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Hearing:

The President's Climate Action Plan: What Is the Impact on Small Business?

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Good morning. My name is Mike Kezar, and I serve as the General Manager of San Miguel Electric Cooperative, Inc. I appreciate the invitation to appear before the subcommittee today to discuss the potential impact that regulating carbon dioxide emissions under New Source Performance Standards (NSPS) provisions of the Clean Air Act could have on San Miguel and its 26 member cooperatives.

San Miguel is a Rural Electric Cooperative Corporation organized for the sole purpose of owning and operating a mine-mouth, lignite-fired generating plant and associated mining facilities in Atascosa County, approximately 60 miles south of San Antonio, Texas. Power produced from the San Miguel facility is furnished exclusively to Brazos Electric Power Cooperative, headquartered in Waco and South Texas Electric Cooperative, headquartered in Nursery. Through the 24 retail distribution cooperatives they serve, power from San Miguel flows to rural electric cooperative members throughout the state of Texas. As a not-for-profit cooperative, San Miguel does not have shareholders and the total cost of owning and operating the plant, including any compliance costs associated with the regulation of CO_2 emissions, will be borne directly by the cooperative consumer/members served by Brazos and South Texas Electric Cooperatives. Additionally, San Miguel's annual sales of electricity total less than 3 million MWh, placing it well under the 4 million MWh ceiling that the Small Business Administration uses to classify electric utilities as small business entities.

Before I address my specific concerns with NSPS regulation of greenhouse gases – including CO_2 - I want to stress that the Clean Air Act is not the appropriate vehicle for the regulation of greenhouse gas emissions for several important reasons. First, any meaningful effort to reduce emissions must necessarily involve tough economic and public policy choices that would significantly impact the nation as a whole. These are choices that must be made by the U.S. Congress, acting as direct representatives of the people, with the transparency and participation allowed through the legislative process. This cannot be left up to Washington bureaucratic agencies. Second, reducing greenhouse gas emissions in the U.S. alone will have no significant impact on worldwide inventories. These reductions, however, would likely have a notable impact on our nation's ability to compete in the international marketplace. The price of virtually all products and services would necessarily increase as the cost of compliance for industry,

particularly the electric generation industry, is spread throughout the various economic sectors Therefore, any significant effort within the U.S. to address greenhouse gas emissions must only be undertaken as part of an overall international initiative that properly balances domestic and international interests. The Clean Air Act is clearly not structured to mandate or allow the appropriate balancing of these interests and public policy concerns.

Unfortunately, and despite the flaws outlined above, the administration has announced its intention to regulate greenhouse gas emissions under Section 111 of the Clean Air Act, and has set timetables for establishing New Source Performance Standards for both new and existing fossil fueled electric generation facilities. This means that the Environmental Protection Agency will have to re-propose an NSPS for new sources. The fact that EPA is now pursuing a different regulatory path is particularly important, given the fact that, as with the original proposal and now with the anticipated re-proposal, there is no commercially available technology to significantly reduce CO_2 emissions. That means there is no "best demonstrated technology" or "best system of emission reduction" as called for under Section 111 of the Clean Air Act that would produce meaningful reductions in CO_2 emissions from fossil fueled electric generation facilities.

Nonetheless, EPA appears intent on regulating fossil fueled electric generation under Section 111 by re-proposing a rule directed at new sources, followed by guidelines for states to follow in regulating existing sources. The regulation of existing sources is required by Section 111, after NSPS for new sources is established. The cost impacts of these regulations, particularly on new and existing coal-fired generation, and especially on small business entities such as San Miguel, could be catastrophic.

EPA's NSPS CO_2 standards for new coal-fired generation were initially proposed in April 2012. This proposal is to be withdrawn, with the President requesting a new proposal no later than September 20, 2013. Any new proposal, however, should not include the same technical and legal flaws as the April 2012 proposal. One of the primary flaws was the combination of coal-fired and natural-gas fired electric generation facilities into a single regulated category for the purposes of the rule and then establishing one emissions limit for that entire category. This

combination of various types of generation facilities into one-large source category is unprecedented for this type of rule. Coal-fired and natural-gas fired electric generation units are very different, and combining them makes no practical sense, flies in the face of decades of EPA Clean Air Act precedent, and likely violates the Clean Air Act's requirements regarding subcategorization of different types of source categories.

Unfortunately, due to a language quirk in Section 111 of the Clean Air Act, any unit constructed or modified after the *proposal* of the rule must comply with standards applicable to new units. This short-circuits a common sense approach to regulating facilities only after considering public comment on the proposal. The April 2012 proposal did allow "transitional" sources, essentially those close to beginning construction, a one year transitional period to begin construction without meeting the proposed CO_2 standards. However for generation sources not that far along in the planning process, the proposal mandated one emission standard – based upon natural gas-fired generation - for all new sources, including coal-fired generation facilities. EPA admitted that new coal-fired generation was incapable of meeting that standard, and the proposal allowed potential new units the option of meeting an interim standard, coupled with required Carbon Capture and Storage, or CCS, utilization to be applied in the future. The technical and economic uncertainties inherent in constructing new coal-fired generation with the absolute mandate to install in the future a technology that is not currently commercially available has the effect of ensuring that no new coal-fired generation facility will be built, at least within the foreseeable future. Furthermore, since the requirements were contained in a proposed regulation, they were not subject to a court challenge. Stop and think about that. Practically speaking, you cannot build a power plant in the United States of America using coal - the one fuel that we have more of than any other nation. The one fuel that mine-mouth facilities like San Miguel know will not be subject to price volatility and we are going to take that off the table. I cannot think of another point in history that any nation has ever done something so clearly against its economic and national security interests.

Section 111 of the Clean Air Act requires that cost be taken into account when developing NSPS for both new and existing units. While I fully support the development of technologies that would cost effectively reduce CO_2 emissions from coal-fired generation facilities, presently no

such technology is commercially available. Carbon Capture and Storage may be technically possible but its practical and economic viability is very uncertain. Deployment of CCS technology would effectively double the cost of power produced by coal-fired electric generation facilities and there is no evidence that this technology will become commercially available anytime in the near future. If EPA were to make CCS applicable to the San Miguel unit, now or in the future, the unit would likely have to cease operation due to this doubling of power costs. This technology clearly does not meet the NSPS mandate for cost consideration.

Since there are no commercially available technologies that can produce meaningful reductions in CO_2 emissions and satisfy Section 111 NSPS cost viability requirements for coal-fired generation, EPA may well formulate NSPS regulatory policy that requires the use of natural gas in lieu of coal for electric power generation. Additionally, I expect EPA to propose that states develop guidelines that would require physical changes at existing units, such as the San Miguel unit, to gain, at best, moderate efficiency improvements, to thereby reduce CO_2 emissions a few percent for every MWh of electricity produced. Although Section 111 requires that any NSPS be economically achievable at the unit, my concern here is that EPA will force guidelines on states that are unrealistic and couple them with, in effect, requirements for emissions averaging or off-sets with natural gas or renewable generation. While this approach may be viable for larger electric utilities with broader generation portfolios, it would not be viable for San Miguel or other small electric utilities whose generation is primarily coal-based.

I want to make it clear I do not oppose flexible regulatory compliance options, but such options cannot substitute for the ability to comply cost-effectively at the individual unit level. Compliance cost for a single coal-fired generation facility small business entity must be affordable. Since companies like San Miguel, with only one facility, have no opportunities to average emissions using these concepts, this is simply not feasible, let alone affordable.

Lastly, I want to address the absolute necessity that EPA follow the requirements of the Regulatory Flexibility Act. In this case, the act mandates that EPA take steps to minimize the economic impact that Section 111 regulations would have on small business entities such as San Miguel. Unfortunately, EPA has a poor track record recently of following its own guidelines

regarding the formation of Small Business Regulatory Enforcement Fairness Act (SBREFA) panels for the purpose of meeting the Regulatory Flexibility Act mandates.

For example, EPA's guidelines require that small business representatives who participate on Small Business Regulatory Enforcement Fairness Act panels be given adequate background information on the rulemaking, as well as options to lessen the economic impact on small business entities of the regulatory program in question. However, in the last two Clean Air Act major rulemakings directed at fossil-fuel fired electric generation - the new source NSPS and the UMATS rules - EPA failed to provide small business representatives with any regulatory options, let alone allowing an opportunity for panel members to meaningfully comment on alternatives to lessen economic impacts on small businesses.

I am especially concerned that EPA may seek to skirt a responsibility to minimize the regulation's impact on small business entities under the guise that the guidelines themselves do not directly affect small business but rather that the State Implementation Plans would. While I believe that small businesses should be afforded full participation as contemplated in the SBREFA on any potential NSPS rule, at the very least, EPA should conduct comprehensive consultations with small business electric utilities in an effort to minimize impacts on small entities even if such efforts are not conducted under the auspices of the SBREFA. In fact Executive Order 13563, as well as the president's June 25, 2013 Memorandum entitled Power Sector Carbon Pollution Standards, clearly advocate, at the very least, that policy formulation not prejudice small business entities. An upfront consultation process involving small business entity representatives would be an excellent opportunity for the administration's own objectives to be satisfied.

That concludes my statement. I thank the subcommittee for the opportunity to address these important issues. I would be glad to answer any questions you may have.