



September 6, 2007

Mr. John Walker
Executive Secretary
Nevada State Environmental Commission
901 South Stewart Street, Ste. 4001
Carson City, NV 89701

Dear Mr. Walker:

The Sierra Club respectfully submits the following comments on the petition ("Petition P2007-03") by Western Resources Advocates.

COMMENTS OF SIERRA CLUB

Nevada law provides that it is "the public policy of the State of Nevada" "to achieve and maintain levels of air quality which will protect human health and safety, prevent injury to plant and animal life, prevent damage to property, and preserve visibility and scenic, esthetic and historic values of the State." NRS 445B.100(1).

There is no dispute that the unconstrained emission of carbon dioxide from Nevada's three proposed coal-fired power plants (which collectively will emit almost 50 million tons of CO₂ per year) will injure human health, welfare and safety, injure plant and animal life and damage property. The consequences for Nevada of global warming, which is caused by CO₂ and other greenhouse gas emissions, include increased heat deaths, severe water shortages, and increased number and severity of wildfires. The consequences also include potentially severe damage to Nevada's agriculture, utility, tourism, and other industries.

Nevada faces significant temperature increases. According to the U.S. EPA, "by 2100 temperatures in Nevada could increase by 3-4°F in spring and fall (with a range of 1-6°F), and by 5-6°F in winter and summer (with a range of 2-10°F)." *See Climate Change and Nevada*, EPA No. 236-F-98-007o (based on projections made by the Intergovernmental Panel on Climate Change and results from the United Kingdom Hadley Centre's climate model).

This Commission has the authority to help address this problem. In fact, NRS 445B.100(2)(a)(emphasis added) states that "it is the intent of [this chapter] to **require** the use of reasonably available methods to prevent, reduce or control air pollution throughout the State of Nevada." Petitioners seek to impose just such "reasonably available methods" on electricity

production in Nevada.

Carbon Dioxide Emissions Are "Air Pollution" Under Nevada Law

NRS 445B.110 defines "air contaminant" as "any substance discharged into the atmosphere except water vapor and water droplets." CO₂, a gas discharged into the atmosphere, is obviously an "air contaminant." In turn, NRS. 445B.115 defines "air pollution" as:

the presence in the outdoor atmosphere of one or more air contaminants or any combination thereof in such quantity and duration as may tend to:

1. Injure human health or welfare, animal or plant life or property.
2. Limit visibility or interfere with scenic, esthetic and historic values of the State.
3. Interfere with the enjoyment of life or property.

There is no dispute that CO₂ is present in the outdoor atmosphere "in such quantity" as to meet each of these criteria. As noted above, Nevada is already feeling the consequences of global warming, including increased heat deaths, water shortages, and increased number and severity of wildfires. Nor is there any dispute that each of these consequences will only get worse as the atmospheric concentration of CO₂ increases.

The Commission Has the Authority to Regulate CO₂ Emissions

Nevada law provides this Commission with the necessary authority to "prevent, abate and control air pollution; "establish such requirements for the control of emissions as may be necessary to prevent, abate or control air pollution; and "require elimination of devices or practices which cannot be reasonably allowed without generation of undue amounts of air contaminants". NRS 445B.210(1), (5), (9)).

The federal Clean Air Act (42 U.S.C. § 7416) explicitly reserves to the states the ability to impose such controls over stationary sources such as the proposed power plants:

Except as otherwise provided * * * nothing in this chapter shall preclude or deny the right of any State or political subdivision thereof to adopt or enforce (1) any standard or limitation respecting emission of air pollutants or (2) any requirement respecting control or abatement of air pollution; except that if an emissions standard or limitation is in effect under an applicable implementation plan or under Section 7411 or section 7412 of this title, such State or political subdivision may not adopt or enforce any emission standard or limitation which is less stringent than the standard or limitation under such plan or section.¹

This provision means exactly what it says: "Under the statutory framework of the Clean Air Act, states are not preempted from adopting and enforcing their own regulations. *See* 42 U.S.C. § 7416 (noting the "Retention of State authority" to adopt and enforce air pollution provisions at least as stringent as the minimum federal standards set out in § 7412.)" U.S. v.

¹ There are no CO₂ emissions standards or limitations "in effect" under sections 7411 or 7412.

Price, 314 F.3d 417, 421 (9th Cir. 2002). See also Exxon-Mobil Corp. v. U.S. E.P.A., 217 F.3d 1246, 1254 (9th Cir. 2000)(Section 7416 is "a sweeping and explicit provision".)

The Proposed Emission Standard is Reasonable

The proposed 1100 lbs/megawatt-hour standard makes sense, for several reasons:


1. The largest potential market for the White Pine and Sithe merchant plants is California. However, pursuant to S.B. 1368, the California Public Utility Commission and the California Energy Commission are promulgating regulations barring California load-serving entities and publicly-owned utilities from entering into baseload purchase contracts for power generated with CO2 emissions greater than those from combined-cycle natural gas, i.e., 1100 lbs/MWh.
2. Other states adjoining Nevada are expected to follow California's lead, as they have for other California CO2 emissions restrictions. For example, Oregon has adopted California's greenhouse gas emission standards for motor vehicles, Arizona is in the process of adoption, and Utah is considering doing so.
3. By definition, the 1100 lbs CO2/MWh standard can be met by gas-fired generation; natural gas is abundant and already powers almost 20% of U.S. electricity production.
4. The 1100 lbs CO2/MWh standard can even be met with coal using IGCC with only partial carbon capture and storage, which industry claims is technologically and economically viable. For example, NRG Corp has proposed building a 680 MW plant at Tonawanda, New York, with 65% CCS ability, and Excelsior Energy has proposed a 1200 MW plant in Mesaba, Minnesota with 30% CCS.

Conclusion

This Commission should protect Nevada, its people, and its industries by regulating greenhouse gas emissions, and it should take a time-out from approving coal-fired power plants during the pendency of promulgating such regulation. This Commission has the authority to do so. Moreover, such a time-out will protect other carbon-using industries in Nevada – agriculture, transportation, mining, tourism as well as all consumers. If the state permits a substantial increase in carbon emissions today, these other industries will likely bear a heavier share of the burden tomorrow to meet the reductions required by future carbon regulation.

Thank you for the opportunity to comment on the petition.

Sincerely,



Alex Levinson

For Sierra Club and its Toiyabe Chapter in Nevada