

Testimony of Mr. Curtis Q. Warner

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Introduction

Chairman Hastings, Ranking Member DeFazio, Representative Crawford, members of the Natural Resources Committee, thank you for this opportunity to testify on the important issue of the U.S. Fish and Wildlife Service's ("Service's") Critical Habitat Designations under the Endangered Species Act ("ESA" or the "Act"). My name is Curtis Q. Warner, and I am the Director of Compliance & Support for Arkansas Electric Cooperative Corporation ("AECC").

I would especially like to thank Representative Crawford for requesting that the Committee hold a field hearing on this timely and important topic here in Arkansas. We also want to recognize Senator Pryor for his work to address this important issue in the Senate.

As a result of these strong oversight efforts by Arkansas' Congressional Delegation, the U.S. Fish and Wildlife Service recently made the decision to reopen for public comment, the proposed critical habitat designation for the Neosho mucket and rabbitsfoot mussels. This will be the second time the proposal has been reopened for comment at the request of our Congressional Delegation.

AECC would also like to thank the Delegation for providing the opportunity to discuss issues in an open forum with Service Director Dan Ashe. We were pleased that Director Ashe took time to travel to Little Rock on April 17 and listen to our concerns about this important rulemaking. With such a widespread critical habitat as is being proposed for the two listed mussels, this rulemaking will have a very significant impact in Arkansas. For that reason, AECC believes that stakeholders be allowed as much time as necessary to provide input on the proposal.

AECC Background

AECC, based in Little Rock, is one of the leading generation and transmission ("G&T") cooperatives in the nation with assets of about \$1.6 billion and annual energy sales of about \$736 million in 2013. AECC provides wholesale electricity, at some of the most competitive rates in the nation, to the state's 17 electric distribution cooperatives. Those cooperatives own AECC and are its members. AECC and its 17 members combine to provide electricity to more than 500,000 farms, homes, and businesses in Arkansas. All together, the Electric Cooperatives of Arkansas have assets of over \$4.5 billion dollars invested here in Arkansas. These assets, in the form of power plants, substations, and transmission and distribution lines, form the infrastructure needed to supply electric service to our member-consumers.

AECC generates and transmits electricity statewide and delivers it to the distribution cooperatives. From there, the distribution cooperatives own and operate a system of distribution lines to provide electric service to their members. Both G&T and distribution cooperatives were formed to provide reliable electric service to their member-consumers at the lowest possible cost.

I have had the good fortune of serving AECC members for more than 35 years. Since I began work at AECC in 1979, I have participated in performing environmental reviews and permitting for all of AECC's power plants, electric substations, and transmission lines. This includes preparation of five Environmental Impact Statements, numerous environmental and engineering reports, and testimony for 16 hearings involving new utility projects before the Arkansas Public Service Commission. Once a review is complete, my staff and I take part in acquiring and maintaining the regulatory permits necessary to construct and operate these facilities. Those permits are subject to many layers of federal, state, and local regulations and requirements. Often those regulations overlap, and occasionally they conflict with each other. And sometimes, as in the case of the Endangered Species Act, those regulations can even conflict with themselves.

AECC's Experience with ESA

When most people think of the Endangered Species Act, they think of the Western parts of the country. We've all heard about the spotted owl and the desert tortoise. However given the 2011 settlement agreement between the Service and environmental plaintiffs, this is quickly changing. According to the Service's listing work plan, every state in the nation will be affected by at least one ESA listing decision in the next five years. Here in Arkansas, we're already dealing with several species including the Indiana bat, Arkansas fatmucket, pink mucket, interior least tern and red-cockaded woodpecker.

The electric cooperative system covers about 62% of the land area of Arkansas. We serve members in all 75 Arkansas counties. With these and so many additional species expected to be listed in the next few years, AECC and its member cooperatives will continue to deal with ESA issues for years to come.

An example of a recent ESA impact is from siting a transmission line in Saline County. AECC submitted its proposed line route to the Service for review, and the Service requested a buffer zone around a small unnamed tributary to the Saline River so that listed mussels that might be present in that stretch of the river would not be impacted. The small intermittent tributary itself wasn't designated critical habitat – the proposed critical habitat was almost a mile away. (Note that this is an overhead line. The only soil disturbance would be the initial clearing of vegetation for line reliability and the area in the immediate vicinity of pole placement.)

In order to comply with the Service's initial recommendation, the route of the transmission line would have been moved to the middle of a farmer's field. This would have caused delay for AECC and would have created a physical and economic impact to the farmer for many years having to avoid poles when working the area. Fortunately, AECC was able to work with the Service's local office and move the line to a more practical location.

AECC has been a leader in developing clean, renewable energy in Arkansas. AECC owns three run-of-river hydroelectric projects on the Arkansas River. If shown to be low-impact, which they are, they can be eligible for renewable energy credits ("RECs") which AECC can sell and use

to reduce rates to our members. At our Dam 2 hydroelectric station, where these RECs are currently worth about \$350,000 a year, AECC had trouble gaining low-impact hydroelectric facility certification due to the habitat of the interior least tern in the area. This caused about a year's delay and lost revenue from the sale of RECs. We have also been looking at developing additional sites on the Arkansas River to harness more renewable energy; but, due to ESA concerns like this one, it would be very difficult to develop any new projects under the current regulatory environment.

Another specific example came when AECC was attempting to site another type of renewable energy project – this time a wind project. A few years ago, AECC had performed a two-year wind study to determine the best places to site utility-scale wind turbines in Arkansas. Working with a major turbine vendor, AECC had an opportunity to install the first prototype of a new state-of-the-art wind turbine at a very promising location as part of a demonstration project. Unfortunately, when the vendor learned that Northern Arkansas was a territory of the endangered Indiana bat, they backed out of the project citing ESA concerns and the delay to the project which would occur.

Often times trying to protect one species could harm another, effectively tying our hands as we try to develop a project. For example, look at the measures to protect mussels versus the measures to protect birds and bats. In the case of the two mussel species that prompted this hearing, agencies such as the Corps of Engineers recommend that to minimize siltation in runoff to wetlands and streams, which could do harm to the mussels' habitat, we should restrict land clearing to the drier months as much as possible – in Arkansas that would be in the summer. Farmers and landowners prefer that we build power lines during drier periods; this reduces rutting and damage to farm fields and property. However, other agencies such as the Service have recommended that we delay the clearing of trees until the winter months in order to protect roosting birds and bats. Clearing trees in winter is the worst time to clear due to the soggy ground and rainy weather – both of which would tend to increase siltation of area streams potentially harming the mussels to protect birds and bats.

And after October of this year, this will become an even bigger constraint as another species – the northern long-eared bat – is listed. At that point any clearing of trees will have to be coordinated through the Service. In many cases field surveys will have to be conducted, at no trivial expense, to determine if any of the species are present in the area. This will cause delays and extra costs to almost every new power line construction project, no matter how small. It will also be a significant impact to private landowners and the timber industry.

The Importance of Transparency and Consistency in ESA Listing Decisions

AECC's mission is to provide reliable and affordable power to our members in a responsible manner.

As part of the nation's electric grid infrastructure, many of AECC's projects cost in the millions of dollars. In the case of new generating stations, it can be in the hundreds of millions of

dollars. As an electric cooperative, all of these costs are passed directly on to our members. So, in order to meet our requirements of reliability and affordability, it's very important that our projects are within budget and on time.

As you know, every action and new regulation by the federal and state government can make permitting and compliance even more difficult, costly and time-consuming than it already is. This extends to something seemingly as benign as a "threatened or endangered listing" of a relatively unfamiliar plant or animal species by the Service, which is the subject of this hearing today. The consequences of listing a species can be very far reaching, so the process needs to be done with care, and in an open and transparent manner.

We are pleased that our Congressional Delegation is looking to make common sense changes to the ESA so that it works better for both people and threatened species. Representative Crawford's Common Sense in Species Protection Act of 2014 (H.R. 4319) does just that. But in so doing, the bill avoids any changes to the ESA listing process itself.

A key feature of this legislation requires that a draft economic impact analysis be issued concurrently with a proposal to designate critical habitat under the ESA. It will also ensure that the methodology used in designating critical habitat under the ESA properly reflects the true economic impact to people and businesses, including electric cooperatives and our members.

This economic analysis needs to include the real costs of a critical habitat designation, not just the costs that government agencies incur to administer an ever increasing bureaucracy. Requiring a real economic analysis and having it available for public review is a very important benefit of the Crawford bill that will give transparency to the process, and AECC supports this idea.

Capturing the real costs of a critical habitat designation is paramount to this reform effort. However in order to capture the real costs, you have to get the methodology correct. AECC's national association, the National Rural Electric Cooperative Association participates in a broad-based coalition supporting reasonable improvements to the ESA, such as this bill. The National Endangered Species Act Reform Coalition has noted that this bill makes several key improvements by:

- clarifying the scope of the economic analysis by requiring the Secretary to examine both the "incremental and cumulative" effects of "all actions to protect the species and its habitat,"
- expanding the scope of the area to be analyzed to include each state and locality that is "the subject of, or affected by, the proposed designation,"
- requiring the assessment of economic effects on a "quantitative and qualitative basis,"
- requiring the economic impact analysis to specifically address public and private economic effects on possible uses of land and property values, provision of water, power and other public services, employment, and revenues available for state and local governments, and finally

- mandating that the economic impact analysis comply with the guidelines issued pursuant to the Data Quality Act.

AECC strongly supports these provisions.

These modifications to current law are important because, as the ESA is currently implemented, no real-life economic analysis is produced by the Service when critical habitat is proposed. This leads people to believe that establishment of critical habitat has essentially zero economic impact. However, those that have tried to construct infrastructure within designated critical habitat know that there are significant economic impacts.

These impacts come in different forms: project delays, additional environmental studies, cost of mitigation, land use constraints, and difficulty in siting new facilities. Whatever the form, these impacts raise the costs of projects – which in turn raise electric rates to our co-op members. And finally, it's important for an entity like AECC that needs to schedule and budget for such projects to have transparency from the beginning so we have a clear understanding of what those impacts may be.

But these impacts aren't just felt by businesses such as AECC; they also affect individual landowners. Take my earlier example where a new transmission line almost got moved into the middle of a field. Being in or even near a designated critical habitat is a burden that can cause land use constraints on property owners and decreases their property values. We know this because in Arkansas many of these property owners are the rural property owners that we serve in our cooperative service territories.

To address this issue, Representative Crawford's bill, H.R. 4319, will mandate the exclusion of property from a critical habitat designation where the economic impacts analysis shows that the benefits of the parcel's exclusion outweigh the benefits of including the parcel within the critical habitat designation. This is obviously common sense; but, it is also a protection rural property owners need, and AECC strongly supports this idea.

I would note that the U.S. Fish and Wildlife Service has announced a draft policy prioritizing the types of properties that may be excluded from a critical habitat. As this draft policy was just announced on Friday, May 9th, we are still reviewing this proposal. However, from initial review, while well-intentioned, the draft policy is inadequate and only reinforces the need for certainty that would be provided by H.R. 4319.

Conclusion

AECC greatly appreciates the work of this Committee in its efforts to reach out beyond the interior West to the new generation of ESA stakeholders that will be affected by implementation of the Act. We look forward to partnering with you as you continue your work to make common-sense changes to the ESA.

Finally, I want to thank Rep. Crawford and our Arkansas Congressional delegation for putting a national spotlight on the issues we face as the ESA is implemented at home here in Arkansas. Legislation such as that proposed by Rep. Crawford and Senator Pryor seek to make modest but significant changes to the ESA that can provide the transparency we need while protecting the species that inhabit the Natural State.

Thank you for the privilege of providing this testimony. I look forward to receiving your questions at the appropriate time.