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Testimony of NRECA to the United States Senate

Committee on Health, Education, Labor and Pensions

Hearing on

The Power of Pensions:
Building a Strong Middle Class and Strong Economy
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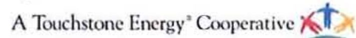
National Rural Electric Cooperative Association



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National Rural Electric Cooperative Association
Before the
Senate Health, Education, Labor and Pensions Committee
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Chairman Harkin, Ranking Member Enzi, and All Committee Members:

I am Christopher T. Stephen, Employee Benefits Legislative Counsel at the National Rural Electric Cooperative Association (NRECA). NRECA is the national service organization for more than 900 rural electric utilities that provide electricity to approximately 42 million consumers in 47 states, and sell approximately 12 percent of all electric energy sold in the United States. Most NRECA members are consumer-owned, not-for-profit electric cooperatives and share an obligation to serve their members by providing safe, reliable and affordable electric service. I am honored to testify today regarding the voluntary employee benefit programs sponsored by our member co-ops for their employees, and how our defined-benefit plan remains a critical recruitment and retention tool for electric cooperatives.

The NRECA Retirement Security Plan (the "Plan") has long enjoyed strong support from this Committee. Back in September 2005, this Committee unanimously approved an amendment to what eventually became the Pension Protection Act (PPA) of 2006 (Pub. L. No. 109-280). Led by Senator Roberts, and cosponsored by you, Mr. Chairman, along with Senators Bingaman, Hatch, Alexander, Isakson and Frist to recognize the special nature of multiple-employer plans sponsored by rural cooperatives. Thank you all for this strong support, as well as you, Senator Enzi, who also strongly supported this effort as Chairman of this Committee during that time.

Our Plan plays a vital role in ensuring that our employees have a secure retirement that enables them to live with dignity in the communities they served. It also provides a critical tool for our members to recruit and retain employees who can often earn higher wages in more urban areas, but value the long-term security provided by the Plan. Today, I will discuss who we serve, what we do, and why maintaining our Plan is part of our member's core business strategy to recruit, retain and reward long-service employees with a secure financial retirement. But first, I want to emphasize upfront that this Committee has the opportunity to help our employees by supporting our Plan. Specifically, as discussed further below, we ask you to consider the following:

(1) **Accelerated funding requirements during down financial markets dramatically increase volatility and costs.** We believe in the important reforms enacted by PPA. But, we have all seen the need to further supplement these important reforms in light of the lessons learned from the economic downturn and from the very sad participation decline in the defined-benefit system. We are grateful for your leadership to enact a short-term adjustment last year. Going forward, we need to restore a critical, logical element from when defined-benefit plans were most popular: permit companies to contribute more during good times, and less during bad times. The current system often works the opposite way, unfortunately. We cannot have a vibrant defined-benefit system as long as the funding rules require exorbitant contributions at exactly the wrong time.

(2) **The Administration's proposal to increase premiums paid to the Pension Benefit Guaranty Corporation (PBGC) by $16 billion amounts to an unfair tax increase on defined-benefit plan sponsors.** This must be soundly rejected. No Congressional

Committee has examined the true nature of the PBGC's deficit or the value of the coverage provided by the PBGC. And PBGC's own annual report notes that the PBGC will not have any trouble meeting its obligations for the foreseeable future. In that context, it is wrong for the government to even consider taxing plan sponsors.

(3) **The IRS has threatened to prohibit us from keeping our promises to our employees.** The Plan has long promised employees who attain normal retirement age (NRA) the right to receive their retirement benefits. Our employees need your protection.

(4) **We urge you not to tax retirement plans to address the national deficit.** Taxing electric linemen on their retirement savings is not the way to address the deficit.

Who We Serve

Last year, Agriculture Secretary Thomas Vilsack confirmed the economic downturn greatly impacted rural America, with high poverty which is reflected in higher mortality rates for children, higher unemployment, and declining populations.[1] Since the beginning of the economic slowdown, rural residents have experienced a greater decline in real income compared to other parts of the Nation due to lower rural educational attainment, less competition for workers among rural employers, and fewer highly skilled jobs in the rural occupational mix.[2] Rural electric cooperatives have far less revenue than the other electricity sectors, but support a greater share of the distribution infrastructure. The challenge of providing affordable electricity is critical when you consider that the average household income in most of our service territories is 14 percent below the national average. I enclose State demographic data for all Committee Members with rural electric cooperative consumers, as compiled by NRECA, as Exhibit 1.

Electric Cooperative Employees

Electric cooperatives are defined by their dedicated employees, who are committed to providing safe, reliable and affordable electricity to their consumer-owners. Like police, fire and other emergency service personnel, electric co-op employees frequently confront life-threatening situations and selflessly put themselves at great personal risk. Amidst the day to day dangers associated with the delivery of safe, reliable and affordable electricity – often during or in the immediate aftermath of hurricanes, floods, tornados and other natural disasters – many co-op employees continuously go above and beyond the call of duty:

- During the January ice storm in Greenfield, Iowa, Farmers Electric Cooperative had 18 of their linemen, led by Nick Kintigh, Doak Grantham, Paul Weber, Pat Held, Dennis Frank and Pat Armstrong, plus 44 linemen and two retired linemen from other co-ops in Iowa, Missouri, and Kansas reported for emergency duty. Even before the storm ended, crews were out to get as many of the 211 poles downed during the storm back up and working to keep the lights on.

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[1] Statement by USDA Secretary Thomas Vilsack before the Subcommittee on Agriculture, Rural Development, Food and Drug Administration, and Related Agencies, U.S. Senate, March 2, 2010.
[2] *Id.*

- On the evening of June 6, the North Platte River uprooted a tree that took out transmission lines on an island in the middle of the river operated by Carbon Power & Light Cooperative, based in Saratoga, Wyoming. With the river 10 percent above flood stage, water ran over the broken live lines with the poles still attached. Carbon's Operations Manager, Dave Cutbirth, who lives about 50 miles from Saratoga, turned around and went back to join Tom Westring, Nick Carey, Jeff McCarther, Bryn Hinz, John Saier, Kelly Lang and Bill Dahlke who, with the assistance of the local fire and rescue team, were boarding rafts in wetsuits in the raging river to get to the downed lines. Even more linemen were on either side of the river positioning the raft and moving equipment into place. At the same time, WY National Guardsmen positioned themselves down river to catch any "floaters". This was the first time anything like this had happened, so the crew was working on pure instinct. This quick thinking and bravery resolved the outage in 4 ½ hours, that would otherwise have left Saratoga and Encampment, Wyoming in the dark for days if they had waited for the water to recede.

I could go on and on for hours with stories like these from every state over the years, not to mention the employees who lost their homes during Hurricane Katrina, or more recently from tornadoes in Alabama and Oklahoma, who stayed on the job for days before even attempting to rebuild their lives.

Electric Cooperatives Role in Our Communities

Since our humble beginnings in the mid-1930's, electric cooperatives' long-term business plan has been to provide safe, affordable and reliable electricity for our consumer-owners. A critical component of this commitment is to eliminate volatility and unpredictability in their annual budgets, and ultimately electricity rates. On average, 60 to 80 percent of a distribution electric cooperative's annual budget will be the cost of wholesale power, distantly followed by salaries and benefits. To prevent sharp spikes in electric bills, our power-producing Generation & Transmission (G&T) co-ops work day-in and day-out to avoid unpredictable and highly volatile wholesale electricity prices for our distribution systems that would make electricity unaffordable for their consumer-owners.

These same principles – to eliminate volatility and unpredictability – are also critically important to all companies like electric cooperatives that sponsor defined-benefit pension plans.

Co-op Commitment to Employees – Retirement Savings Plans

Economic security in retirement is a leading concern for all Americans, including electric cooperative employees. NRECA members are committed to preserving and enhancing the voluntary employer-sponsored retirement system and the tax policies that support it. NRECA is proud that the vast majority of its members offer comprehensive retirement benefits to their committed employees through a traditional defined-benefit plan (the NRECA Retirement Security Plan) and a defined-contribution plan (the NRECA 401(k) Plan). These "multiple-employer" retirement benefit plans (under § 413(c) of the Internal Revenue Code) are operated to

maximize retirement savings for employees, retirees and their families and provide each co-op employee the financial means to enjoy a comfortable and secure retirement.[3]

The NRECA Retirement Security Plan

The NRECA Retirement Security Plan (the "Plan") provides comprehensive, guaranteed retirement benefits to over 63,000 employees and retirees throughout the United States. Our 900+ members have as few as four employees, with a median payroll of 48 employees. Our "multiple-employer" defined-benefit pension plan provides cooperatives with a convenient and affordable mechanism to pool resources, maximize group purchasing power and leverage economies of scale that would otherwise be unavailable to small businesses like cooperatives. In fact, that is why NRECA created the Plan in 1948 – our members could not afford all of the administrative expenses to set up and operate a plan on their own, and financial institutions were not interested in employers of our size.

When defined-benefit plans were first created, federal pension policies acknowledged that all business activities were cyclical. That is, Congress recognized that every sector of the economy had good times and bad times, which made defined-benefit plans enormously popular as a recruitment and retention tool to reward long-service employees through the 1980's. Until Congress amended the "full funding limit" rules (effective in 1988), the tax code allowed employers to contribute more to their retirement plans in good times, and less in bad times, recognizing the need for more capital in bad times. For the next 12 years, the Plan was so overfunded under these rules that electric cooperatives were prevented from making any additional contributions at all (1988-1993), or at best only permitted partial funding (1994-1999). Since then, our members have funded the Plan as responsibly as possible, but policies like these and others that require more funding by companies during down financial markets make funding these plans extremely difficult. It is critical to remember that defined-benefit plans are invested for the long-term with liabilities extending out for decades, so federal policies should be carefully crafted to balance the need to properly fund plans today, while ensuring that companies can weather cyclical financial storms to remain in business for the long term.

PPA codified the core, fundamental principle that a promise made is a promise kept. That is, it sought to strengthen the private retirement plan system with substantially increased funding requirements and improved disclosure to participants so that long service employees were more

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[3] This permits electric cooperatives to pool experience and expenses while being controlled by a single Plan Document with limited optional plan features for each employer that is not administered subject a collective bargaining agreement – which differentiates us from "union multi-employer plans." The Plan annually files one Form 5500 with the U.S Department of Labor. Each participating employer must execute an adoption agreement that binds them to the plan terms. For this reason we operate as a type of single-employer plan for some legal and administrative requirements, but each participating employer must meet other requirements, such as IRS nondiscrimination requirements, individually. Contributions to the Plan are pooled in a single trust and (unlike Master Prototype Plans) are available to pay benefits to employees of any of the participating organizations. Also, for funding purposes, the Plan is treated as one plan, rather than as a collection of single-employer plans, pursuant to Code section 413(c)(4)(B). This funding regime is very important to us, as it allows us to deal with funding issues with one overall approach, instead of some 900 different approaches.

able to count on a secure, financial retirement. And, while the PPA has already been a success in many respects, the economic calamity that followed its passage in 2008 and 2009 with extraordinary investment losses for all employer-sponsored retirement savings vehicles demonstrated that even very good legislation may need to be refined to recognize new, unforeseen economic challenges.

Economic Downturn Impact on the Plan and Employees

While PPA recognized that by design, NRECA's "multiple-employer" defined-benefit plan posed no risk of default to the PBGC and delayed implementation of many provisions until 2017, electric co-ops were not immune from the unprecedented market losses of 2008 and early 2009. In real dollars, the Plan's assets were valued at $3.5 billion on December 31, 2008, a 30 percent ($1.5 billion dollars) drop from the previous year. On December 31, 2009, it had gained back some but not all of the previous year's losses. As a result, average Plan contributions in 2010 were 35 percent higher than in 2009, dramatically increasing short-term liabilities that forced some co-ops to make the difficult choice of increasing electricity rates, reducing or eliminating retirement benefits all together, or even laying off quality employees to pay for these increased liabilities. As a result, co-ops now, on average, contribute 23 percent of payroll to the Plan, making it an even larger part of total compensation.

In both good times and in bad times, electric co-ops have kept their promises to their employees and retirees, which has not always been easy. Congress specifically recognized the challenges faced by plan sponsors during the economic downturn. As a result, it passed legislation (Pub. L. 111-192) that directly permitted plan sponsors to implement a "2 plus 7" or 15-year extended amortization schedule for funding shortfalls. This was supported by nearly every employer and labor union that sponsors a plan (including NRECA) because it gave all parties more time to make up for the losses of 2008 and early 2009. NRECA applauds your efforts to enact this legislation last year.

We believe providing an employee with a secure retirement is critical to reward their commitment to providing our consumer-owners with safe, reliable and affordable electricity.

DB Plans Work for Electric Cooperatives, But Financial Challenges are Growing

As you know, keeping rural America's best and brightest "at home" has become an increasingly difficult task, with so many young people going to more urban areas for other employment and educational opportunities. The strongest recruitment and retention tool for electric cooperatives continues to be their employee-benefits programs – particularly their defined-benefit pension plans. As a consumer-owned business, each electric cooperative is focused on serving its community though its workforce. While many publicly-traded, international companies see 20 to 30 percent or more annual employee turnover, electric cooperatives see less than a five percent annual employee turnover, with more than 2/3 of cooperative employees spending their entire working careers within the cooperative family. Our members understand the very real recruiting, training, and development costs for new hires are 1.0 to 2.0 times annual pay. As such, our defined-benefit plan rewards long service employees, and allows our members to invest in these key employees without having to face these substantial replacement costs.

Each co-op plan has a uniform benefit formula that treats all employees the same regardless of pay – from the CEO to the apprentice lineman. Over time, employees are able to accumulate substantial benefits for retirement security. This guaranteed security, however, has become much more difficult to sustain in recent years because of volatility in the financial markets, which leads to economic uncertainty and volatility for all businesses that sponsor defined benefit plans.

We are looking toward the future, working with our members to maintain our Plan going forward. Cost uncertainty is anathema to any business, let alone one that sponsors an increasingly complex and expensive defined-benefit plan. This is especially true for companies that run "at cost" like electric cooperatives. Policies that increase volatility in contribution rates and require more funding by companies during down financial markets has created a trend over the last decade for employers to freeze or completely eliminate defined-benefit plans. As such, electric cooperatives sometimes ask us: "If everyone else is cutting their defined benefit plans; why aren't we?" Thankfully for rural America that has not happened, largely due to our business model and the unique multiple-employer plan design that reduces complexity, and maximizes group purchasing power that would otherwise be unavailable while allowing cooperatives to tailor benefits to meet their needs. Many in the defined-benefit plan industry are aware that the multiple-employer plan model may be one of the best ways to encourage employers nationwide to reestablish traditional retirement plans. Congress should continually examine new and innovative policies to encourage current plan sponsors to remain "in the game" and should reject policies that leave companies no choice but to abandon the system.

Current Policies and Proposals Raise Concerns, Opportunities

PBGC Premiums - In his 2012 Budget Request to Congress, the President proposed giving PBGC the authority to set its own premiums, to utilize a company's "credit rating" in determining such premiums, and estimates premium increases of $16 billion over ten years to alleviate the PBGC's alleged deficit. NRECA strongly believes that Congress should not, under any circumstances, cede its taxing authority to the Administration or allow PBGC to set its own premiums. Further, the idea of using "credit rating" or some other creditworthiness proxy has been specifically rejected by Congress – the latest time was during consideration of PPA. This role for a government agency would be inappropriate, especially for private companies and non-for-profit entities like electric cooperatives – or even NRECA as a trade association – that are not credit rated. PBGC has also stated that their $16 billion increase would be focused on "at risk" companies only, and the PBGC has further stated that 20 percent of the 100 largest defined benefit plans are maintained by companies that are below investment grade. For companies already facing financial difficulties, massive premium increases would force those employers to discontinue providing retirement benefits altogether. We do not believe there is any way for PBGC to assess all or even most of this premium increase on just 20 percent of defined benefit plan sponsors, which is why even "healthy" companies are opposing this proposal. And finally, there are very serious questions about the size of the PBGC's deficit; and, by PBGC's own statements, there is no demonstrated basis for the drastic measures being considered. The PBGC states in its 2010 annual report that "[s]ince our obligations are paid out over decades, we have more than sufficient funds to pay benefits for the foreseeable future." Since there is no immediate crisis, Congress should not rush to relinquish its authority to establish appropriate

premium requirements, or to raise them unnecessarily. Raising PBGC premiums, without any hearings or analysis of the value of the coverage received by the plan sponsors amounts to a tax on employers that have voluntarily decided to maintain defined benefit plans.

IRS Regulation Prevents Co-ops from Keeping their Promises to Employees – Electric cooperatives understand the realities of the tight market for skilled labor in rural America, and value long service employees. To prevent co-ops from losing their most valuable employees to retirement from these physically demanding jobs, the Plan permits employees to "quasi-retire" – that is, receive "in service" distributions at the Plan's NRA – including 30 years of benefit service. Without this feature, many needed employees would be forced to retire in order to obtain the Plan's most valuable benefit. This feature is a win-win for cooperatives and employees, *and has been a part of the Plan for 25 years.* While targeting a new "Cash Balance Plan" technique, the IRS published an immediately effective final regulation on May 21, 2007 (72 Fed. Reg. 28604, et. seq. (2007)) that could unfairly prevent employees with 30 years of benefit service who wish to continue working from receiving their benefits. Legislation has been introduced in the two preceding Congresses -- the "Incentives for Older Workers Act of 2010" (S. 4012) in the 111th, and the "Aging Workforce Flexibility Act of 2007" (S. 2933) in the 110th -- to prevent this from happening. We urge Congress to include this legislation in any pension bill before the end of this year, as some 500 employees at 188 co-ops who have been making life-changing financial decisions could be prevented from receiving their earned benefits in 2011 alone; <u>over 2100 employees at 291 co-ops could be impacted over the next 5 years</u> because of this rule intended to address a completely different issue.

Eliminating/Limiting Retirement Savings Tax Policies - Congress and the Administration are focused on reducing budget deficits and the national debt, and are considering changes to the deferred tax treatment of defined-benefit plans, defined-contribution plans and other retirement savings vehicles that provide the economic and social safety net for a secure retirement to generate revenue for the Treasury. Eliminating or diminishing the current tax treatment of employer-sponsored retirement plans like the NRECA Retirement Security Plan or 401(k) Plan will jeopardize the retirement security of tens of millions of American workers, impact the role of retirement assets in the capital markets, and create challenges in maintaining the quality of life for future generations of retirees. While we work to enhance the current retirement system and reduce the deficit, policymakers must not eliminate one of the central foundations – the tax treatment of retirement savings – upon which today's successful system is built. As you consider comprehensive tax reform and deficit reduction, we urge you to preserve these provisions that both encourage employers to offer and workers to contribute to retirement plans, and prevent these critical plans from becoming "Piggy Banks" for the federal government.

<u>CONCLUSION</u>

NRECA strongly believes that any reforms to the retirement savings system should continue to encourage workers to provide for their own economic security, while encouraging employers to continue sponsoring benefit plans. Going forward, we need to restore a critical, very logical element from the period when defined benefit plans were most popular: funding rules that allow companies to contribute more during good economic times, and less during bad times. The current system often works the opposite way. We hope to continue our work with the

Committee to address the challenges of administering and participating in a defined-benefit pension plan, particularly "multiple-employer" plans like NRECA, so they remain a viable vehicle in the future for companies trying to do the right thing - providing meaningful retirement benefits to their employees. I look forward to answering your questions.