



Comments of
Seminole Electric Cooperative, Inc.

Presented by Lisa D. Johnson

U.S. House of Representatives
Committee on Energy and Commerce
Subcommittee on Environment and the Economy
Hearing on “EPA’s 2014 Final Rule: Disposal of Coal
Combustion Residuals from Electric Utilities”

January 22, 2015



Summary of Testimony

Seminole Electric Cooperative (Seminole) is one of the largest, not-for-profit generation and transmission cooperatives in the country. Seminole is owned by nine, not-for-profit, consumer-owned Member electric cooperatives. Collectively, we provide safe, reliable, competitively-priced electricity to more than 1 million consumers and businesses in parts of 42 Florida counties.

Seminole would like to acknowledge that we support the U.S. Environmental Protection Agency's (EPA) decision to designate coal combustion residuals, or CCRs, as non-hazardous. The EPA's approach, supported by data from its own investigations, appropriately balances the need to protect public health and the environment without creating an undue burden on affected facilities.

Even with a non-hazardous final rule, however, we are seeking your support to provide legislative certainty to secure the non-hazardous designation and to establish an orderly process for state authorities to implement federal criteria through state permits.

Self-implementing – While the EPA will now regulate CCRs as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA), Subtitle D is self-implementing, which means facilities covered by the rule, including Seminole's coal plant, must comply *with the Federal rule regardless* of whether or not the state adopts the rule.

As a self-implementing final rule under Subtitle D, the typical method for a state or citizen group to check compliance at a facility, that *may or may not* be adhering to the rule, is to file suit against the facility. For utilities, such lawsuits could result in frivolous and costly legal disputes in federal district courts where the resulting interpretations and penalties could vary significantly.

Seminole's goal is to comply with both state and federal permits, but we need clarification and certainty on this issue to ensure consistent implementation and compliance.

Non-hazardous designation – The next major concern we have with the rule is the complete lack of certainty that CCRs will continue to be regulated as non-hazardous.

On numerous occasions, the EPA has determined that CCRs are not hazardous - and there are no new findings to justify a change in EPA's determination.

Regulating CCRs as a hazardous waste is not warranted and would effectively eliminate beneficial reuse and recycling of these materials, negatively affecting the cost of electricity. We ask that you end the continuous reevaluation process and confirm once and for all that CCRs are, and will continue to be, regulated as non-hazardous waste.

Seminole Electric Cooperative Testimony

Background

Seminole Electric Cooperative, Inc. (Seminole) is one of the largest, not-for-profit generation and transmission cooperatives in the country. Seminole is owned by nine, not-for-profit, consumer-owned Member electric cooperatives. Collectively, we provide safe, reliable, competitively-priced electricity to more than 1 million consumers and businesses in parts of 42 Florida counties.

Seminole's primary resources include the Seminole Generating Station (SGS) in northeast Florida and the Richard J. Midulla Generating Station (MGS) in south central Florida. Seminole works to maintain a balanced and diversified generation portfolio that includes owned generation, as well as capacity and energy provided through purchased power agreements with other utilities, independent power producers, and government entities (municipals and counties). Seminole also receives power from renewable energy facilities, including waste-to-energy, and landfill gas-to-energy, and a biomass facility*. The diversity in Seminole's generation mix reduces exposure to changing market conditions, helping keep rates competitive.

Introduction

First, Seminole would like to acknowledge that we support the U.S. Environmental Protection Agency's (EPA) decision to designate coal combustion residuals, or CCRs, as non-hazardous. The EPA's approach, supported by data from its own investigations, appropriately balances the need to protect public health and the environment without creating an undue burden on affected facilities.

Even with a non-hazardous final rule, however, we are seeking your support to provide legislative certainty to secure the non-hazardous designation and to establish an orderly process for state authorities to implement federal criteria through state permits.

CCRs are materials produced when coal is burned to generate electricity. In Seminole's case, CCRs consist primarily of three distinct yet different byproducts: fly ash, bottom ash, and flue gas desulfurization (FGD) material.

Seminole and CCRs

Seminole owns and operates SGS – a 1,300-megawatt coal-fired power plant in Putnam County, FL, employing nearly 300 hard-working, skilled Floridians. SGS generates approximately 800,000 tons of CCRs per year. However, Seminole recycles more than two-thirds, or roughly 550,000 tons, per year of our CCRs to produce wallboard, cement, and concrete block.

At SGS, the FGD material from an environmental control system is converted into synthetic gypsum and sold to Continental Building Products (Continental). Continental is a wallboard production facility specifically constructed in 2000 to utilize the synthetic gypsum from SGS. Since 2000, more than 7 million tons of FGD materials have been converted into wallboard – wallboard used to build homes and businesses throughout Florida and across the country. Seminole also recycles all of the facility's bottom ash to manufacture cement and stronger, lighter concrete block. If not reused beneficially, these byproducts would have been placed in a landfill.

In 2009, Seminole received a Sustainable Leadership Award from the Council for

Sustainable Florida for our beneficial reuse of CCRs, and SGS was named one of the top six coal plants in the world by *Power Magazine* for our recycling practices and environmental accomplishments.

One of Seminole's most important goals is to make certain our power plants are operated in a safe, environmentally-responsible manner and in full compliance with all permits issued by the Florida Department of Environmental Protection (FDEP) and the EPA, bringing us to one of our concerns with the new rule.

Legislative Opportunities

Self-implementing – While the EPA will now regulate CCRs as a non-hazardous waste under Subtitle D of the Resource Conservation and Recovery Act (RCRA), Subtitle D is self-implementing, which means facilities covered by the rule, including Seminole's coal plant, must comply *with the Federal rule regardless of* whether or not the state adopts the rule. For example, should the State of Florida adopt the EPA's final rule, the federal rule also remains in place as a separate, independent rule that must still be met – undoubtedly creating dueling regulatory regimes, not to mention, unnecessary confusion.

As a self-implementing final rule under Subtitle D, the typical method for a state or citizen group to check compliance at a facility, that *may or may not* be adhering to the rule, is to file suit against the facility. For utilities, such lawsuits could result in frivolous and costly legal disputes in federal district courts where the resulting interpretations and penalties could vary significantly. For not-for-profit electric cooperatives, this is especially troublesome, as any costs incurred must be passed on to the consumer-owners at the end of the line.

Seminole's goal is to comply with both state and federal permits, but we need clarification and certainty on this issue to ensure consistent implementation and compliance. We ask that you eliminate the legal "double jeopardy" aspect of this rule, if a state fully adopts the EPA's new final rule.

Non-hazardous designation – The next major concern we have with the rule is the complete lack of certainty that CCRs will continue to be regulated as non-hazardous. For Seminole, this is extremely problematic as a major component of the plant design at SGS is based on our environmental control systems and recycling practices – not to mention Continental's wallboard facility, which was constructed next door to SGS to maximize efficiencies in the production of wallboard.

Should the EPA decide to regulate CCRs as hazardous under RCRA Subtitle C at a later time, the wallboard facility's operation in rural Putnam County, FL, would be impacted adversely, as would the 100 employees that depend on Continental, and in turn, Seminole for work. Additionally, Seminole would be forced to dispose of CCRs as a hazardous waste – turning a beneficially used product into an expensive, landfilled waste stream, driving up the cost of electricity for our not-for-profit cooperative consumers.

On numerous occasions, the EPA has determined that CCRs are not hazardous - and there are no new findings to justify a change in EPA's determination. Regulating CCRs as a hazardous waste is not warranted and would effectively eliminate beneficial reuse and recycling of these materials, negatively affecting the cost of electricity. We ask that you end the continuous reevaluation process and

confirm once and for all that CCRs are, and will continue to be, regulated as non-hazardous waste.

Conclusion

Electric utilities face an ensuing battle when it comes to the onslaught of regulations targeting fossil fuel-fired power plants, especially those that burn coal and natural gas. Since 2008, the EPA has been proposing and finalizing new regulations aimed at electric utilities at a greater rate than ever before experienced.

Seminole has been making the right investment in environmental controls for years - considerably reducing air emissions, recycling our CCR byproducts, and minimizing landfill disposal. In total, Seminole's coal-based generating units at SGS have more than \$530 million of environmental control equipment - making them some of the cleanest coal-based power plants in the U.S.

For Seminole and other affected facilities, we are seeking regulatory certainty, especially related to this rule, so we can continue to provide safe, reliable and affordable electricity, while fully complying with all applicable rules, regulations and laws.

On behalf of Seminole and NRECA, thank you for providing the opportunity to share our views and discuss this very important rule.

* Seminole sells a portion of the renewable energy credits associated with its renewable generation to third parties. The third parties can use the credits to meet mandatory or voluntary renewable requirements.