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Via Federal Express

August 31, 2007

Mr. Lew Dodgion, Chairman
State Environmental Commission
901 South Stewart Street, Suite 4001
Carson City, Nevada 89701

Subject: Comments on Public Petition for Rulemaking

Dear Mr. Dodgion:

I am writing to request that the State Environmental Commission (the “Commission”) reject the rulemaking petition (the “Petition”) submitted by Western Resource Advocates, et. al., (the “Petitioners”) requesting that the Commission suspend Nevada’s air pollution control permitting process for proposed new coal-fired electric generating plants until such time as the Nevada Division of Environmental Protection (NDEP) promulgates regulations enacting a greenhouse gas (GHG) emission standard of 1,100 pounds of pounds of carbon dioxide (CO₂) per megawatt-hour (lb/MWh). As you may be aware, LS Power is involved in the development of several energy projects in Nevada.

The White Pine Energy Station, being developed through a joint venture between LS Power and Dynegy, is a proposed 1,590 MW coal-fired power plant in White Pine County, Nevada (the “White Pine Energy Station”). This project was announced in February 2004 and has been diligently pursued since that time.¹ LS Power is committed to complying with all applicable federal, state, and local regulations to ensure that the White Pine Energy Station will be sound for the environment and a tremendous asset for Nevada. In fact, we can point to many instances where we have gone above and beyond in our commitment to make this the best project possible for White Pine County and the state of Nevada. Examples include an agreement to use an advanced cooling technology to reduce water usage by 80% and utilization of activated carbon injection to reduce mercury emissions to one-fifth the level required by the EPA’s 2005 Clean Air Mercury Rule. LS Power believes that the White Pine Energy Station is needed to ensure adequate, low cost electric supply.

In addition to the White Pine Energy Station, LS Power is involved in several other projects that are currently or being planned to meet electric demands in Nevada including:

¹ The efforts commencing in 2004 included working with NDEP to obtain an air quality permit that incorporates all legally applicable requirements. Now, as this air permitting process is being concluded, Petitioners would have the Commission significantly revise the requirements applicable to the White Pine Energy Station.

- Ownership of the 513-MW Apex natural gas fired combined cycle facility;
- Development of a 500 mile transmission line known as the Southwest Intertie Project through eastern Nevada; and
- Development of wind energy projects with an anticipated generation capacity of approximately 250 MW in Nevada.

LS Power is sensitive to the need to minimize GHG emissions while at the same time reliably and economically meeting electric demands. We believe that this is best accomplished through building a diverse portfolio of efficient generation assets (including renewables) and commercializing the technology that will allow CO₂ emissions from fossil fuel plants to be captured and stored. While commercialization of carbon capture and storage may take a decade or more, it is critical in the near-term that modern power plants be developed to continue to meet the growing electric demand and to ensure that older, less efficient, and higher emitting power plants can reduce operations or be retired.

The Petition before the Commission would harm Nevada's ability to meet growing electric demand, would delay and subdue investment in major transmission projects which are needed to advance other generation projects, particularly renewable energy projects in rural Nevada, and would not result in a meaningful reduction in GHG emissions. For these and other reasons as provided in more detail below, LS Power respectfully urges the Commission to reject the Petition.

- 1) **The 2007 Nevada Legislature has recently acted and provided direction on GHG regulation for Nevada.** On March 19, 2007, Senate Bill No. 422 (SB422) was referred to the Nevada Senate's Committee on Natural Resources. SB422 was introduced by Senator Titus and proposed to require the Commission to establish a program limiting the amount of GHGs that affected units would be allowed to emit.² After deliberations on SB422, Senator Titus reported back to the Senate Committee on Natural Resources during a hearing on April 11, 2007. Senator Titus reported that "[a]fter further study and extensive discussion with Division of Environmental Protection (DEP), utility representatives and environmental groups, I have concluded that Nevada is not ready for a full-blown cap and trade program."³ SB422 was subsequently revised to require the development of a statewide GHG inventory and to require the Commission to establish requirements for participation in a verifiable GHG registry. On June 13, 2007, Governor Gibbons signed the bill into law.

It is noteworthy that the Petitioners not only participated in the legislative debate on SB422, but that they also registered the following endorsement:

"I am the lead attorney and director of Western Resource Advocates. We are a conservation organization. We have an interest in water, land and energy issues in the intermountain west. I want to speak in favor

² Senate Daily Journal, 74th Sess. (March 19, 2007).

³ Minutes of the Senate Committee on Natural Resources, 74th Sess. (April 11, 2007) at 12.

of this bill for a reason Senator Titus may not have considered, because she could not have anticipated it when she drafted the amended version. It is the recent U.S. Supreme Court decision in the Massachusetts et al. v. Environmental Protection Agency et al. The U.S. Supreme Court has now determined global greenhouse-gas emissions, carbon dioxide and other emissions that are identified in the bill are now pollutants under the Federal Environmental Protection Agency (EPA) Clean Air Act as amended in 1990. This means the EPA will be developing some sort of regulatory regime for greenhouse-gas emissions. Under the structure of the Clean Air Act, the states play some role in administering all federal antipollution laws. It is good for Nevada to have an idea, just from the data perspective, of what is out there in terms of greenhouse-gas emissions. It is possible the federal government will try to do some sort of registry, as well. It is best for each state to have its own database. I urge the passing of this amended version of the bill.”⁴

Thus, the Nevada state legislature examined the issue of regulating GHG emissions earlier this year with the input of many stakeholders, including the Petitioners, and determined that the emissions inventory and reporting requirements, not limits on GHG emissions, are appropriate at this time.⁵ Given the recentness and specificity with which the legislature has expressed its intent, the Petition amounts to a request for the Commission to override the duly enacted laws of the State of Nevada. Therefore, consistent with the legislature’s intent and authority, the Commission should reject the Petition.

- 2) **GHG emission limits must be established on a national level to meaningfully reduce GHG emissions.** Carbon dioxide is a naturally occurring gas that plays a vital role in the earth’s ecosystems. Carbon dioxide emissions from fossil-fueled power plants do not have direct adverse effects on air quality for humans, plant life or animals. As such this is not a local or regional air quality issue. Rather, the issue of concern is the affect of GHG emissions, and more specifically carbon dioxide, on global climate change. Given the global nature of the issue, carbon dioxide emissions released from sources in Nevada

⁴ Minutes of the Senate Committee on Natural Resources, 74th Sess. (April 11, 2007) at 16 (testimony of Charles Benjamin, Western Resource Advocates).

⁵ Further, the Supreme Court decision in Massachusetts v. EPA referenced by Petitioner does not have immediate implications for greenhouse gas regulation under the Clean Air Act. The Court held that “EPA has the statutory authority to regulate the emission of such gases from new motor vehicles.” Slip Opinion at 30. The Court did not hold that EPA must regulate but that it must, on remand, make a determination as to whether greenhouse gas emissions “cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare” See Slip Opinion at 30-32; CAA § 202(a)(1). It is only when (and if) EPA makes “a finding of endangerment [that] the Clean Air Act requires the agency to regulate emissions of the deleterious pollutant from new motor vehicles.” See Slip Opinion at 30. Hence, the fact that the Supreme Court has found CO₂ and other greenhouse gases to constitute air pollutants does not subject them to regulation at this point in time and any action to be taken in response to the Supreme Court’s decision is for EPA to take.

have no greater impact on Nevada than carbon dioxide emissions released from sources in Ohio, New York or overseas.

As such, LS Power supports a national policy to reduce carbon dioxide emissions, and other GHGs, in a manner that will provide meaningful GHG reductions while maintaining electric reliability and economic stability. We believe that building new efficient fossil fuel power plants (including coal-fired) will be part of this effort as well as the expansion of renewable energy sources.

LS Power encourages the State of Nevada to continue to work at a national level to address this global issue in a meaningful way that will protect both Nevada's environmental and economic interests. In addition, LS Power commends Nevada for leading the way in renewable energy portfolio standards and emphasis on energy efficiency.

- 3) **New coal-fired generation facilities are needed and should play a vital role in the state of Nevada and the United States to increase energy independence.** Adequate and reliable electricity supply is essential to the well-being of Nevadans and to Nevada's economy. The western United States is projected to have the largest percent change in population of any region with an estimated 45.8 percent growth between 2000 and 2030.⁶ Nevada has the fastest rate of population growth in the United States, and the demand for power continues to increase. Population increases and economic growth in Nevada will result in a demand for electricity that cannot be met with existing power generation resources.

In light of rapid population growth in the area, the construction of new power generation and transmission facilities is required to meet increasing demands for electricity. The federal Energy Information Administration (EIA) forecasts energy needs for approximately 24,000 MW of new power generation in Nevada and other western United States by 2015 (78,000 MW by 2030). New baseload generating facilities (i.e., facilities that can provide electricity 24 hours per day) will be needed to supply a part of this increasing demand for power and the White Pine Energy Station will be ideally situated to help Nevada meet these growing energy needs.

While a growing portion of the electric demand can be met with renewable resources, coal-fired generation remains the primary choice for supplying baseload energy needs. In fact, the EIA estimates that new coal-fired generation facilities will supply 47,000 MW of the need for new generation capacity in the Western United States by 2030.⁷

A key reason for coal's role in energy production is the fact that coal is economical and abundantly found in the United States. A recent study by the Massachusetts Institute of

⁶ United States Census Bureau, 2005.

⁷ EIA, 2006.

Technology (MIT) underscores the importance of coal as the nation moves toward energy independence and economical, reliable power:

“We believe that coal use will increase under any foreseeable scenario because it is cheap and abundant. Coal can provide usable energy at a cost of between \$1 and \$2 per MMBtu compared to \$6 to \$12 per MMBtu for oil and natural gas. Moreover, coal resources are distributed in regions of the world other than the Persian Gulf, the unstable region that contains the largest reserves of oil and gas.”⁸

An often overlooked fact is that the electric generation fleet in the United States is aging, with many facilities reaching the end of their useful life. However, it is often not possible to retire these facilities until new plants are built. As new, efficient and cleaner coal-fired plants are built, older plants with less emission controls can be retired resulting in fewer emissions and better usage of our limited natural resources.

Thus, the construction of new, efficient coal-fired generation capacity is consistent with the goals of energy independence and reliable, economical power.

- 4) **New coal-fired facilities will promote and enable the development of renewable energy resources.** While the Petition seems to imply that the development of coal-fired generating capacity is not compatible with the development of renewable resources, this is simply not true. The transmission infrastructure planned to support the White Pine Energy Station will promote and enable the development of renewable resources in Eastern Nevada. In fact, Great Basin Transmission, LLC (GBT), an LS Power-Dynegy joint venture company, is developing a 500 mile, 500 kV transmission line through eastern Nevada. Renewables alone would not support the economics for construction of this line. Rather, the economic anchor for this line will be the White Pine Energy Station with GBT reserving at least 200 MW of transmission capacity available for renewable energy.

Furthermore, most sources of renewable energy have practical limitations. Specifically, solar power is limited to areas with high intensity solar radiation and can only provide electricity for a limited number of hours each day. Wind is an intermittent resource and geothermal is limited in scale by the remoteness and scarcity of this natural resource. Even with these limitations, renewables can and will play an integral part of electric generation, but, due to these limitations, fossil fuel plants will need to play a major role for the foreseeable future.

LS Power is actively pursuing renewable energy projects in Nevada and the West. For example, LS Power has been working since 2005 to develop approximately 250 MW of wind energy resources in close proximity to this transmission line. Thus, new coal-fired

⁸ Katzer, James et al., “The Future of Coal,” Massachusetts Institute of Technology, March 14, 2007.

generation, and specifically the White Pine Energy Station, will be compatible with and promote the development of renewable resources in Nevada.

- 5) **Construction of new coal-fired power plants does not restrict the ability to implement future caps on GHG emissions.** As discussed above, LS Power advocates a nationwide approach to regulating GHG emissions. Many of the power plants operating today are nearing the end of their useful life. New coal-fired power plants, such as the White Pine Energy Station, are inherently 10-15% more efficient than today's typical coal plant. A simple replacement of these existing, less efficient facilities would reduce coal consumption and carbon dioxide emissions by 10-15%. New coal-fired plants also emit significantly less sulfur dioxide, nitrogen oxide, particulate and mercury emissions, which will provide air quality benefits as these facilities replace older plants.

Lastly, a tremendous amount of money and research is occurring to make carbon capture and sequestration viable for coal-fired power plants. As this technology becomes proven and commercially available, newer coal-fired power plants will be in a better position to install this technology than will existing coal plants due to the higher efficiency and longer useful life to support the economics of such technology. In preparation for these technological advances, WPEA will commit to reserve 20 acres of land near the boiler exhaust stack(s) to accommodate future carbon capture equipment when it becomes commercially proven and viable for the White Pine Energy Station.

Thank you for the opportunity to comment on the Petition. We are willing to provide additional information on our views and the White Pine Energy Station to help you make your decision.

Sincerely,

/s/ Eric W. Crawford

Eric W. Crawford
Director, Project Development

cc: John Walker, Executive Secretary, SEC
Leo Drozdoff, Administrator, NDEP