

AEPCO is a member-owned, not-for-profit generation and transmission (G&T) cooperative based in Benson, Arizona. AEPCO is considered a small utility by the Federal Energy Regulatory Commission and a small business by the Small Business Administration. AEPCO's purpose is to generate electricity and transmit it to distribution cooperatives that deliver power to end-use member-consumers in Arizona, Nevada, New Mexico, and California.

AEPCO's service area includes cost-sensitive rural and disadvantaged communities. Regulatory costs have a direct impact on not-for-profit electric cooperatives and their rural end users. AEPCO is committed to balancing environmental stewardship with the cooperative's mission to provide safe, reliable, competitively priced power to its members.

NRECA is the national trade association representing nearly 900 rural electric cooperatives across the country, including 64 G&T cooperatives and 832 distribution cooperatives. America's electric co-ops comprise a unique sector of the electric industry. These not-for-profit entities are independently owned and governed by the people they serve. From growing exurban regions to remote farming communities, electric co-ops provide power to 42 million Americans across 48 states. They keep the lights on across 56% of the American landscape – areas that are primarily residential and sparsely populated. These characteristics make it comparatively more expensive for electric co-ops to operate than the rest of the electric sector, which tends to serve more

compact, industrialized, and densely populated areas. This means that co-ops are constantly asked to do more with less.

Cost-effective and lawful federal regulations that minimize unnecessary burdens on the power sector are critical to electric co-ops' ability to provide affordable, reliable, and safe electricity to their consumer-members. Federal action – and inaction – regulating coal combustion residuals (CCR) has resulted in unworkable and unreasonable regulatory requirements for the power sector, making it more difficult for electric co-ops to serve their consumer-members. We are pleased that this Administration has taken important steps to address harmful U.S. Environmental Protection Agency (EPA) regulations that will impact reliability and affordability. We look forward to continuing to work with the Administration and Congress to reform federal CCR regulations to support our country's rapidly growing energy demands while maintaining important environmental protections.

A Balanced Electricity Portfolio is Essential to Maintain Energy Reliability and Affordability

As our nation increasingly relies on electricity to power our economy, keeping the lights on has never been more important – or more challenging. Over the next five years, the North American Electric Reliability Corporation forecasts that all or parts of several states are at high risk of rolling blackouts during normal peak conditions. Flawed public policies that force the premature closure of existing power plants are a big reason for this threat. This problem is compounded by the rapid growth of data centers in rural areas. Some forecasts project data centers will consume 9% of all US electricity generation by 2030. In AEPCO's service territory alone, there are currently over 3 gigawatts of capacity demand for development.

AEPCO is presently constructing new natural gas units and solar plus battery energy storage systems (BESS) to expand and diversify our generation portfolio. Renewable energy sources like solar and BESS can play a strategic role in the Western energy grid, but reliable and dispatchable generation sources, including coal and natural gas, are necessary to fill the gaps caused by intermittency. Coal also offers energy security benefits because the fuel is readily available on the ground as opposed to pipeline fuel or intermittent renewable resources.

Communities throughout our service territory experience extremely hot summers that cause a high demand for electricity. Energy market prices often soar due to high demand or during adverse reliability events, such as wildfires. Maintaining the capability to utilize coal as part of our energy mix ensures that summer demand is met at affordable rates. The cost of electricity is of particular concern to AEPCO because roughly one third of our members' residential consumers live below the federal poverty line. For these reasons, coal complements AEPCO's renewable and natural gas generation resources.

How AEPCO Safely and Responsibly Manages CCR

Because electric co-ops are owned and governed by the consumer-members we serve, we have a vested interest in protecting and maintaining the environment within our communities. Environmental stewardship is not and should not be mutually exclusive with ensuring that our

consumer-members have access to reliable and affordable electricity to meet the needs of our growing and ever-changing economy.

Just as all generation sources produce some form of waste, CCR is the byproduct of coal-fired electric generation. AEPCO currently owns and operates one coal-fired generating facility, Apache Generating Station (Apache) in Cochise, Arizona. Apache has composite-lined CCR impoundments on-site subject to federal CCR regulations. AEPCO has a robust CCR compliance program to comply with all operational, monitoring, reporting and recordkeeping requirements of federal CCR regulations and has worked closely with EPA to comply with such regulations.

In addition, Arizona's Aquifer Protection Permit (APP) program, administered by the Arizona Department of Environmental Quality (ADEQ), has had oversight of the Apache CCR disposal units for nearly 30 years. APP is a protective state program that has provided historical oversight of CCR units. AEPCO's current and past CCR disposal activities are regulated under an APP Permit. The APP program calls for routine ground water monitoring and CCR unit maintenance and inspections, regular state inspections, semi-annual and annual reporting to ADEQ, Contingency Plan requirements, and closure and post-closure activities. Monitoring well data is also subject to Alert Levels and Aquifer Quality Limits to measure and identify any potential groundwater impacts.

AEPCO's impoundments are designed to meet the APP program's stringent Best Available Demonstrated Control Technology (BADCT) requirements. The purpose of BADCT is to employ engineering controls, processes, operating methods or other alternatives, including site specific characteristics, to reduce the potential discharge of pollutants to the greatest degree achievable.

Additionally, AEPCO currently exceeds federal CCR beneficial use provisions by selling 90%+ of its fly ash to a third party owned by the Salt River Pima-Maricopa Indian Community. By doing so, AEPCO reduces the amount of CCR that is disposed in its regulated impoundments. AEPCO supports this safe alternative use of coal ash.

Federal Polices to Further Support CCR Management

EPA Legacy CCR Rule

In 2015, EPA finalized federal CCR regulations that established minimum federal standards for the disposal of CCR generated from coal-fired power plants. The power industry has been working in good faith to comply with the 2015 rule through closure, groundwater monitoring, and corrective action to safely manage CCR.

However, last year EPA finalized the Legacy Coal Combustion Residuals Surface Impoundments and CCR Management Unit Rule (Legacy Rule or Rule), which established regulatory requirements for two new classes of CCR units, inactive CCR surface impoundments at inactive power plants and accumulations of CCR directly placed on the land at any time (CCRMUs). For both new categories, EPA's approach fails to consider the diverse characteristics, sizes, and relative risk of particular sites. It also upends the long-recognized beneficial reuse of CCR. Instead, it adopts a one-size-fits-all approach that is not supported by EPA's risk analyses and will result in massive costs to the utility industry. These costs will eventually be borne by rural

end users in cooperative service areas. EPA's approach and the associated costs and regulatory requirements will exacerbate challenges to the reliable delivery of electricity.

For example, under the Legacy Rule, CCR regulation extends to CCR units that were responsibly closed decades ago under a state permit, and which meet the federal protectiveness standards under Resource Conservation and Recovery Act (RCRA), because they do not pose an unacceptable risk to human health or the environment. Such units would nonetheless be required to reclose under the new Legacy Rule's requirements at significant cost to electric co-op consumer-members. Such reclosing would entail a complete reevaluation and possible alternative remediation and closure requirements. These changes come with significant costs but do not necessarily provide additional environmental protections. The Legacy Rule also expands CCR regulation to certain areas located under existing critical energy infrastructure such as generating units, cooling towers, and substations. Closure of these areas would require serious disruptions to critical components of power plant's energy infrastructure, which would only further exacerbate pressures on grid reliability and electricity affordability.

AEPCO has units that have been closed-in-place (Closed Impoundments), but which now fall under the current definition of CCRMU. Such Closed Impoundments were closed via state approval of a closure plan and oversight of ADEQ under the APP program. They have an earthen cap that is designed to prevent pooling of water, making the risk of release of CCR minimal. Regardless, the Closed Impoundments continue to be under post-closure oversight of ADEQ and are subject to regular inspections, monitoring, and reporting requirements. There is no need to re-close or duplicate the solid waste management efforts of ADEQ. EPA's CCRMU risk analysis does not consider CCR disposal areas like APP-regulated CCRMUs and exceeds EPA's regulatory authority under RCRA. AEPCO urges EPA to perform a comprehensive risk assessment of CCRMUs. That assessment should be reliable and should include the benefits of state programs on the management and disposal of CCR.

We commend EPA's decision this spring to reconsider the harmful CCR Legacy Rule and hope to work with the Administration to develop workable and cost-effective revisions to the Rule. In the meantime, we support an immediate delay of the Legacy Rule compliance deadlines. AEPCO is already outlaying significant expenses for compliance with Legacy Rule deadlines. As a cost-sensitive, smaller cooperative, regulatory certainty from EPA is critical during the reconsideration process.

Federal and State CCR Permit Programs

Federal CCR regulations were originally promulgated under the Solid Waste Disposal Act because CCR is a solid waste and not a hazardous waste. Congress gave states the primary authority to regulate the broader category of "solid waste management practices." But in almost all states, including Arizona, federal CCR regulations are currently being "self-implemented" without the benefit of state or federal permits and a regulatory infrastructure to work with regulators to demonstrate compliance. This self-implementing framework has proven unworkable for several reasons. Facilities are unable to work with state or federal regulators to tailor regulatory requirements to site-specific conditions. Instead, utilities must implement the CCR Rule without any regulatory guidance or compliance certainty unlike with other federal

environmental programs. Without a permitting program in place, enforcement is presently serving as an ill-fitting substitute for organic collaboration between an agency and a regulated party. Additionally, EPA's evolving stance on federal CCR regulatory requirements has resulted in a lack of clarity surrounding CCR compliance requirements, forcing facilities to make major operational decisions under immense regulatory uncertainty.

For instance, EPA has challenged site-specific decisions such as sufficiency of a groundwater monitoring network, the validity of statistical approaches chosen, and the technical bases of alternate source demonstrations, which are used to show that a statistically significant level of an identified constituent is from a source other than the monitored CCR unit. These issues are not enforcement issues, but rather should be the basis of discussion and collaboration between a utility and regulator through a permitting program.

To address this issue, Congress in 2016 passed the Water Infrastructure Improvements to the Nation Act, which amended RCRA to allow states to establish CCR permit programs for EPA approval and to require EPA to implement a federal CCR permit program subject to the availability of appropriations. Congress has appropriated funding to implement a federal CCR permit program every year since 2018. Despite this, no federal CCR permit program has been finalized, and only a handful of states have EPA-approved state CCR permit programs, although additional states have submitted applications or have expressed interest in doing so, including Arizona. Establishing state and federal CCR permit programs will allow for a more effective way to regulate CCR units by tailoring requirements based on an individual site's characteristics, size, and relative risk.

We appreciate EPA's recent proposal to approve North Dakota's CCR permit program application, and Arizona is working with EPA in advance of submitting a CCR permitting program proposal. We urge EPA to work with states and quickly review all permit program applications it receives in the spirit of cooperative federalism. Additionally, we urge Congress to continue to appropriate funds for the development of site-specific and risk-based federal and state CCR programs to support electric co-ops as they comply in good faith with federal CCR regulations.

Conclusion

As the electricity demands of our nation continue to grow, electric co-ops are committed to meeting increasing demand while continuing to provide reliable and affordable electricity to their consumer-members and protecting the environment within their communities.

Smart energy policy is critical to meeting this goal. We look forward to working with this Subcommittee and the Administration to address federal CCR regulation to allow co-ops to better serve their consumer-members.