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August 31, 2007

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

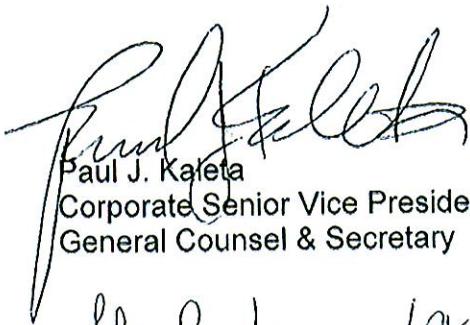
Sent Via Email – [jbwalker@ndep.nv.gov](mailto:jbwalker@ndep.nv.gov)

Dear Mr. Walker:

Please find attached comments on behalf of Sierra Pacific Resources pursuant to the State of Nevada Department of Conservation and Natural Resources State Environmental Commission's public notice regarding Petition P2007-03.

Sierra Pacific Resources additional requests the opportunity to address the Commission at the hearing scheduled for September 7, 2008.

Respectfully,

  
Paul J. Kaleta  
Corporate Senior Vice President  
General Counsel & Secretary

  
Tony F. Sanchez III  
Corporate Senior Vice President

  
Starla Lacy  
Director, Environmental Services

attachments

**IN THE MATTER OF THE PUBLIC PETITION BY WESTERN RESOURCES  
ADVOCATES TO THE STATE ENVIRONMENTAL COMMISSION**

**COMMENTS OF SIERRA PACIFIC RESOURCES,  
NEVADA POWER COMPANY,  
AND SIERRA POWER COMPANY ON THE  
WESTERN RESOURCE ADVOCATES PETITION**

**August 31, 2007**

## EXECUTIVE SUMMARY

Sierra Pacific Resources (SPR) is an investor owned corporation based in Nevada. Its two chief operating subsidiaries are Nevada Power and Sierra Pacific Power. With a combined service area of 54,500 square miles, Nevada Power and Sierra Pacific Power serve nearly 1.2 million electric customers across Nevada and in the Lake Tahoe area of California. SPR is a fixture in the Nevada community and has served this State for over 100 years.

SPR is required by Nevada law to provide its customers with reliable, low-cost electricity, while meeting the needs of a fast growing economy. Nevada has been the fastest growing state in the nation for 19 of the past 20 years, and has seen a substantial increase in the demand for energy.

SPR has met and plans to meet this growth, in part, with new solar, wind, and geothermal projects. By the end of this year, Nevada will use more solar and geothermal energy per capita than any other state, including California. And there is more to come. SPR is firmly committed to using renewables to the greatest extent possible. During the next 7 years, SPR expects to invest, along with others, \$2 billion to increase its renewable energy supplies and produce more than 15% of its electricity from renewable sources.

SPR must, however, provide electricity to all of its customers – hospitals, schools, homes, gaming and resort complexes, and other businesses – 24 hours a day, 7 days a week, every day of the year – even when the sun is not shining and the wind is not blowing. Renewable energy and conservation alone cannot reliably meet this obligation; therefore, traditional power resources are required. Moreover, other traditional base-load power resources, such as hydroelectric power or nuclear power plants, which are available in neighboring states like California, are presently not

practical alternatives. In fact, California relies on coal, nuclear, and hydroelectric sources for almost 50% of its energy needs.

That leaves only fossil fuel generation technology, such as natural gas and coal, or buying electricity on the open market, which is predominantly fueled by natural gas, to provide the additional generating capacity SPR must have to meet its customers' needs. Yet, as citizens of Nevada know only too well, Nevada cannot remain captive to the volatile prices and supply restrictions of natural gas and expensive purchased power. Currently, close to 70% of SPR's electricity comes from natural gas.

Nevadans need to have a balanced energy portfolio that includes an energy center designed to use the most advanced coal technologies to (1) reduce their exposure to natural gas volatility and otherwise avoid the boom and bust energy cycles of the past and (2) permit SPR to retire certain of its older, less efficient coal-fired units, thus improving the environment. This is only common sense and follows the time-tested advice that when planning for any future needs (e.g., retirement, college), you balance and diversify your investments. You don't put all your eggs in one basket.

Accordingly, SPR plans to assure reliability, improve environmental performance, and stabilize prices through development of a diverse portfolio of renewable and fossil fuel technologies, together with an emphasis on conservation strategies to moderate growing demand. This plan is balanced, environmentally-positive, and grounded in common sense.

The Public Utilities Commission of Nevada ("PUCN") agrees. After a lengthy public process that considered comments by many interested citizens of Nevada, including consumers, unions, and business groups, as well challenges made by NCARE, a Petitioner in this proceeding, the PUCN approved SPR's balanced approach. Specifically, the PUCN ordered

more renewable energy development, increased conservation, development of a new 250-mile transmission line that will distribute power and promote renewable energy across Nevada, and the construction of the state-of-the-art Ely Energy Center (“EEC”) in White Pine County.

The EEC will generate 2,500 MW of base load electricity for Nevada. Slated to start operation during the next five years, Phase 1 will provide 1500 MW of new, technologically advanced coal capacity from the cleanest and most efficient coal-based energy center ever built in the western United States. In Phase 2, SPR plans to build 1000 megawatts of Integrated Gasification Combined Cycle (“IGCC”) capacity, once that technology becomes viable and commercially available using western coals. All told, this project will be the largest energy development in Nevada since the Hoover Dam and provide significant jobs and financial benefits across Nevada.

Importantly, the EEC will not sacrifice protection of the environment but enhance it.

First, SPR designed the EEC to meet or exceed the highest environmental standards:

- It will use the nation’s lowest-sulfur coal, from the Powder River Basin.
- It will go beyond “Best Available Control Technology” to install both a fabric filter system and “wet scrubber” system to control emissions.
- It will emit mercury at a rate at least 50% lower than allowed by federal law.
- It will be a “zero discharge” plant that manages wastes on site.
- It will use a “hybrid” cooling system that uses 50% less water than traditional wet cooling tower systems.
- It will be a super critical plant and therefore 5-10% more efficient than sub critical coal plants found across the western United States.

Second, the concerns raised by Petitioners about carbon dioxide (CO<sub>2</sub>) emissions from the EEC ignore that this project will enable SPR to shut down three older, less-efficient, higher-emitting coal-fired plants at SPR’s Reid Gardner station in Moapa. SPR has committed to these

retirements, subject to PUCN approval and completion of the EEC. These retirements will offset a large share of the new emissions from the EEC. In fact, because of the retirements and the access to renewable sources opened by the new transmission line, *CO2 emissions from the SPR system after the EEC will be lower than if SPR were to opt solely for natural gas-fueled capacity, as would be required by the standard urged by Petitioners.*

Third, SPR does not presently anticipate that the CO2 emissions will continue throughout the life of the proposed units, as Petitioners have assumed. Rather, SPR has specifically planned Phase 1 of the EEC to allow room for CO2 capture equipment. Again, subject to the approval of the PUCN, SPR would support installing CO2 capture equipment once that technology becomes reliable and commercially viable for use in Ely.

Fourth, Petitioners ignore that the EEC will not operate until the Nevada Department of Environmental Protection has completed its review of the environmental aspects of the center and issued appropriate permits. Further, the potential impacts of the EEC will be studied by the Bureau of Land Management as part of SPR's request for a right of way on federal land to construct the facility, including the new transmission line.

Perhaps most importantly, Petitioners disregard the fact that the EEC project will spur the development of further renewable power, rather than supplant or retard it. A central component of the EEC project is to construct the 250 miles of new transmission lines to move the electricity generated in Ely to serve customers across Nevada. As part of SPR's commitment to renewable energy, the new transmission line will be sized to open up an economical pathway to move up to 500 MW of renewable "zero CO2" geothermal and wind renewable energy projects in northern and eastern Nevada to customers throughout Nevada.

Petitioners nonetheless seek to block the EEC project and keep Nevadans captive to natural gas for the foreseeable future, claiming this Commission must grant their petition as a matter of law. Their interpretation of law is simply not correct. As demonstrated below, nothing in the Supreme Court's decision in *Massachusetts v. EPA*, the Clean Air Act, or this State's laws require this Commission to take the steps requested by Petitioners.

Nor should the Commission accept Petitioners' invitation to step into the debate over how to regulate CO<sub>2</sub> or other greenhouse gas ("GHG") emissions at this juncture. Let us be clear. SPR believes that GHG emissions are a serious subject requiring careful consideration. However, the regulation of such emissions present not only questions of state environmental policy, but of national trade policy, economic policy, and energy security. These matters are currently subject to extensive debate at the national level by Congress and the Executive Branch. At a minimum, this Commission should follow the lead of Nevada's Governor and Legislature, who considered but decided not adopt a bill that would have directed this Commission to start the rulemaking Petitioners now seek and instead have undertaken other initiatives regarding GHG emissions.

In summary, having failed in earlier challenges presented to the PUCN, Petitioners now ask this Commission to take the wholly unprecedented step of stopping the development of the EEC. Petitioners further seek to place conditions on future operations that will prevent development of new coal technology in Nevada and dictate Nevada energy policy to rely even more on constrained natural gas supplies. The Commission should reject this petition.

Instead, SPR respectfully urges the Commission to recognize that what Nevada needs is a balanced approach: A diversified portfolio that already includes substantial renewable energy, a commitment to further renewable technology development and increased energy efficiency and

conservation, and continued use of existing state-of-the-art natural gas powered turbines, all anchored by the Ely Energy Center, which will replace and offset existing, higher emitting coal fired plants. This will allow SPR to meet its obligations to the public and ensure a reliable, efficient and clean energy source for Nevada for years to come.

## **DISCUSSION**

### **I. Nevada Needs the EEC to Provide Reliable, Low-Cost Base Load Power to Nevada as Part of a Balanced Energy Portfolio That Includes Coal, Natural Gas, Substantial Renewables, and Conservation**

Petitioners are seeking to stop the development of the EEC. However, Nevada needs the Ely Energy Center to meet growing demand for power, as part of a balanced portfolio of electricity production. Having learned a painful lesson in the 2000-2001 western energy crisis, Nevada cannot rely on natural gas or expensive, uncertain power bought on the open market. Nor can renewables alone meet the growing demand, no matter how much SPR may promote and benefit from their development. Instead, the simple fact is that Nevada must have reliable, low cost base load power owned and operated by Nevada providers to anchor its energy portfolio, all under the jurisdiction of the PUCN.

#### **A. The Ely Energy Center**

The Ely Energy Center is a 2,500-megawatt electricity generating facility planned for White Pine County, Nevada. Sierra Pacific Power Company and Nevada Power Company will own and operate the EEC jointly. The EEC is a vital part of SPR's integrated resource plan for supplying electric power to meet Nevada's growing demand for electricity. As detailed below,

the PUCN formally approved the plan at the end of last year and authorized initial spending on the project, subject to SPR obtaining the necessary permits.<sup>1</sup>

In the first phase, SPR plans to construct two 750-megawatt units using state-of-the-art, pulverized coal technology. These units will use western sub-bituminous, low sulfur coal. The first 750 MW unit is scheduled to begin providing power in late 2011, with the second 750 MW unit following in 2013. In Phase 2, SPR intends to add two more 500-megawatt Integrated Gasification Combined Cycle (“IGCC”) coal gasification generating units to the EEC. The two IGCC units would follow when technically reliable and commercially viable.

A vital part of the project is a 250-mile transmission line which, for the first time, will unify Nevada's electrical systems. Interconnection of north and south will enable efficient sharing of resources between the two systems, including renewables such as geothermal found predominantly in northern Nevada, and increase the stability of the electrical grid. The line will be sized to also carry hundreds of megawatts of renewable energy throughout Nevada.<sup>2</sup>

The EEC will be the largest energy development project in Nevada since the Hoover Dam was completed in 1936 and provide significant jobs and financial benefits across the state. The construction phase of the project is expected to create approximately 2,500 jobs. Phase 1 will create 150 full-time, family-wage jobs, and it is expected that there will be 250 full-time, family-wage jobs when Phase 2 is completed.<sup>3</sup> White Pine County and area communities will

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<sup>1</sup> *In re Nevada Power Co. and Sierra Pacific Power Co.*, Nos. 06-06051 and 06-07010, 2007 Nev. PUC LEXIS 22 (Nev. Pub. Serv. Comm’n. Jan. 30, 2007) (hereinafter “Order”).

<sup>2</sup> A map showing the proposed location of the EEC and the transmission line is attached. Figure 1-1 of Sierra Pacific Resources, Application for Operating Permit to Construct (June 2007).

<sup>3</sup> The Nevada State AFL-CIO supports the EEC for the low cost, reliable electricity it will provide, as well as the valuable jobs the project will create. *See* Resolution of the Nevada State AFL-CIO in Support of Ely Energy Center (August 22, 2007). Since adopting this Resolution, the State AFL-CIO has withdrawn as a member of the Progressive Leadership Alliance of Nevada, one of the Petitioners.

also realize a significant tax base benefit, estimated to be more than \$500 million in the first 10 years, including additional property taxes and sales taxes on goods and services for the plant.<sup>4</sup>

**B. Nevada needs the EEC as part of a balanced energy portfolio**

Nevada's need for substantial, additional base load power was extensively documented during proceedings before the PUCN<sup>5</sup> to consider SPR's "Integrated Resource Plan" or IRP. It takes many years to plan, permit, and construct electricity generating stations. Accordingly, the PUCN requires SPR to develop long term IRPs to plan for the future in order to determine that the best portfolio of new units, renewable resources, and conservation are available to provide reliable, low cost electricity to Nevada. *See* NRS 703.151, NRS 704.741. The PUCN conducts a lengthy hearing on the IRP, evaluates alternatives, and then issues a final order that sets the portfolio of resources available to SPR.<sup>6</sup>

The evidence regarding Nevada's continued growing demand for electricity cannot be disputed.<sup>7</sup> Given Nevada's extraordinary growth, demand for electricity has grown dramatically, with both Nevada Power and Sierra Pacific Power facing significant annual load growth. To try to keep pace, the SPR system added 1600 MW of capacity in 2006 alone and plans another 1140 MW of additional capacity by 2008.

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<sup>4</sup> In cooperation with the City of Ely and the White Pine Historic Railroad Foundation, the EEC will also help to rehabilitate a large portion of the Nevada Northern Railway. This has significant economic potential for Ely and nearby McGill.

<sup>5</sup> The PUCN supervises and regulates the operation of public utilities, including electric utilities. NRS 703.150. By law, the PUCN must protect the public interest. It protects the customers who depend upon electricity to live and work in Nevada, ensures electricity rates are stable and that electricity is available and reliable. NRS 703.151.

<sup>6</sup> NRS 704.746 (PUCN will conduct hearings and evaluate the adequacy of plans based on electricity demands, energy efficiency measures, economic benefits, environmental costs, renewable generation and the purchase of power from neighboring states); NRS 704.751 (PUCN determines what "prudent and reasonable expenditures made to develop the utility's plan, including environmental, engineering and other studies, must be recovered from the rates charged to the utility's customers").

<sup>7</sup> Petitioners offer no evidence to the contrary in support of their petition.

Nonetheless, a significant need remains. Even with the increased use of renewable sources, SPR has projected it will have a shortfall of approximately 4000 MW of capacity in 2015, unless it adds large, base-load capacity to the system.<sup>8</sup> This is compounded by the fact that along with the escalating power demand, a number of SPR's generating facilities, due to their age, will need to be retired or replaced in the next 20 years with modern generating facilities to ensure continued system reliability.

As detailed in SPR's 2006 Integrated Resource Plan, it was SPR's judgment, after studying the various alternatives, that Nevada needed to add significant low cost, base load power from the EEC, as part of a more balanced portfolio of assets to meet growing demand. For example, SPR estimated that in 2008 it will produce approximately 21% of its electricity from coal units, several of which are older and less efficient. Further, SPR estimated it will have to rely heavily on natural gas for more than 41% of its generating assets. It also has a substantial "open position" meaning it must buy power on the open market to meet growing demand. In 2008, SPR estimates it will buy on the open market at least 29% of the electricity required by Nevada citizens. Most of that is expected to come from natural gas units. SPR anticipates that the remaining 9% of the electricity it provides will come from a variety of renewable resources.<sup>9</sup>

If the EEC is not developed, the gap between the anticipated load on SPR's system and required reserves on the one hand, and generation resources available to SPR on the other will continue to increase and lead to a more than doubling of SPR's open position in coming years.<sup>10</sup>

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<sup>8</sup> See Exhibit 1 (Figures based on 2006 IRP filings). For example, PUCN staff witness Jon Davis testified that NPC will need significant additional base load capacity by 2012. Order ¶ 83. Further, absent new capacity, "declining reserve margins and/or capacity shortages" were likely, all compounded by SPR's "large and growing open position at a time of impending capacity shortages" SPR's "aging fleet of coal plants" and SPR's "need to upgrade and modernize their resource portfolio by adding Company-owned or controlled base load capacity." Order ¶ 166.

<sup>9</sup> These are estimates and will necessarily change as forecasts are refined.

<sup>10</sup> See Exhibit 1.

The open position will increase even more after 2012 if older units are retired. In contrast, with the EEC, the future open position would be reduced substantially.<sup>11</sup> Moreover, the increase in customer demand for electricity would be met by reliable, low cost generation owned and operated by a Nevada-regulated entity, not by expensive natural gas fueled power bought on the market, and would reduce SPR's exposure to the continued vagaries of a volatile market.

Based on a record developed over many months, the PUCN determined that a balanced portfolio was best for Nevada. In reaching its decision, the PUCN considered both the EEC and various alternatives, including proposals to replace the EEC capacity solely with renewable sources or a combination of renewables and natural gas generation. The PUCN analyzed the technical feasibility and reliability of these alternatives to meet expected demand, took note of when those alternatives would be available, and evaluated the capital outlays and operating costs, environmental costs, and the economic benefit of the different alternatives.<sup>12</sup>

At the end of its review, the PUCN agreed with SPR that a balanced resource portfolio that included the EEC was in the best interest of Nevada.

[I]t offers fuel diversity benefits, reduces the reliance on the volatile energy markets by reducing the Companies' open position, will result in more predictable and stable rates, and provides a hedge against natural gas price volatility. Furthermore, the Companies' Preferred Plan is also consistent with the recommendation in the January 11, 2001, Nevada Electric Energy Policy Committee report to the Governor that it should be the policy of Nevada to put in place a plan that results in an adequate supply of electricity, at a predictable price and with acceptable environmental impacts for the residents of the State.

Order, ¶175.

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<sup>11</sup> *Id.*

<sup>12</sup> Order, ¶165 ("The Commission has considered the infrastructure needs to support the State's economy, resource adequacy in Nevada and the [Western Electricity Coordinating Council]; fuel diversity, projected fuel costs and availability; economic benefits of facilities additions; impact on customers' rates; projected environmental impacts and costs; the timing of new resources; available generation options; the level of capacity available from renewable energy resources, and conservation and load management.")

Moreover, the PUCN agreed that renewables alone are not enough. SPR is among the leaders in the development of renewable sources of energy. SPR plans to invest, with others, as much as \$2 billion in coming years and increase the renewables share in its energy portfolio by more than 50%. However, renewables are only one part of a balanced portfolio of generating assets and they alone cannot meet the projected increase in demand. As the PUCN concluded: “Attempting to displace the very large amount of capacity proposed... with renewable resources, at least at this point, seems unrealistic, unlikely and impractical.” Order, ¶176.

California’s recent experience with its wind resources is instructive and supports the PUCN’s analysis. During the summer of 2006 heat wave, only 5-10% of California’s 2500 MW of wind resources was able to provide electric power to Californians. The wind simply didn’t blow during the heat of the day and the turbines could not turn.<sup>13</sup> SPR and Nevada cannot afford to rely solely on renewables, such as wind, to provide the needed capacity.

Also, the PUCN found that greater reliance on natural gas generation would not provide the fuel diversity needed to hedge against natural gas availability and prices. It weighed the risks and costs on the citizens of Nevada and concluded that even if the capital cost of a natural gas plant were lower, a more balanced portfolio of assets that included coal would be superior.

[T]he Commission acknowledges that a gas-fired combined cycle unit is relatively quick to construct, the cost for this capacity on a per MW basis is relatively low, it is relatively less risk for the utility to undertake, and less risky for the utility’s shareholders when compared to a coal-fired facility such as the EEC. However, the cost and availability of fuel to operate gas generation facilities represents a significant price risk when compared to Powder River Basin coal.... [T]he price of natural gas is far more volatile than coal.

Order, ¶197. The risk of volatile fuel costs would have to be borne by the citizens of Nevada, *id.*, and it was the PUCN’s judgment, based on its expertise and the extensive record presented to

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<sup>13</sup> See e.g., D. Dixon, *Wind Generation's Performance during the July 2006 California Heat Storm*, (September 8, 2006) [http://www.energypulse.net/centers/article/article\\_display.cfm?a\\_id=1332](http://www.energypulse.net/centers/article/article_display.cfm?a_id=1332).

it, that it was a risk that should be avoided. Order, ¶198.<sup>14</sup> This squares with the January 11, 2001 report to the Governor of the Nevada Electric Energy Policy Committee that recommended against further reliance on volatile natural gas alone.<sup>15</sup>

Finally, the PUCN found that meeting the increasing demand only with power purchased on the open market was not a feasible alternative for Nevada. Consistent with the findings of the January 2001 Nevada Electric Energy Policy Committee report, the PUCN found that Nevada had learned from the 2000-2001 energy crisis in the west that SPR and its ratepayers should not be left open to excessive risks in the wholesale markets and that SPR needed to have greater Nevada-owned and operated capacity anchoring its system.

Given Nevada's negative experience in such markets, the Commission believes that the construction of new base load facilities is preferable than having to rely solely on wholesale markets to fill this open position. Further, the Commission believes, given the State's previous experience during the 2000-2001 Western energy crisis and the importance of new resources to the State, that large strategic capacity additions should be owned and controlled by the Companies.

Order, ¶196.

Indeed, Petitioners' demands for a standard that would require exclusive reliance on renewable energy (or natural gas while renewable facilities are being built) should be considered in light of the past boom and bust energy policies understood all too well in the western United

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<sup>14</sup> With respect to demand for natural gas, almost all new capacity, either utility or non-utility generation, constructed in the country over the past decade has been natural gas capacity. The increased demand for gas has been reflected in the price of natural gas. Recent legislative actions in California suggest that it plans to rely heavily on natural gas generated electricity to meet its future needs. This will place even greater pressure on the volumes of gas demanded. While there are a number of promising new resources in Alaska and the MacKenzie Delta in Canada, the timing for these resources is not yet available and their cost remains uncertain.... Consequently, an increased reliance on natural gas generators for base load generation must be very carefully considered from the standpoint of both self-generation and purchased power alternatives. Based not only on the record in this proceeding, but the experience of deferred energy and Energy Supply Plan proceedings over the past two years, the Commission has serious reservations about increasing NPC's and SPPC's reliance on natural gas to power its baseload plants.

Order, ¶ 198.

<sup>15</sup> See Nevada Electric Energy Policy Committee, Report to the Governor of the State of Nevada From the Nevada Electric Energy Policy Committee, 1-2 (Jan. 11, 2001).

States. Congress at first prohibited the use of natural gas altogether to generate electricity. Later, with promises of lower prices, abundant gas supplies, and cleaner air, the federal law that prohibited the use of natural gas to generate electricity was replaced with a law that so encouraged use of natural gas that natural gas-fired turbines were built at breakneck speed. Then, despite the build up of gas-fired plants nationwide (particularly in the West), there were calls for deregulation and reliance on markets and retail access. The result was the emergence of the likes of Enron, the Energy Crisis, price spikes, and reliability concerns (including brownouts and rolling blackouts in California). This history of energy policy in the West certainly counsels for a balanced approach today.

**II. The EEC Project will exceed environmental standards, allow SPR to retire older, less efficient and higher emitting coal generating capacity, and accelerate development of renewable sources**

Petitioners ask this Commission to set a standard that would effectively prohibit construction of all new electricity generation from coal, including the EEC (or even an IGCC if it were available). They say the new energy centers will cause environmental harm, primarily from the anticipated CO<sub>2</sub> emissions. For the Ely Energy Center, this complaint is not well founded. SPR has proposed to put in place air pollution controls that meet or exceed all existing federal and state rules. Moreover, once Phase 1 of the EEC is operational, SPR expects to retire three existing coal-fired units. When combined with the growth in zero CO<sub>2</sub> renewables from the EEC transmission line and other demand side management, SPR estimates that more than 50% of any of the increases in CO<sub>2</sub> emissions from the EEC will be offset.

Further, SPR does not presently anticipate that the CO<sub>2</sub> emissions will continue throughout the life of the proposed units. Rather, SPR has planned Phase 1 of the EEC to allow room for CO<sub>2</sub> capture equipment, once that technology becomes reliable and commercially

viable. Subject to the approval of the PUCN, SPR would support development of that equipment at that time. Moreover, for Phase 2 of Ely Energy Center, SPR has proposed to construct an IGCC (once demonstrably reliable and viable using western coal, subject to PUCN approval). That technology will result in even lower CO<sub>2</sub> emissions than the super critical units in Phase 1.<sup>16</sup>

**A. EEC will meet or exceed federal and state requirements to maintain air quality**

In all respects, SPR's Ely Energy Center will meet or exceed existing federal and state air quality requirements, including the requirement to install the Best Available Control Technology ("BACT"). These commitments are specified in detail in SPR's air permit application submitted to NDEP.<sup>17</sup> All pollution controls and emission limitations for regulated pollutants will be set by NDEP in the final air permit. Petitioners, and others, will have the opportunity to present their views regarding the EEC during the public comment period in that proceeding.<sup>18</sup> Thus, there is no need for the unprecedented action by this Commission requested by Petitioners.

For example, SPR has proposed to use low-sulfur Powder River Basin coal and wet flue gas desulfurization (a "wet scrubber") to capture 97% of SO<sub>2</sub> emissions.<sup>19</sup> SPR's analysis is that a wet scrubber is beyond what is required for BACT, and will reduce SO<sub>2</sub> emissions 40% more than the alternative dry scrubber.<sup>20</sup> EEC has also proposed selective catalytic reduction, along with low NO<sub>x</sub> burners and over fire air, to capture 87% of NO<sub>x</sub> emissions.<sup>21</sup> These are three,

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<sup>16</sup> SPR is taking other steps to enhance the performance of the EEC. For example, its hybrid cooling system will use substantially less water than similar coal plants. Moreover, it will be a "zero-discharge" facility – meaning that all plant waste streams will be recycled or disposed in an on-site lined landfill. <http://www.sierrapacificresources.com/projects/ely/environmental.cfm>.

<sup>17</sup> Sierra Pacific Resources, Application for Operating Permit to Construct, Appendix B (2007) ("Permit Application").

<sup>18</sup> NAC § 445B.3364.5-7; 40 C.F.R. § 124.10(b).

<sup>19</sup> Permit Application, Appendix B 2, 25, 39.

<sup>20</sup> Permit Application, Appendix B 38-39.

<sup>21</sup> Permit Application, Appendix B 16.

state-of-the-art emission controls for NOx. EEC will also meet the stringent requirements set out in Nevada law for controlling mercury emissions. Accordingly, the emissions will be at least 50% lower than the current rate allowed by EPA rules.<sup>22</sup> SPR has also proposed state of the art fabric filters to control particulate and other emission sources.<sup>23</sup>

**B. The EEC will allow SPR to retire older coal generating units and facilitate more development of renewables, and thereby significantly offset emissions from the Ely facility, including CO2 emissions**

A key aspect of the approved IRP for the EEC is that it will allow SPR to retire three existing and aging coal-fired units, as well as to construct the new transmission line which will serve to promote renewable sources of energy. In fact, SPR estimates that more than 50% of the CO2 emissions that will be generated by the EEC will be offset by other emission reductions. As a result, SPR estimates that the total CO2 emissions from the SPR system after the EEC project *will be less than if SPR were to build natural gas units to meet anticipated demand.*<sup>24</sup>

Specifically, SPR's current portfolio includes 300 MW of coal-fired power generated by Reid Gardner Units 1-3. Those units were brought on line during the 1960's and 1970's and are far less efficient than the proposed Ely Energy Center. A standard measure of a plant's efficiency is the "heat rate" – the measure of the fuel consumed for each unit of electricity produced. The lower the heat rate, the less coal that has to be burned to produce the same amount of electricity. For the three Reid Gardner units, the heat rate is approximately 10,800 Btu/kWh, while the designed heat rate of the EEC is only 9,250 Btu/kWh, *i.e.*, more than 14% more efficient. In fact, the EEC will be an extremely efficient unit, more efficient than any other similar plant currently being built or proposed in the western United States.

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<sup>22</sup> Permit Application.

<sup>23</sup> Permit Application, Appendix B 2.

<sup>24</sup> See Letter from D. Sims to Council of Northern Nevada (Aug. 13, 2007) (comparison in attached chart).

By providing low cost, base load capacity, the EEC will allow SPR to retire these older, less efficient, higher emitting base load units, and retiring the three Reid Gardner units will significantly offset currently anticipated CO2 emissions from the EEC. SPR has estimated that the EEC will emit approximately 10.4 million tons per year of CO2. Approximately 27%, or 2.8 million tons per year will be offset by retiring the older coal-fired units.<sup>25</sup>

Moreover, SPR estimates that additional renewable capacity and other demand management programs will offset 3.5 million more tons of CO2 per year, or another 33% of the CO2 emissions projected for the EEC. This is largely because the location and size of the EEC makes constructing the 250-mile transmission line connecting the Nevada Power and Sierra Pacific Power systems economically feasible. This new line or “Intertie” will be sized to have up to 500 MW of additional capacity to carry and thereby directly promote the development of new renewable energy sources, including wind, solar, and geothermal power. These renewable projects will further offset CO2 emissions from the EEC. These projects are now constrained because there are no adequate transmission lines to move the power that could be generated to Nevada’s growing population centers. As the PUCN explained,

the Intertie will aid in the development of renewable energy resources by allowing electricity generated by non-solar renewable resources in Northern Nevada to be delivered to Southern Nevada and electricity generated by solar resources in Southern Nevada to be delivered to Northern Nevada. Further, the Intertie will allow for the development of wind resources in Eastern Nevada to both Northern and Southern Nevada.

Order, ¶200.<sup>26</sup>

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<sup>25</sup> See Letter from David Sims to Council of Northern Nevada (Aug. 13, 2007).

<sup>26</sup> CO2 emissions from the EEC would not only be offset by retirements and renewables specifically tied to the new transmission line, but also by demand side management, other investments in renewables, and efficiency improvements. Thus, even after adding the EEC, SPR expects that the rate of overall CO2 emissions per kilowatt hour sold in the SPR system will be dramatically lower than at present.

In fact, prohibiting the EEC, as Petitioners now request, will severely retard the development of wind power and other renewables in Nevada. Without the EEC, the Intertie will not likely be built, and without it, wind generators and other renewables will not have the needed transmission lines to access all of Nevada's consumers.<sup>27</sup>

**III. Contrary to the Petitioners' claim, neither the Clean Air Act or Nevada law requires this Commission to suspend NDEP's permitting authority and start a rulemaking to limit CO2 emissions**

**A. Massachusetts v. EPA does not require Nevada to regulate CO2 emissions from coal-fired power plants**

Petitioners contend this Commission *must* act, because it is required to do so in light of the Supreme Court's ruling in *Massachusetts v. U.S. EPA*, 127 S. Ct. 1438 (2007). Petitioners' claim that the law *requires* this Commission to grant the relief Petitioners seek distorts the Court's ruling and is wrong as a matter of law. In *Massachusetts v. EPA*, several states had asked EPA to regulate CO2 emissions from *mobile sources* under the Clean Air Act, but EPA had declined to do so, in part because it claimed Congress did not give EPA the authority to regulate them. The states appealed and the Court dealt with only two questions: "whether EPA has the statutory authority to regulate greenhouse gas emissions from new motor vehicles; and if so, whether its stated reasons for refusing to do so are consistent with the statute." *Id.* at 1446.

Given the focused nature of the questions that it faced, the Court's holdings are understandably narrow. The Court concluded that EPA has the authority to regulate CO2 emission from mobile sources, not that it must. *Id.* at 1462. It further held that EPA had not offered sufficient reasons for refusing to determine whether it *should* regulate CO2 emissions, and held open the opportunity for EPA to make that showing on remand. *Id.* That is the issue presently under consideration at EPA.

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<sup>27</sup> Order at ¶¶8, 40-41.

Thus, contrary to Petitioner’s assertions, the Supreme Court did not hold that Nevada or anyone else is “*required*” to regulate CO2. The Court only held that EPA has the discretionary “authority” to regulate CO2 emissions from *mobile* sources, not stationary sources like power plants. *Id.* at 1462. The Court was *not* mandating that CO2 *should* be regulated, much less how.

We need not and do not reach the question whether on remand EPA must make an endangerment finding [the first step in the regulatory process for setting emission limits for mobile sources], or whether policy concerns can inform EPA's actions in the event that it makes such a finding.

*Id.* at 1643.

Nor did *Massachusetts v. EPA* address whether EPA, or any state delegated by EPA to implement the Clean Air Act, may or should regulate CO2 emissions from power plants. The case was a challenge to EPA’s actions regarding *mobile sources*, which are governed by entirely separate provisions (Title II) of the Act. In fact, the U.S. Court of Appeals for the District of Columbia currently has before it challenges to EPA’s 2006 revisions to the New Source Performance Standards (“NSPS”) for electric utility boilers.<sup>28</sup> The challenges are based, in part, on arguments that Title I of the Clean Air Act authorizes EPA to regulate CO2 emissions from power plants as part of the revised federal NSPS. If the issue is still being reviewed by D.C. Circuit, federal law cannot *require* this Commission to regulate CO2 emissions immediately.

**B. *Massachusetts v. EPA* does not mean that CO2 is a pollutant “subject to regulation” under the Clean Air Act’s New Source Review provisions**

Petitioners further argue this Commission *must* impose Best Available Control Technology (“BACT”) limits on CO2 emissions from power plants. Petitioners assert this is so because they say: (i) after *Massachusetts v. EPA*, CO2 is a “pollutant” under the Act; (ii) if it is a “pollutant” then CO2 must be “subject to regulation” under the Prevention of Significant

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<sup>28</sup> See *State of New York v. EPA*, 06-1322 (D.C. Cir. docketed Sept. 13, 2006).

Deterioration (“PSD”) of the New Source Review (“NSR”) requirements of Title I of Act; and (iii) therefore the Act *requires* the Commission to *mandate* that PSD permits for coal-fired plants include both a BACT analysis and an emissions limit on CO2 emissions. Pet. at 19-21.

Petitioners’ assertions are wrong. First, again, *Massachusetts v. EPA* did *not* address whether CO2 emissions from power plants are or should be regulated under Title I of the Act. Second, even if CO2 were a “pollutant” under Title I of the Act, CO2 is not yet “subject to regulation” for the simple reason that EPA has not yet regulated it. Petitioners’ argument confuses a “pollutant” with a pollutant “subject to regulation” for purposes of PSD. The reality is that a BACT analysis is *only* required for that *subset* of “pollutants” that are actually regulated under the Clean Air Act. *See* 42 U.S.C. § 7479 (3); 40 C.F.R. § 52.21(b)(12). A pollutant is not “subject to regulation” unless EPA sets an emissions limitation for it. As there is no present emission limitation on CO2, it is not “subject to regulation” under PSD.

The difference between these two concepts is well established. EPA’s Environmental Appeals Board (EAB) has consistently held that a pollutant is “subject to regulation” only when a regulation “*has been promulgated*” for that pollutant – not when a regulation *could* be promulgated. *In re Indeck-Elwood, LLC*, \_ E.A.D. \_, slip op. at 8, n.10 (EAB 2006);<sup>29</sup> *In re North County Resource Recovery Assocs.*, 2 E.A.D. 229 (Adm’r 1986) (“EPA lacks the authority to impose [PSD] limitations or other restrictions directly on the emission of unregulated pollutants.”); *In re Genesee Power Station Limited Partnership*, 4 E.A.D. 832 (EAB 1993) (“unregulated pollutants generally do not form part of the BACT analysis, since by statute and

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<sup>29</sup> “The regulations define regulated pollutants (or regulated NSR pollutants as any pollutant subject to regulations under the CAA (i.e., pollutants for which a NAAQS has been promulgated, pollutants subject to standards promulgated under Section 111 of the CAA, and Class I or Class II substances subject to title VI of the CAA), 40 C.F.R. § 52.21(b)(50).” *In re Indeck Ellwood LLC*, slip op. at 8, n. 10.

regulation BACT is defined as an emissions limitation for a regulated pollutant.”<sup>30</sup>; *see also* *Alabama Power Co. v. Costle*, 636 F.2d 323, 370 n. 134 (D.C. Cir. 1979).<sup>31</sup>

The EAB has in fact already twice considered and expressly rejected the claim that a state is “required” to address CO<sub>2</sub> in its PSD permitting process. *See In Re Inter-Power of New York, Inc.*, 5 E.A.D. 130 (EAB 1994); *In re: Kawaihae Cogeneration Project, PSD/CSP Permit No. 0001-01-C*, 7 E.A.D. 107 (EAB 1997). In both instances, the EAB found that CO<sub>2</sub> is an unregulated pollutant and, therefore, a BACT analysis is not required. EPA guidance documents provide additional confirmation.<sup>32</sup> Petitioners offer no relevant authority to the contrary.<sup>33</sup>

EPA’s approach makes practical sense. If Nevada were required to conduct a BACT analysis for every substance that may be a “pollutant” under the Clean Air Act, it would quickly be overwhelmed. The Clean Air Act has a “sweeping” definition of “pollutant” that “embraces all airborne compounds of whatever stripe.” *Massachusetts v. EPA*, 127 S. Ct. at 1460. Thus,

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<sup>30</sup> *See also In re Umetco Minerals Corp.*, 6 E.A.D. 127, 127-28 (EAB 1995) (“radon emissions from uranium byproducts that result from uranium milling are *subject to regulation* under the Clean Air Act” because “EPA has designated radionuclides (including radon) as hazardous air pollutants under section 112(a) of the Clean Air Act” and because “EPA has issued National Emission Standards for Hazardous Air Pollutant (NESHAP) for ‘radon emissions from operating mill tailings...”).

<sup>31</sup> In *Alabama Power Co. v. Costle*, the court considered, in the absence of a national ambient air quality standard, when a pollutant may be “subject to regulation” for purposes of PSD. The court explained that “[o]nce a standard of performance has been promulgated [by EPA] ... those pollutants become ‘subject to regulation’ within the meaning of section 165(a)(4), 42 U.S.C. § 7475(a)(4), the provisions requiring BACT prior to PSD permit approval.” *Id.* Therefore, before a standard of performance has been promulgated, the pollutant is not “subject to regulation.”

<sup>32</sup> EPA’s 1990 *NSR Workshop Manual (Draft)* states that some pollutants may not be “subject to regulation,” *id.* at I.1, that a BACT analysis addresses “each regulated pollutant,” *id.* at B.4, and that there is a specific list of “Regulated Pollutants” that is limited to those for which EPA has set emission limitations. *Id.* at A.18. <http://nsdi.epa.gov/ttn/nsr/gen/wkshpman.pdf> Even more specifically, in 1993 guidance, EPA explained that CO<sub>2</sub> was the subject of a study and if those studies indicate CO<sub>2</sub> should be regulated then it “could be reconsidered at that time for classification as [a] pollutant[] subject to regulation under the Act.” EPA, L. Wegman, Dep. Director Office of Air Quality Planning and Standards, to Air Division Director, Regions I-X (April 26, 1993)<http://www.epa.gov/region07/programs/artd/air/title5/t5memos/rapdef.pdf>.

<sup>33</sup> The only reference Petitioners invoke for their novel theory is one EPA statement that “a pollutant is considered regulated once it is subject to regulation under the Act. A pollutant need not be specifically regulated by a section 111 or 112 standard to be considered regulated.” 66 Fed. Reg. 59161 (Nov. 27, 2001). Yet, read in context, the source cited by EPA makes abundantly clear that, like every EAB decision on this topic, EPA was explaining that a pollutant was “subject to regulation” only *after* emissions of that pollutant become actually regulated under some provision of the Act, rather than just Sections 111 and 112. 61 Fed. Reg. 38250, 38309 (July 23, 1996).

Nevada would be obligated to evaluate BACT for every single substance projected into the air by a regulated source. Such an interpretation would make the NSR program absolutely unworkable.<sup>34</sup>

**IV. The economic data provided by Petitioners were and will be weighed by the PUCN. In any case, the data provided are flawed and should not be relied on here.**

Petitioners say this Commission must act due to the alleged economic costs of CO2 emissions. However, the PUCN already has weighed the economic costs and benefits of the proposed EEC – including much of data presented here by Petitioners. The PUCN rejected NCARE’s claim that future GHG emission reduction costs were not adequately addressed in SPR’s plans to use coal. “The Companies presented a complete and thorough analysis of the cost and risk associated with future carbon emissions regulation and fully rebutted [NCARE’s] criticisms.” Order ¶ 179. Moreover, the PUCN will receive an update on the economics related to environmental matters, including CO2 emissions, after NDEP issues the EEC an air permit.<sup>35</sup>

Even if the PUCN had not already considered and rejected the Petitioners’ economic claims, Petitioners’ flawed analysis cannot justify their proposed regulations. Indeed, Petitioners’ arguments are based on a series of errors, including as follows:

- **Petitioners overestimate the annual CO2 emissions from the proposed EEC.** Petitioners repeatedly claim that the proposed 3,480 megawatts of proposed coal-fired electricity will produce 48.6 million metric tons of carbon dioxide per year. Petition at 4, 5, 11, 24, 26. Their methodology for calculating that figure is badly flawed and grossly overestimates CO2 emissions. For example, the Petitioners calculations

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<sup>34</sup> We also note the rule proposed by the Petitioners may be unconstitutional and/or be pre-empted by federal laws. Petitioners’ rule would require *out-of-state* facilities that sell power to a Nevada utility to comply with a required CO2 certification. Pet. at 2. A similar rule was adopted in California and commenters have questioned whether that rule violates or is preempted by the Federal Power Act and the Commerce Clause of the U.S. Constitution, among other requirements. See e.g. Pacificorp’s Response to Administrative Law Judges’ Ruling Requesting Comments and Legal Briefs on Market Advisory Committee Report, Rulemaking 06-04-009, Pub. Util. Comm’n of the State of California and the California Energy Comm’n (Aug. 6, 2007). Congress is considering as part of any national legislation, whether inconsistent state laws would be allowed or preempted by federal law. This counsels against using the Commission’s limited resources to conduct a rulemaking at this juncture.

<sup>35</sup> Order ¶ 180.

predict that the EEC will generate almost 19 million metric tons of CO<sub>2</sub> per year.<sup>36</sup> Yet in reality, it is estimated that the Ely Energy Center will produce only 10.5 million metric tons of CO<sub>2</sub> per year,<sup>37</sup> more than half of which will be offset, as explained above.

- **Petitioners’ artificially inflate their “cost” estimates by using the overestimate of CO<sub>2</sub> emissions.** Petitioners offer estimates of the “economic” and “social” cost of CO<sub>2</sub> emissions calculated on a “cost” per ton basis. Petition at 25-28. Thus, each total cost estimate they offer is dramatically inflated because of petitioners’ overestimate of CO<sub>2</sub> emissions.
- **Petitioners’ reliance on the Stern Review’s estimate of the “Social Cost of Carbon” (SCC) is unwarranted.** The Stern Review’s estimate of the SCC has been heavily criticized and is simply outside of reasonable bounds.<sup>38</sup> It should not, therefore, be used to justify the proposed regulations.
- **Petitioners dramatically overstate the percentage of Nevada electricity that comes from coal.** Petitioners claim that 50 percent of the State’s electricity is coal-based. Pet. at 4. In fact, as of May, 2007, coal generation represented only about 17% of Nevada’s electricity fuel source.<sup>39</sup>

Fundamentally, the numbers that the Petitioners use are at best very uncertain. Within the space of three pages, Petitioners assert the future cost of carbon emissions may be \$12 per metric ton, or \$8, or \$20, or even \$85. Pet. at 26-28. Given such uncertainties, this Commission should not step in and second-guess the economic considerations that the PUCN has already decided and will continue to consider as it is charged to do by Nevada law.

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<sup>36</sup> Petitioners multiplied the generating capacity of phase 1 of the EEC (1500 MW) by a faulty emissions factor of 12,661 tons of CO<sub>2</sub> per megawatt per year. Petition at 4 n.2.

<sup>37</sup> Letter from David Sims to Council of Northern Nevada (Aug. 13, 2007). In fact, Petitioner Western Resources Advocates cites the lower number on its website. See <http://www.westernresourceadvocates.org/energy/coal/nevada.php>.

<sup>38</sup> See e.g., Richard Tol & Gary Yohe, *A Review of the Stern Review*, 7 *World Econ.* 233, 233-34, 242-43 (Dec. 2006) (noting that the SCC estimate "is high if all studies are considered, but it is very high if the attention is restricted to those studies that were published in peer-reviewed journals" (emphasis in original)); William Nordhaus, *The Stern Report and the Economics of Climate Change* (Nov. 5, 2006); Gary Yohe, *Some Thoughts on the Damage Estimates Presented in the Stern Review—An Editorial*, 6 *Integrated Assessment J.* 65, 65-66 (2006).

<sup>39</sup> Coal provides 456,000 MWh of the State’s 2,756,000 MWh of net electricity generation [http://tonto.eia.doe.gov/state/state\\_energy\\_profiles.cfm?sid=NV](http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NV).

V. **This Commission should allow the PUCN to decide how best to provide for the electricity needs of Nevada**

This Commission should also decline the Petition because to do so would second guess the judgment of the PUCN on the appropriate mix of power generation best for Nevada. The PUCN is the entity responsible for balancing the costs and benefits of different electricity generating resources for Nevada. It considered the EEC, evaluated the *available* alternatives, and concluded Nevada needed a more balanced portfolio that includes a new energy center that uses the most advanced coal technology, such as the EEC. Yet, if this Petition were granted and a rule issued that prevented SPR from developing the EEC, the ultimate effect would be to nullify the PUCN's judgment that a mixed portfolio, owned and operated by a Nevada regulated utility, is in the best interest of the State. It would force SPR and the PUCN to reconsider the same alternatives the PUCN has already judged after a lengthy public process were not in the public interest, including volatile-priced natural gas fired power and/or more expensive natural gas fired power purchased on the market. Moreover, it would have the effect of forcing SPR to leave in place the older, less efficient, higher emitting units that SPR would otherwise be able to retire. Ironically, it also would greatly diminish the prospect for additional renewable energy in Nevada, as it is unlikely the new transmission line would otherwise be built.

Further, each of the Petitioners had every opportunity to raise the arguments they presented here to the PUCN. In fact, NCARE did intervene and raised those arguments. The Commission considered them, weighed the evidence, and issued a final Order. NCARE chose not to appeal that Order. Now, NCARE, along with the other Petitioners, restate the same arguments here. They should not be allowed the proverbial second bite at the apple.<sup>40</sup>

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<sup>40</sup> Administrative adjudicatory proceedings are *res judicata* and bar further litigation of the same claims and issues that were or could have been litigated. *Britton v. City of North Las Vegas*, 106 Nev. 690, 799 P.2d 568 (1990). NCARE participated fully in the IRP proceeding and made the identical argument raised here: because of the alleged

**VI. This Commission would be otherwise ill-advised to start a rulemaking at this time**

Apart from legal issues, there are significant policy reasons why this Commission should not conduct a rulemaking on CO2 emissions. SPR takes seriously concerns about all environmental issues associated with its operations, including a claim that CO2 emissions from the EEC will contribute to climate change. Yet, CO2 emissions and how to address them is an issue that needs to be addressed far more broadly than in the rulemaking sought by Petitioners.

First, this Commission should await further developments on the national level before taking action. If we put the anticipated contributions of CO2 from the EEC in context, it becomes clear that this is an issue to be addressed on a national level. Published data estimate that loadings of all CO2 equivalent GHG emissions from industrial sources in the developed world (excluding the U.S.) total about 16 billion metric tons/year. The United States contributes an additional 7 billion metric tons.<sup>41</sup> The EEC may increase net CO2 emissions by 4.2 million tons of CO2, until such time as carbon capture becomes reliable and commercially viable. Thus, the estimated contribution of the EEC would be in the range of 0.059 % of the U.S. contribution and less than 0.026 % of developed world's share (based on 2004 levels). The EEC's actual contribution would be materially smaller, as these data do not include the contributions of India or China, where 1-2 new coal-fired power plants are being built *every week*.

This is not to suggest that no action should be taken. It is appropriate that on the federal level our government has begun to address our nation's contribution of CO2 and other

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relationship to global climate change and the anticipated regulation of CO2 emissions, Nevada should not construct the EEC because it uses coal to produce electricity. NCARE provided oral and written testimony, cross-examined witnesses and proposed its own plan that would require SPR to meet demand with natural gas, renewables and demand-side management, but not coal. The PUCN expressly "considered NCARE's position," but ultimately approved SPR's proposal. See Order, ¶¶ 175-179.

<sup>41</sup> For 2004, the Annex 1 countries emitted an estimated 15,907 million metric tons of CO2 equivalent GHGs and the United States emitted 7067 million metric tons. See [http://unfccc.int/ghg\\_emissions\\_data/items/3800.php](http://unfccc.int/ghg_emissions_data/items/3800.php). The U.S. estimate excludes land use, land-use change and forestry,

greenhouse gas emissions. Right now, the Congress is wrestling with this complex question. There are more than 50 different bills in Congress that propose a variety of approaches – ranging from cap and trade systems to an across-the-board carbon tax – as well numerous other bills on energy production.<sup>42</sup> Economic analyses recognize that regulating GHG emissions can have a ripple effect on the cost to produce and provide goods and services in this country. Such rules may impact the competitiveness of our nation’s economy in the global marketplace. Moreover, using vast coal reserves to provide a share of our energy needs serves important national security interests, such as avoiding the use of imported oil and natural gas. This is not a subject for state-by-state regulations.

These national concerns counsel in favor of developing national policies on CO2 emissions that address emissions from all sources. Congress is currently evaluating how it should balance the costs on different sources and sectors of the national economy, including not only utilities, as Petitioners advocate, but mobile sources, manufacturing, refining, mineral production, agriculture, and others. These are policy decisions that require a national view.<sup>43</sup>

Second, we would also urge the Commission not to act without first having the considered judgment of the elected officials in Nevada. Nevada has already begun to address the question of CO2 and other GHG emissions in Nevada in a variety of ways. For example:

- Governor Jim Gibbons has formed a 13-member Nevada State Climate Change Advisory Committee.<sup>44</sup> The Committee represents a wide spectrum of viewpoints in

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<sup>42</sup> According to the Congressional Research Service, as of July 17, 2007, 54 bills had been introduced in Congress that address climate change issues and more than 45 hearings have been held. *See* CRS Report for Congress, *Climate Change Legislation in the 110th Congress* (July 17, 2007). Appendix 1 to the CRS Report provides a list of the proposed legislation. Available at [www.ncseonline.org/NLE/CRS/](http://www.ncseonline.org/NLE/CRS/).

<sup>43</sup> U.S. EPA is also looking at how it should address CO2 emissions under the federal Clean Air Act, in light of *Massachusetts v. EPA*. “EPA is exploring and studying the issues raised by the Court’s decision, including potential ramifications on other provisions of the Clean Air Act.” Statement Of Stephen L. Johnson Administrator U.S. Environmental Protection Agency Before The Committee On Environment And Public Works United States Senate at 17 (April 24, 2007). The Commission should likewise await guidance from EPA on interpreting the Act.

<sup>44</sup> Executive Order by the Governor, Establishing Nevada Climate Change Advisory Committee (April 10, 2007).

Nevada and is charged with providing a final report and recommendations to the Governor on how Nevada may further reduce GHG emissions, including by the use of renewable energy sources.

- Nevada has already set very aggressive goals to encourage such renewable energy production. Nevada's Renewable Energy Portfolio Standard requires SPR and the state's other regulated power companies to generate 20 percent of their energy from such renewables as solar, wind and geothermal by 2015. NRS 704.7821.
- The renewables standard works in tandem with other state policies designed to conserve energy as a way to reduce generation of GHG emissions, including requirements that government motor pools have alternative-fueled vehicles and tax credits to construct energy efficient buildings.<sup>45</sup>
- More recently, during the 2007 legislative session, the legislature passed AB 178, which phases-out less energy efficient incandescent light bulbs. It is anticipated that this requirement will substantially reduce Nevada's demand for energy. Nevada is the first state to pass such legislation.<sup>46</sup>

In addition, the legislature enacted SB 422 which establishes a statewide registry of greenhouse gases emitted in Nevada.<sup>47</sup> The law defines a "greenhouse gas" to include not only CO<sub>2</sub>, but also hydrofluorocarbons, methane, nitrous oxide, perfluorocarbons, and sulphur hexafluoride. Under this law, the State Department of Conservation and Natural Resources will issue, by the end of 2008 and every four years thereafter, a statewide inventory of greenhouse gas emissions. This is a logical first step towards deciding what additional measures Nevada may consider, in addition to what may be required by Congress or EPA.

Significantly, as introduced, SB 422 would have required this Commission to establish, by regulation, a statewide program for the control of six greenhouse gases emitted in Nevada for the generation of 25 MW or more of electricity. The program would have created allowances for CO<sub>2</sub> equivalent emissions and a program by which allowances would be banked and traded. The

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<sup>45</sup> [http://www.eere.energy.gov/states/news\\_detail.cfm/news\\_id=11045](http://www.eere.energy.gov/states/news_detail.cfm/news_id=11045)

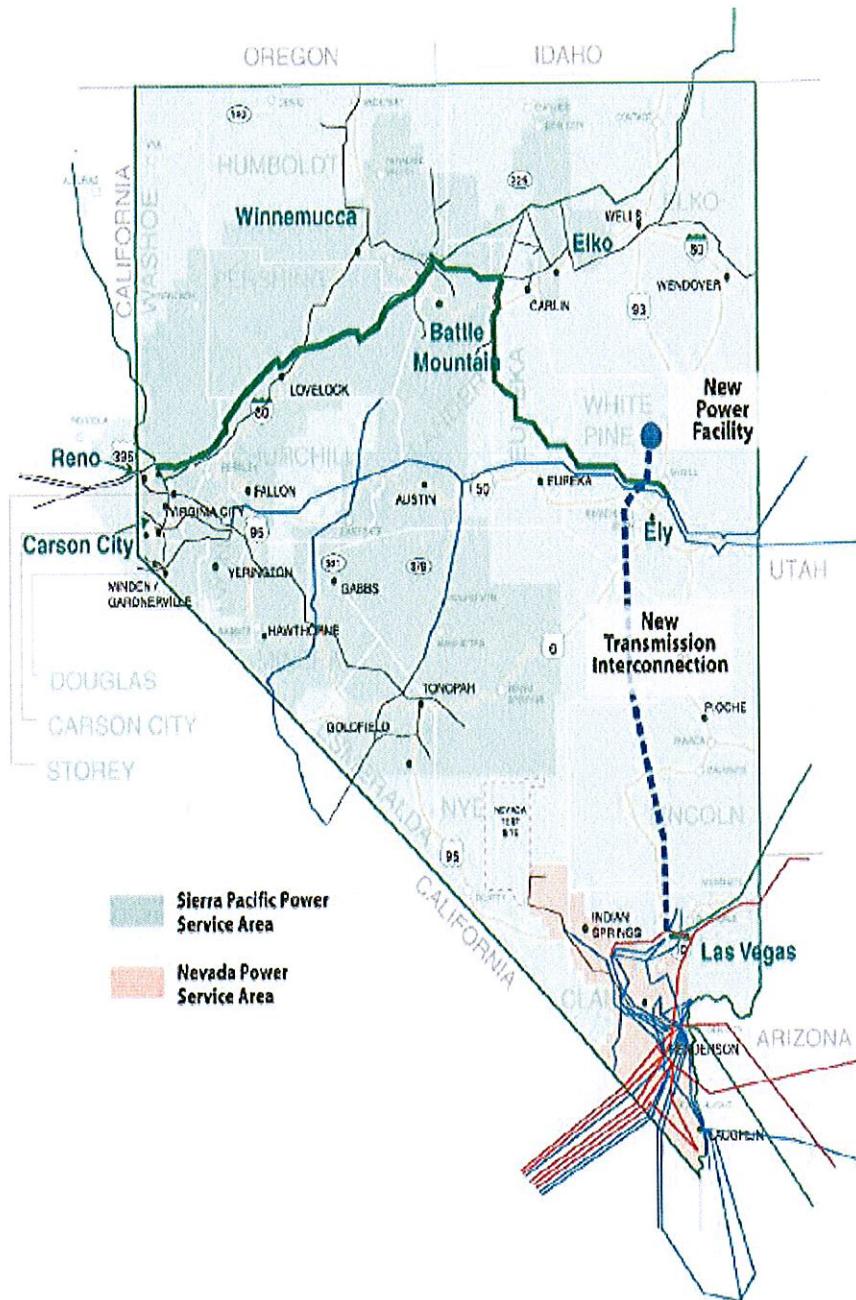
<sup>46</sup> *Id.* <http://www.leg.state.nv.us/74th/Reports/history.cfm?ID=403>

<sup>47</sup> For a history of the bill as introduced and then amended, *see* <http://www.leg.state.nv.us/74th/Reports/history.cfm?ID=996>.

program would also have imposed a limitation on the annual amount of greenhouse gases that an affected unit may emit. Those provisions, however, were not enacted.

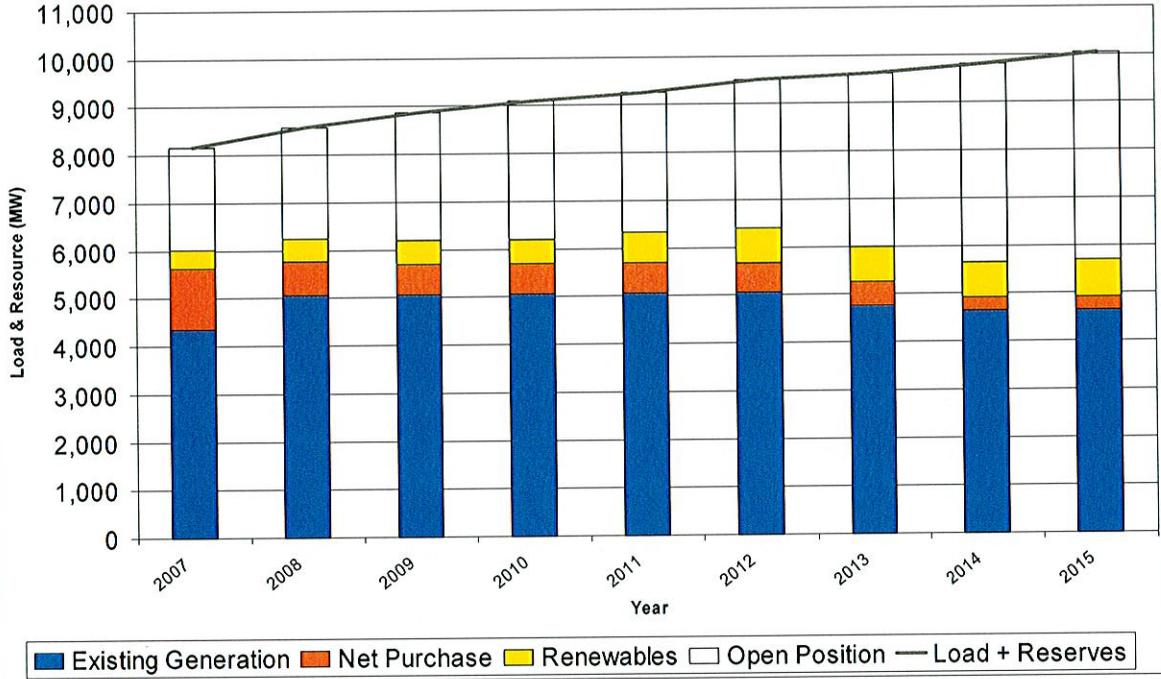
Accordingly, the Nevada Legislature evaluated the issue and determined that a rulemaking like that the Petitioners are advocating was premature, so they instead required a registry. The registry, combined with the Governor's Advisory Committee, is a logical approach. Moreover, this Commission should not embark on a rulemaking that the Legislature chose not to authorize. These are the types of significant decisions that have far reaching implications for Nevada that should only be made after clear direction from elected officials.

**FIGURE 1-1  
MAP OF SITE AREA**



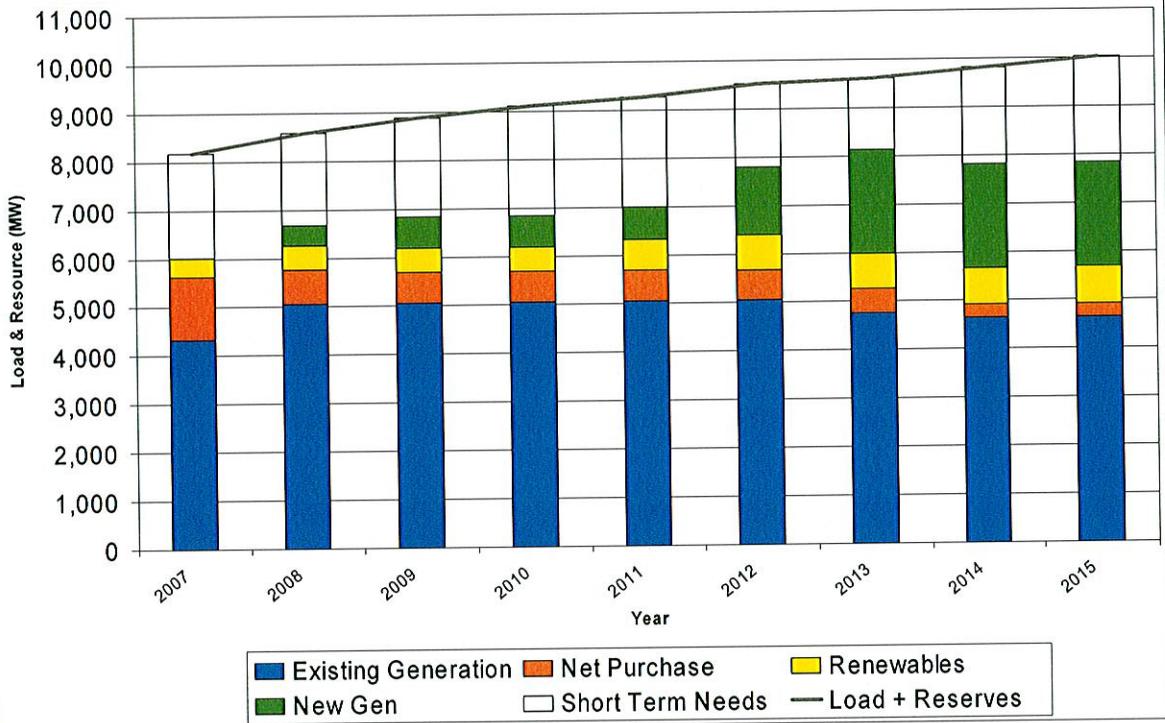
Source: Sierra Pacific Resources, Application for Operating Permit to Construct, Figure 1-1 (Feb. 2007)

**NPC & SPPC Load and Resource Balance  
No New Generation  
2007 - 2015**



Source: Nevada Power Presentation to Public Scoping Meetings February 2007.

### NPC & SPPC Load and Resource Balance 2007 - 2015



August 13, 2007

Paul McKenzie  
Business Representative  
Council of Northern Nevada  
1819 Hymer Avenue  
Sparks, NV 89431

Dear Paul:

Thanks again for your consideration of a show of support for the Ely Energy Center. Below are a few facts and details that you may find helpful in your internal discussions and whatever you may state publicly.

**Regarding the need for the Ely Energy Center:**

- Nevada has been the nation's fastest growing state in the past 19 out of 20 years.
- Our system has been growing more than 300 megawatts per year, more than any other utility in the nation
- Although renewable supplies are growing quickly, we will be short nearly 4,000 megawatts of capacity in 2015, unless we add a large generating facility similar in size to the Ely Energy Center
- Currently, about 75% of our electricity comes from natural gas, and the coal-fueled Ely Energy Center is vitally needed to reduce our customers' exposure to price volatility
- Sierra Pacific Resources has been mandated by the Public Utilities Commission of Nevada to build this coal-fueled plant and a transmission tie-line to improve reliability and open the pathway for renewable energy from remote eastern portions of the state

**Regarding the greenhouse gas issue:**

- For reasons noted below, the Ely Energy Center project will emit **less than half** of the greenhouse gases, compared to the other two proposed coal facilities in Nevada (see attached chart)
  - This project will enable us to shut down three other units that produce approximately **2.8 million tons of CO2 annually**
  - This project reserves a minimum of 300-500 megawatts of transmission line capacity for renewable energy, which will save approximately **3.5 million tons of CO2 annually**
  - This project – as part of the PUC-mandated Integrated Resource Plan will save **about 272,000 tons/year of greenhouse gases** through 15 demand-side management programs

- Unlike the other proposed coal-fueled plants in Nevada, we also are accommodating future carbon capture and storage technology in our plans, as that technology becomes commercially viable

Paul, thanks again for giving us the opportunity to share some of these facts with you. I'm also including a general presentation we recently used in Ely for a public meeting. Please call me if you have any questions.

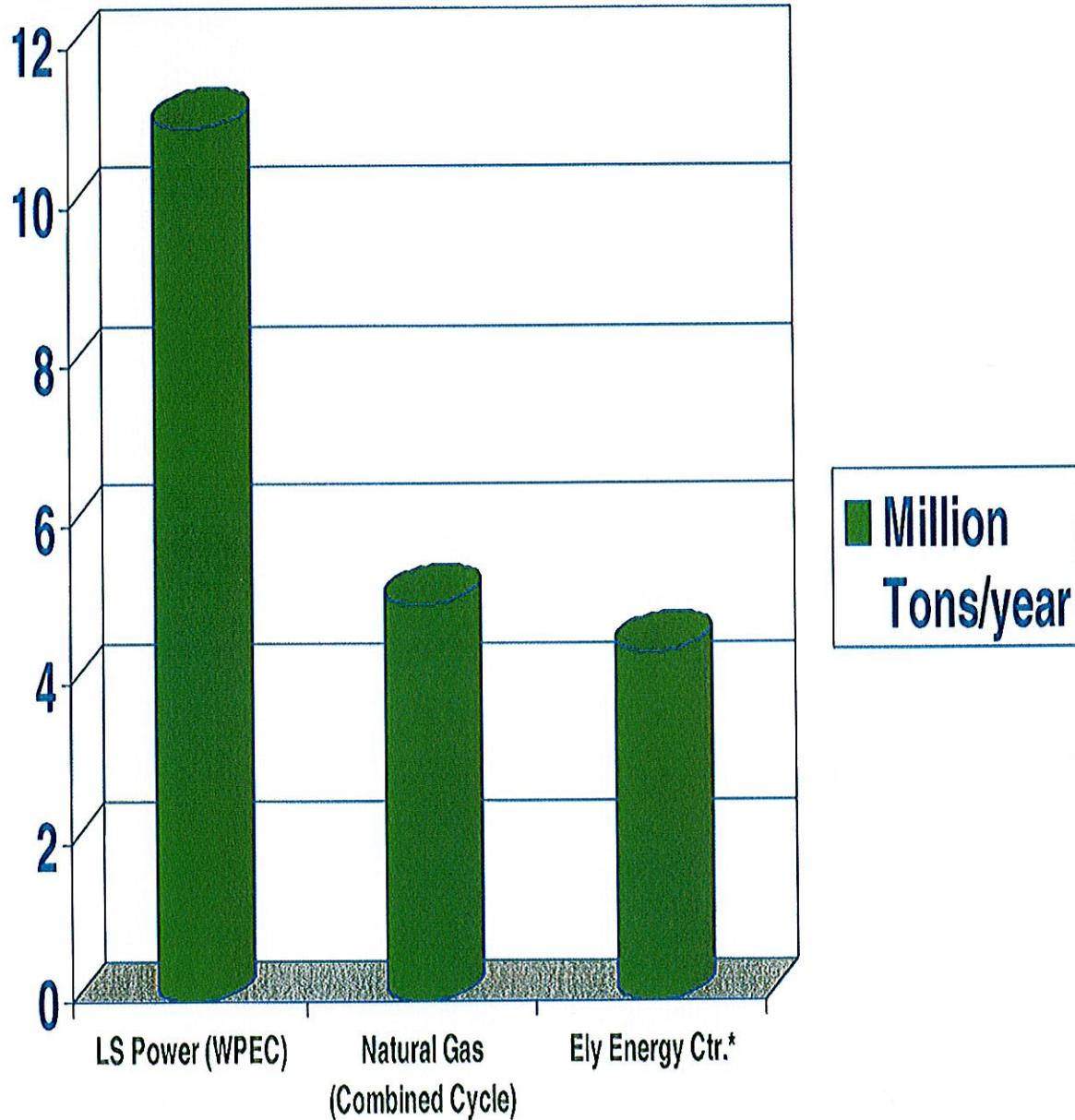
Sincerely,



David M. Sims  
Director, Project Development

Enclosure

# Greenhouse Gas Comparison



\* Includes CO2 reductions from shutting down Reid Gardner 1,2,3; 500 MW of new renewable energy resources; demand-side management reductions

**RESOLUTION OF THE NEVADA STATE AFL/CIO  
IN SUPPORT OF THE ELY ENERGY CENTER**

**WHEREAS** Nevada's continued growth is creating an ever increasing demand for power, and

**WHEREAS** we understand the need to reduce greenhouse gases in an effort to reduce global warming, and

**WHEREAS** we understand if the Ely Energy Center comes on line Sierra Pacific will have the ability to shut down three of their existing power plants thereby reducing the output of greenhouse gases by as much as 50% from current levels, and

**WHEREAS** we support renewable energy but realize it will take time and investment to build an infrastructure of renewable energy power plants which will have the ability of fulfilling Nevada's ever increasing energy needs, and

**WHEREAS** we understand while geothermal is the most dependable and most prominent of the current renewable energy sources, the cost of development for a geothermal power plant is nearly \$7 million per megawatt while the planned Ely Energy Center costs are projected at approximately \$1 million per megawatt, and

**WHEREAS** ultimately the rate payers in Nevada will pay for the development of whatever source we find to feed the growing demand for electricity, and

**WHEREAS** the higher the cost to develop the energy source, the greater the financial burden on our members, and

**WHEREAS** Sierra Pacific has a record of building power plants using Union Labor, and

**WHEREAS** the Ely Energy Center will create 2500 construction jobs at its peak, and

**WHEREAS** the overwhelming majority of renewable energy projects are built with labor who do not make a living wage and do not have benefits, and

**WHEREAS** Sierra Pacific mans their power plants with Union Labor once those plants go into production, and

**WHEREAS** the Ely Energy Center will create a total of 250 permanent jobs in White Pine County once phase II has been completed, and

**WHEREAS** the overwhelming majority of renewable energy power plants are manned with a labor force who do not make a living wage and do not have benefits and are therefore a burden on their community for their health and welfare, and

**WHEREAS** Sierra Pacific is a Nevada corporation which reinvests in Nevada, and

**WHEREAS** the overwhelming majority of renewable energy developers are not Nevada corporations, in fact most of them are not even being American corporations, and they do not have an interest in reinvesting in Nevada, and

**WHEREAS** we support affordable energy, and

**WHEREAS** we support workers being paid a living wage and being provided with benefits, and

**WHEREAS** we support companies who reinvest in the state of Nevada over companies which reap profits at the expense of their workers and Nevada's rate payers only to take those profits out of the state, and

**WHEREAS** we support efforts to reduce greenhouse gases through improved technology and higher efficiency built into new power plants which will allow the decommissioning of less efficient power plants which are releasing pollutants at higher levels; be it therefore

**RESOLVED** the Nevada State AFL/CIO supports the efforts of Sierra Pacific to construct the Ely Energy Center in White Pine County, Ely, Nevada, and be it further

**RESOLVED** that this resolution shall be forwarded to those elected representatives who may have concern about this project, to show our support for the Ely Energy Center.

This resolution was approved August 22, 2007 by the delegation in attendance at the 51<sup>st</sup> Annual Constitutional Convention of the Nevada State AFL-CIO as submitted by the Building and Construction Trades Councils of Northern and Southern Nevada and the Central Labor Councils of Northern and Northeastern Nevada.