

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Walz, Barbara
Sent: Mon 6/5/2017 11:15:21 PM
Subject: Thank you for your time
170331a Walz to DOC Permit Streamlining and Reducing Regulatory Burdens.pdf

Hello Mandy – I am late on this email to thank you for your time (I needed to track down your email address).

Sure appreciate the time that we had with you and Administrator Pruitt with the G&T cooperative group in April.

Congratulations on your new role! How exciting!

I would like to offer to serve as a resource for electric utility (cooperative) environmental issues, if you need any information or examples of projects, regulations for the regulatory reform

I have attached the comments that we sent to the Department of Commerce, just as an fyi – to show what issues are important to us.

I KNOW you are super busy, and don't expect a reply, but, wanted to reach out to you and get you my contact information.

Best wishes in the new position – happy you are there!

Barbara

Barbara Walz

Senior Vice President

Policy and Compliance

Tri-State Generation and Transmission Association, Inc.

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TRI-STATE GENERATION AND TRANSMISSION ASSOCIATION, INC.

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U.S. Department of Commerce
Docket ID No. DOC 2017-0001-0001
Office of Policy and Strategic Planning
H.C. Hoover Building Rm 5863
1401 Constitution Ave. NW
Washington D.C. 20230


Submitted Via: Regulations.gov

Tri-State Generation & Transmission Association, Inc. (Tri-State) is a not-for-profit, wholesale electric power producer/supplier that serves 43 rural electric cooperatives and public power districts in Colorado, Nebraska, New Mexico and Wyoming. Tri-State's transmission and member distribution systems serve a population of approximately 1.5 million people across a 250,000-square-mile service territory. The mission of Tri-State is to provide our member systems with a reliable, cost-based supply of electricity while maintaining high environmental standards. Tri-State provides electricity to its members based on a diverse mix of generation resources including coal, natural gas, hydroelectric, wind and solar power located throughout its four-state member service territory.

Tri-State appreciates the opportunity to provide public comments on the request for information pursuant to President Trump's Memorandum of January 24, 2017, "Streamlining Permitting and Reducing Regulatory Burdens for Domestic Manufacturing". Tri-State appreciates President Trump's recognition of the heavy burden that is placed upon manufacturing by the regulatory programs of agencies identified in the Presidential Memorandum and appreciates Secretary Ross's outreach in this effort to collect public input from domestic manufacturers and their stakeholders. Tri-State submits these comments as a stakeholder in domestic manufacturing in the United States. The cost to produce electricity is often a significant part of the cost of manufacturing. The obstacles and impediments that present themselves to building, maintaining and operating our infrastructure cause and create excess costs for manufacturing and can create delays in providing service when it is needed.

Tri-State recognizes and appreciates the President's Executive Order Promoting Energy Independence and Economic Growth. The direct effect of the order will be to rescind several guidance documents that have placed a significant regulatory burden on our ability to provide reliable and cost effective electric power to our members, however we want to underscore that it will be important for the individual agencies within the administration to follow through on the review of rules that have been

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adopted, like the Clean Power Plan and to "...suspend, revise or rescind..." the final rules "...as soon as practicable, ...".

As a stakeholder in the manufacturing of goods and services in the United States the regulatory programs that have been adopted and implemented over the past many years have created a significant burden on our ability to produce reliable electricity for our customers in a cost effective manner. The layering of requirements from different media programs has forced the closure of generation facilities well before financing is paid and well before the remaining useful life of many facilities has been reached – forcing utilities to either buy power on the market or build new generation. Below are some key issues that have, or will in the future, adversely affected our ability to provide electric service to domestic manufacturing in America.

Clean Power Plan

Litigation over this rules' requirements is currently ongoing, and we are pleased to see that the Trump Administration has asked the court to hold this litigation in abeyance while EPA reviews this rule per President Trump's recently signed Executive Order. The current final rule exceeds EPA's statutory authority, displaces state responsibility, and requires significant changes to the electric utility industry that go well beyond the control of the individual sources being regulated. The scope of any new rule should be limited to standards that can be achieved within the fence line of a given facility and utilities should be provided a narrative standard with flexibility in meeting any requirement that is adopted.

Greenhouse Gas Requirements for New Sources - 111(b)

The rule requires that new sources must implement a system of carbon capture and sequestration. These systems are not proven technology, are not commercialized and are cost prohibitive in the market place. As implemented, the requirements of this rule prevent any future opportunity for the development of new coal-fired electric generation in the United States. We are pleased to see that the Trump Administration has asked the court to hold this litigation in abeyance while EPA reviews this rule per President Trump's recently signed Executive Order. Any new rule promulgated should be consistent with a consideration of the "best system of emission reduction" definition for the New Source Performance Standard requirements contained in the of the Clean Air Act and specifically reexamine the current rule's assumptions on the current state of technology.

Social Cost of Carbon

The Obama Administration finalized a "social cost of carbon" estimate to place a monetary value on the supposed future damages from global climate change over hundreds of years in order to justify onerous regulation of carbon dioxide emissions. This estimate was developed by administration officials with little opportunity for public input, and the resulting cost estimate could vary wildly based on multiple arbitrary cost and modeling assumptions. We are pleased



that the Trump Administration has rescinded this fatally flawed estimate and disbanded the interagency work group.

CEQ NEPA Guidance on Climate Change and Greenhouse Gases

The Obama Administration finalized guidance to federal agencies on how to consider the impacts of proposed federal actions on climate change as part of the environmental review under the National Environmental Policy Act (NEPA). This guidance, which was not subject to formal notice and comment, represented an unreasonable and inappropriate expansion of existing CEQ NEPA regulations. Further, this guidance would have significantly impacted proposed energy and water infrastructure improvements, adding further delays and uncertainties. We are pleased that the Trump Administration has rescinded this guidance.

Regional Haze Rule SIP/FIP

The statutory goal of the regional haze rule is to achieve natural visibility conditions in the nation's National Parks, Wilderness areas (Class I areas) by 2064. "Natural conditions" is defined to mean visibility in pre-industrial America. Given the global nature of air quality and the current operation and needs of our society, this does not seem reasonable. There are several aspects of this program that need to be addressed:

- Under this program States are supposed to have the primary role in determining how best to make emissions reduction and put themselves on a 'glide-path' to achieving the goal. EPA has directed the initial focus of this program on electric generating units, largely to the exclusion of other sources of air pollutant emissions and the focus of some states. Phase I of this program has largely been implemented and compliance is due by 2018. In recent years, EPA has become much more prescriptive in forcing states to impose high cost, low benefit pollution controls to drive a policy perspective against coal fired electric generation based on aesthetics rather than human health and the environment.
- EPA has largely demanded that states impose selective catalytic reduction technology to control NOx emissions. Retrofitting this technology to existing sources can cost hundreds of millions of dollars per electrical generating unit.
- EPA has started planning for Phase II of the program and has proposed a guidance document for states that continues to erode state authority over their programs. The rule requires that regional haze plans be reviewed and revised every ten years. This period of time is insufficient to assess appropriate emission controls, develop plans and implement emission reductions in a reasonable fashion.
- Achieving natural visibility conditions representative of pre-industrial times will be a significant effort that many believe is unachievable given the current make up and operation of our society. As this program goes forward, EPA must consider the impact of other sources of emissions and what to do about them, such as the emissions from wild and prescribed fire, the emissions from on and off road mobile sources and international emissions. The administration should revise the proposed EPA guidance and EPA

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oversight to put the decision making back in the hands of the states and allow states the time and discretion to cost-effectively manage this program towards a goal that is still 48 years away.

- A good first step is to extend the 2028 planning and compliance cycle by at least 3 years, which gives states and the regulated community added time to meet the next round of limits.
- Many states and industry groups have provided specific remedies in comments on the proposed guidance that clarifies where EPA has overstepped their authority and how it can be fixed.

2015 Ozone NAAQS Implementation Rule

On November 16, 2016, EPA proposed the 2015 Ozone NAAQS (70 ppb) “Implementation Rule”. The proposed rule sets forth how EPA would continue to treat the existing (2008) Ozone NAAQS and what States would be required to do in the development of State Implementation Plans for areas that do not attain the 2015 standard. Adoption of the 2015 ozone NAAQS is based on limited scientific data and is unnecessary and inappropriate. The 2008 ozone NAAQS, a standard that was determined to be fully protective of public health and the environment, hasn’t even been fully implemented. The reduced level of the standard will cause more stringent levels of nonattainment to be classified and more stringent emissions controls to be required on existing operations at significant costs.

In the proposed Implementation Rule EPA needs to do a better job of accounting for background concentrations of ozone that travel into a non-attaining area by recognizing the Clean Air Act provision that provides relief from international sources of emissions applies to all states and by providing states with tools to address ozone from natural sources and other distant or out of state sources. Large areas across the country are being designated as nonattainment when significant amounts of ambient ozone are being transported into these areas from outside the country or from great distances. In some cases nonattainment areas are responsible for less than 50% of their ambient ozone concentrations. Once a nonattainment area is defined EPA should not require states to evaluate other distant sources within the State but outside the nonattainment area for additional emission controls.

We support the bill that has been introduced in Congress to extend the effective date of the 2015 Ozone NAAQS to 2025. If the 2015 ozone NAAQS is retained, the 2008 Ozone NAAQS should be revoked once new classifications are adopted.

EGU MACT/MATS

The EGU MACT or MATS Rule was adopted as a final rule in February 2012 and has been implemented across our industry for a few years, however, this rule requires control equipment on coal -fired power plants for mercury, HCl, and other emissions that were justified based on



benefits of particular matter emission reduction co-benefits, which were double-counted with other air quality regulations. Again, there are many issues that need to be addressed;

- EPA never actually determined that there was an adverse health impact from the emissions of HCl from electric generating units.
- It is widely recognized that the initial impact of this rule; gigawatts of coal fired generation being shut down has already occurred, however, the rule's ongoing implementation should be scaled back to provide owners and operators relief from the monitoring/testing, recordkeeping and reporting requirements of this rule.
- The rule has required the installation of monitoring equipment and third party testing every quarter that costs approximately \$100,000 per year per unit. The on-going testing and monitoring is excessive, burdensome, in some cases duplicative and provides little benefit, especially for units that are consistently meeting the standards. Now EPA is preparing to conduct its Risk and Technology Review and consider the application of more stringent emissions controls and or testing, monitoring, reporting and record keeping.
- The administration should review the MATS rule pursuant to the March 28th Executive Order Promoting Energy Independence and Economic Growth, petition the court to hold the current litigation in abeyance and reconsider the supplemental finding regarding the consideration of costs for the final rule.

Air Quality Modeling

EPA's air quality models are used to demonstrate projected future compliance with the NAAQS. These models are based on extreme worst case simulations and employ assumptions that are not realistic, creating inappropriate limitations on industrial and manufacturing operations, which significantly increase the cost of manufacturing and infrastructure development based on modeled simulations of impacts that are unlikely to ever happen, and greatly increase costs for little or no measureable benefits. Current models (AERMOD) have been shown to over-predict impacts from a wide range of industrial and manufacturing operations. Because the NAAQS are becoming increasingly stringent, it is important to refine the models and the assumptions that are plugged into them to minimize the over prediction of impacts. Recently updated versions of AERMOD and AERMET reflect improvements but more revisions are necessary.

Numerous meetings and discussions have been held and information has been provided to help address and improve identified modeling irregularities. EPA has agreed that improvements need to be made to the modeling system and guidance and even signaled that they planned to make them.

Changes to the models that EPA uses should be made to decrease over-prediction and to increase modeling efficiency. Inaccurate modeling that over-predicts real-world impacts and real-world



costs is very often the step that delays or kills projects, or makes them so expensive, risky, and difficult to accomplish that investments and jobs shift to other resources and countries.

We ask:

- that more reasonable modeling assumptions that reflect real-world potential outcomes be required in permitting processes, and
- that the timeframes for review and issuing permits be sped up to allow timeframes that match changing market conditions and economic forces in the real world.
- these modeling improvements apply to both greenhouse gas and criteria pollutants.

Waters of the United States Final Rule

The administration has identified the Waters of the U.S. (WOTUS) rule as exceeding statutory authority under the Clean Water Act (CWA) and federal jurisdiction, as described in Supreme Court decisions. The rule is currently stayed. The administration should ask the court to hold the litigation in abeyance and withdraw the 2016 rule. The current regulations are protective of the waters of the U.S.

Steam Electric Effluent Limitation Guidelines (ELG) Final Rule

The Steam Electric Effluent Limitation Guidelines (ELG) rule prohibited any discharge of wastewater from coal ash transport or management, and imposed limits on other discharges to water that may not be actually achievable. EPA cloaked the data and analyses underlying the final decisions under an expansive interpretation of “confidential business information.” The rule is under litigation, but since opening briefs were only filed December 5th, the administration should request the court hold the litigation in abeyance and revisit the rule. Revisiting the rule would align with two of the new administration’s priorities: energy independence (the rule only applies to coal-fired power plants) and regulatory reform (the rule sets a troubling precedent for hiding critical technical justification for the rule).

Cooling Water Intake Structure Final Rule

In the “316(b) Rule,” EPA provided significant flexibility and state discretion in approaches to protect fish and other aquatic species from being harmed by a facility’s cooling water intake system. In the rule, EPA provided an explicit requirement for the Fish and Wildlife Service or the National Marine Fisheries Service (the Services) to review all permits for potential impact to Endangered Species Act (ESA)-listed species, and especially to recommend new and costly technologies (such as closed-cycle cooling systems). The concern is how the Services will conduct these reviews, especially how they will establish the baseline for measuring potential effects. The new administration should revise guidelines and policies to clarify the Services’ role in reviewing 316(b) permits or other CWA decisions. Such an effort would not only improve implementation of the 316(b) rule, but other ESA assessments performed by the Services.



Coal Combustion Residual (CCR) Management

The CCR rule is being implemented by coal-fired power plants nationwide under a self-implementing/citizen-enforced regime. The recently passed Water Infrastructure Improvements for the Nation (WIIN) Act creates a pathway to implement the program through permits (state-issued permits in states that assume the program, EPA-issued permits in other states) that could reflect site-specific conditions rather than the current inflexible one-size-fits-all criteria. The EPA should expeditiously establish processes to review and approve state permitting programs. EPA should make the federal program more risk-based, especially with respect to groundwater protection, corrective action, and closure, through guidance and upcoming rulemaking resulting from the 2016 settlement agreement. Congress should appropriate funds for, and EPA should establish, a site-specific, risk-based CCR permitting program in states that do not establish their own CCR permitting programs. The administration should retain the non-hazardous designation for CCRs and work with Congress to make that designation permanent and to assure funding for the federal permitting program in states that do not elect to issue state permits.

Presidential Memorandum on Ecosystem Services

This memo was issued on October 5, 2015 regarding the concept of incorporating “ecosystem services” into federal decision-making. Ecosystem services are broadly defined as the benefits that flow from nature to people. The memo directed federal agencies to develop policies to promote the consideration of ecosystem services into agency decisions, including regulatory contexts and in NEPA reviews. The memo also identified the need for development of new CEQ “implementation guidance” within 14 months. What this concept can and has led to in practice for some industries is a push by agencies to request/require “mitigation” and impact fees for natural resource impacts beyond what the regulated community is accustomed to (e.g. mitigation for habitats/ecosystems that are not rare, unique or otherwise protected such as wetlands or ESA species habitats).

Final Critical Habitat Regulations and Policy

The USFWS issued final regulations and policy in February of 2016 regarding the designation of critical habitat under the Endangered Species Act (ESA). These regulations and policy inappropriately expanded the concept of critical habitat and would allow for the designation of currently unoccupied lands that might at some future point develop and contain the habitat features necessary for the species. These final rules should be revoked and the USFWS should simply revert back to the previous critical habitat rules.

Final BLM Mitigation Policy & Manual and USFWS Compensatory Mitigation Policy

Effective January 30, 2017, the BLM revised its policy and handbook providing guidance on implementing mitigation to address impacts on BLM-managed lands. The policy and handbook exceed the statutory authority of FLPMA by incorporating concepts like using a “landscape scale” approach from President Obama's memorandum on mitigation impacts on natural



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resources from development and Secretarial Order 3330. The scope of mitigation will add significant burden and cost to infrastructure built and maintained on BLM lands. The administration should rescind the policy and review whether FLPMA gives BLM the statutory authority to even require mitigation. Similarly the USFWS' final compensatory mitigation policy from November of 2016 relies on the concepts of "net benefit" and "no net loss" as well as the sequential mitigation hierarchy in the presidential memorandum on mitigation that was recently rescinded by executive order. These concepts are inconsistent with the ESA and a revised compensatory mitigation policy should be developed.

Tri-State appreciates the opportunity to provide these written comments on the Request for Information from the Department of Commerce seeking information on the impacts of federal permitting and the adverse impacts from regulations on domestic manufacturers and their stakeholders. If you have any questions about Tri-State's comments, please contact Doug Lempke of our staff at 303-254-3590.

Sincerely,

Barbara A. Walz
Senior Vice President
Policy and Compliance
Chief Compliance Officer

BAW:DAL:dbf

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