

Summary Minutes of the STATE ENVIRONMENTAL COMMISSION (SEC)

Meeting of September 7, 2007

By Teleconference from

The State Legislative Building (Room 2135)
401 S. Carson St.
Carson City, Nevada
and
The Grant Sawyer Building (Room 412)
555 E. Washington St.
Las Vegas, Nevada

Members Present:

Carson City

Lewis Dodgion, Chairman
Pete Anderson
Kenneth Mayer
Ira Rackley
Tracy Taylor
M. Frances Barron
(formerly M. Frances Sponer)

Members Absent:

Alan Coyner, Vice Chairman
Donna Rise
Stephanne Zimmerman
Harry Shull

SEC Staff Present:

Rose Marie Reynolds, Dep. A.G.
John Walker, Executive Secretary
Robert Pearson, Recording Sectry.

BEGIN SUMMARY MINUTES

Chairman Dodgion called the meeting to order at 9:30 am and stated that there were seven Commissioners present, which constituted a quorum, and that the meeting had been properly noticed. He noted that on the agenda, Item 9 (as in the member packets—now Item 8 since the regulatory petition originally listed as Item 5 had been dropped) had been scheduled for the afternoon session. He asked if there were any comments or suggestions from the Commissioners about any other agenda items or the order in which they should be taken; hearing none, he moved down the agenda to Item 1.

1) Approval of minutes from the May 24, 2007 SEC hearing *ACTION

Chairman Dodgion asked if there any questions, additions or deletions from the Commissioners on the summary minutes of the May 24, 2007 SEC meeting. There were none.

Motion: Commissioner Anderson moved that the minutes be approved as presented. Commissioner Gans seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved down the agenda to Item 2:

**2) Approval of the following Settlement Agreements - Air Quality Violations
*ACTION by Consent Calendar**

Larry Kennedy, Supervisor of the Compliance and Enforcement Branch of the Nevada Division of Environmental Protection's (NDEP) Bureau of Air Pollution Control, presented the settlement agreements to the Commission. He noted that one of the settlements on the agenda, Wilkin Mining and Trucking, had not returned their signed copy of the settlement on time and could not be presented today.

Mr. Kennedy now gave the following presentation:

(BEGIN PREPARED REMARKS BY LARRY KENNEDY)

Mr. Chairman, members of the Commission, good morning. For the record, my name is Larry Kennedy. I recently became Supervisor of the Compliance & Enforcement Branch in the NDEP's Bureau of Air Pollution Control. I have been serving as Acting Supervisor of the Branch since March 2006.

This morning I will present Settlement Agreements negotiated by the Bureau's Compliance & Enforcement Branch for approval by the State Environmental Commission. There is one change to the agenda. We have not yet received a signed copy of the proposed Settlement from Wilkin Mining & Trucking, and so it cannot be presented to you today. I will only present Five (5) Settlement Agreements.

For the record, I'd like to briefly describe the roles and responsibilities of the Bureau with respect to the Commission. The Commission is authorized under the Nevada Revised Statutes to levy administrative penalties for Major violations of state rules and regulations that protect air quality. Based on a long-standing agreement, the Bureau's Compliance & Enforcement Branch negotiates penalties for Major air quality violations on the behalf of the Commission.

At the Commission's previous meeting in May, I described how the Compliance & Enforcement Branch had developed an Administrative Penalty Table for use in determining penalties for major air quality violations that are not simply related to emission exceedances. For the settlements presented today, the Penalty Table was used to assess penalties for a reporting violation and for six alleged violations related to emissions compliance testing. The Penalty Matrix, which is

designed to assess penalties for violations related to emissions exceedances, was used to calculate penalties for the other Three (3) violations.

We have informed all of the companies or individuals listed on today's agenda that the Branch acts as the Commission's agent in assessing penalties and negotiating settlements, and that the Commission may see fit to adjust a penalty that we have assessed. All of the companies on the agenda have been notified that their settlements would be considered by the Commission at this meeting.

What I would like to do today is:

- briefly describe the alleged violations and each of the related settlement agreements, and
- then, answer any questions you may have.

(END PREPARED REMARKS BY LARRY KENNEDY)

(See **Appendix 1** for the list of settlements and comments)

Commissioner Gans requested a clarification on the Marigold settlement, whether "the standard wasn't in effect." Mr. Kennedy elaborated on the difference between the penalty table and the penalty matrix. The Marigold test in this case was a voluntary test, and therefore treated as an emissions exceedance and not a compliance violation.

Motion: Commissioner Barron moved that the settlement agreements presented be approved, clarifying that this did not include Wilkin Mining and Trucking as noted in the testimony. Commissioner Anderson seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved to Item 3:

3) Approval of Arsenic Rule Exemptions for the following list of water systems *ACTION by Consent Calendar

<u>WATER SYSTEM ID #</u>	<u>SYSTEM NAME</u>
NV0000903	CMC Steel Fabricators DBA CMC Joist
NV0000206	Pioneer Hills MHP

Jennifer Carr, Bureau Chief of safe Drinking Water at NDEP presented the exemptions. She now gave the following presentation:

(BEGIN PREPARED REMARKS BY JENNIFER CARR)

Good morning Chairman, Members of the Commission. I am Jennifer Carr, Chief of the Bureau of Safe Drinking Water. You may recall that, at the May hearing, I represented the Bureau of Air Quality Planning. Well, since then, Doug Zimmerman announced his retirement, to be effective just after the first of the year. I have more of a water-program background so, in late June, I took this opportunity to move laterally into the Chief's position for the Bureau of Safe Drinking Water. I am excited about this program and the fact that I am able to work with Doug during his last few months with the Division.

Today, I have two additional Arsenic Rule Exemptions to bring forward. To date, the SEC has granted a total of 53 exemptions at the last 2 hearings, out of an eligible universe of 88 systems. The two systems before you today submitted arsenic exemption applications that were originally intended to be granted at the May hearing. However, statute requires the water supplier to notify all their users of the time and place of the SEC hearing, and they were not able to present proof of appropriate public notification to their customers at that time. The public notification requirement was rectified for this hearing and therefore these systems are being recommended for approval by the Bureau of Safe Drinking Water.

For your reference, and as we have provided in the past, the maximum average arsenic concentration for these facilities is 16 ppb (ug/l) for CMC Steel Fabricators and 35 ppb for Pioneer Hills Mobile Home Park. The population served for both providers is less than 500 people.

To balance out your overall picture for systems in Nevada, of the 88 systems eligible for exemptions, and assuming that you grant the two today, there will be 55 that have received exemptions and have to comply with the new drinking water standard by January 23, 2009. There are 18 systems that have not received an exemption because they have found other compliance solutions. The final 15 systems that have not received an exemption either have not applied or we are working with them to complete their application packages.

In preparation for the December 2007 SEC hearing, the remaining systems are being notified that this will be their last chance to receive an exemption. The January 23, 2009 compliance deadline (for exempted facilities) is drawing near; and it simply doesn't make programmatic sense to continue to chase down this path. I have been working with Doug Zimmerman and Bureau staff toward finalizing an approach for these few facilities that are not in compliance. Other tools that the NDEP is considering include our legal Civil and Administrative processes; which will also be the tools we utilize for facilities that fail to meet the milestones outlined in the existing exemptions.

I'll be happy to take any comments or answer any questions you may have. Thank you.

Numerical Summary of Systems:

Exemptions

September 6, 2006	36	SEC Hearing exemptions approved
May 24, 2007	<u>17</u>	SEC Hearing exemptions approved
	53	
September 7, 2007	<u>02</u>	SEC Hearing exemptions proposed
	55	
<u>Total Eligible</u>	88	
Exemptions	<u>55</u>	through September 7, 2007
Remaining	33	
	<u>18</u>	Other solutions (treatment, blending, consolidation)
No app/more info	15	

(END PREPARED REMARKS BY JENNIFER CARR)

(The draft Exemption Document is contained in **Appendix 2**)

Commissioner Barron asked what the reasons were for the 15 systems that had not requested exemptions? Ms. Carr replied that there may be one or two that were pursuing consolidation with municipal systems, there are a number that have initiated an application but may be missing components of it such as pursuing financial assistance, and NDEP is working with each individual case to try to bring their application to the December SEC meeting and to bring them into compliance.

Commissioner Gans asked for an opinion about how many of the 15 NDEP and the SEC would have problems with? Ms. Carr stated that she did have concerns that some of the 15 would not complete the process and be found in violation, after which NDEP would move into "enforcement mode," with administrative orders and possible penalties. They do not want to go down this path, are encouraging solutions and application for the exemption, but in the event a system did not complete the process they would be in violation of the standard that went into effect in 2006.

Commissioner Gans followed up by asking what proactive efforts the Division was taking to try and get systems to do this? Ms. Carr replied that they are reaching out to each system, sending letters and making phone calls offering to assist in the process, and through the Board for Financing Water Projects there is a contractor to provide technical assistance, as well as NDEP staff. But some of the systems are unfortunately not as proactive as most of the other facilities.

Commissioner Gans summed up by saying then were not sitting back, we're trying to get things done, and Ms. Carr agreed.

Commissioner Anderson asked if the users of the 15 systems in question were aware of the status of the water they're being provided? Ms. Carr replied that annual reporting on drinking water quality to the users of the systems is required by regulation, including any federal standards that aren't being met. So at a minimum, annually they're informed of the quality of their drinking water. Commissioner Anderson followed up by asking if they necessarily knew that there was a potential problem a year from now with their provider, and Ms. Carr said that was correct.

When there was no further discussion by the Commission and no one from the public offered comment, Chairman Dodgion said he would entertain a motion;

Motion: Commissioner Rackley moved to accept the exemptions proposed by staff for these two systems. Commissioner Anderson seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved to Item 4:

Regulatory Petition for Mining Regulation & Reclamation * ACTION ITEM

4) Regulation R141-06: Revises Provision Governing the Stabilization of Spent Ore:

Dave Gaskin, Bureau Chief of Mining Regulation and Reclamation, introduced Kurt Kolbe of the Bureau as the person who would present the petition. He now gave the following presentation:

(BEGIN PREPARED REMARKS BY KURT KOLBE)

Mr. Chairman, members of the commission, good morning. For the record my name is Kurt Kolbe and I am the Supervisor of the Mine Closure Branch within the Nevada Division of Environmental Protection's Bureau of Mining Regulation and Reclamation. I have held this position since 1999.

My presentation today addresses the proposed minor revisions to **NAC 445A.430 Stabilization of spent ore.**

For background, in mid-2005 the Nevada Mining Association approached NDEP with respect to some confusion that the existing **Stabilization of spent ore** regulation was causing to mine operators with spent heap leach pads entering into permanent closure. This existing regulation language strongly implies that mine operators **MUST 'rinse'** spent heap ore until the effluent **rinse water** WAD CN and pH meet the existing regulatory limits. The existing regulatory limit for the WAD CN concentration is less than 0.2 mg/l with the effluent rinse water pH between 6-9 s.u.

The NDEP wishes, through these proposed regulation revisions, to clarify to mine operators that spent ore 'rinsing' is not, nor should be, a mandatory heap closure requirement.

There are both advantages and disadvantages to 'rinsing' spent ore.

Rinsing spent ore incurs distinct heap solution chemistry/process solution water balance advantages. For example;

- Rinsing may decrease the pH of the overall spent heap solution quicker than natural neutralization.

- A rinse solution applied back to the heap via spray/irrigation methods will generally accelerate cyanide degradation.

- And finally, rinse solution applied back to the heap via spray/irrigation methods will also accelerate removal of excess process solution, via evaporation, from the heap draindown/pond circuit.

Rinsing disadvantages may include:

- The potential addition of process circuit make-up water may make future reduction of solution inventory that much more difficult and time consuming.

- Rinsing has little to no effect on heap solution salts and metals.

- For the purposes of site closure, high solution inventories may postpone heap/process pond closure/reclamation activities.

- And finally, the overall operating costs associated with rinsing - for example the requirement for onsite power and site manning.

There are also other methods available to reduce cyanide concentrations in process solution - examples include alkaline chlorination, biological treatment, and the addition of hydrogen peroxide.

In summary, the proposed revisions to this regulation are intended to shift effluent stabilization from a particular stabilization method - in this case rinsing - to a results-based concept where a variety of effluent stabilization methods may be available.

- The NDEP will continue to classify heap rinsing as a viable stabilization method.

--These proposed changes do not impact in any way the responsibility of the operator to preclude degradation of waters of the State.

--These proposed revisions have the support of the industry and BLM/USDA-FS concurrence.

That concludes my presentation.

(END OF PREPARED REMARKS BY KURT KOLBE)

Chairman Dodgion noted that the SEC had received a letter from the Nevada Mining Association supporting the petition. Commissioner Mayer commended staff for having industry onboard with the agency.

When there was no further discussion by the Commission and no one from the public offered comment, Chairman Dodgion said he would entertain a motion:

Motion: Commissioner Barron moved that the petition from Mining Regulation and Reclamation be approved. Commissioner Anderson seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved to Item 5:

5) Regulation R019-07: Mercury Storage*

(BEGIN PREPARED REMARKS BY MIKE ELGES)

Mr. Chairman, members of the Commission, for the record, my name is Mike Elges. I'm the Chief of the Bureau of Air Pollution Control. In September 2006, the State Environmental Commission adopted a temporary amendment to NAC 459.9533 that added mercury to the list of highly hazardous substances regulated under the Chemical Accident Prevention Program or CAPP. This amendment is back before the Commission today for consideration as a permanent amendment. I'd like to note that we are not proposing any amendments from that of the version the Commission adopted in September.

As many of you know, the federal Defense Logistics Agency, or DLA, has determined that the Hawthorne Army Depot will be the repository for the nation's mercury defense stockpile. Hawthorne is expected to handle and store some 4,890 tons of mercury. To minimize the potential for mercury to be released into the environment, last year the Division moved forward with proposing amendments to the NAC so that mercury would be regulated under the CAPP program. Those temporary amendments established regulatory requirements for Hawthorne regarding handling and storage of mercury in amounts of 200,000 pounds (100 tons) or more. This amount was chosen so that it ensured that each building that was slated for storage at Hawthorne would be regulated, as this was the smallest amount reported to be contained in any single building.

I'd also like to report that during the 2007 Legislative session, Senate Bill 118 was passed and included amendments to NRS 459.3818 for the handling and storage of mercury when present in quantities of 200,000 pounds or more. With the passage of this bill, there is now a statutory requirement for regulating mercury under the CAPP provisions. SB 118 established the threshold for regulation at the same 200,000 pound or 100 ton threshold as the temporary amendments to the NAC.

With that as a brief overview, the Division recommends that Petition R019-07 be adopted by the Commission as permanent regulation.

I'd be happy to answer any questions you may have.

(END OF PREPARED REMARKS BY MIKE ELGES)

Chairman Dodgion asked for confirmation that this regulation was exactly the same as the temporary one adopted, with no changes. Mr. Elges confirmed this. Commissioner Barron enquired about how much more mercury was expected to come into the Hawthorne facility? Mr. Elges responded that at his time the only known amount was what DLA (Defense Logistics Agency) was proposing, almost 5,000 tons. To clarify the 100 tons mentioned in the regulations, that was based on the number of buildings at the facility and the amount expected to be stored at each of the buildings. The level was set to ensure that the Hawthorne facility was captured "completely" based on information from the DLA. To the best of his knowledge (Mr. Elges stated), there is no mercury currently stored at Hawthorne. Commissioner Barron also asked how the mercury would be transported to the facility, and Mr. Elges stated that it would be primarily trucked in, then offloaded into the buildings formerly used for ammunition storage. It is not yet known exactly when the shipments will begin. Commissioner Barron expressed a desire for the public health authorities to be informed of the shipment timing so that precautions could be in place. Mr. Elges agreed to contact the State Health Officer. He also discussed the monitoring process during transport and at the storage facilities.

Commissioner Gans asked how Hawthorne has become the facility for this consolidation; Mr. Elges didn't have a definitive answer, but said that the EIS looking at several locations around the country had concluded that the Hawthorne facility was the best choice.

When there was no further discussion by the Commission and no one from the public offered comment, Chairman Dodgion said he would entertain a motion:

Motion: Commissioner Gans moved that the petition R019-07 be approved. Commissioner Rackley seconded, and the vote was unanimous in favor.

Chairman Dodgion now moved to Item 6:

6) Regulation R057-07: Adopt by Reference*

(BEGIN PREPARED REMARKS BY MIKE ELGES)

Mr. Chairman, members of the Commission, for the record, my name is Mike Elges. I'm the Chief of the Bureau of Air Pollution Control. As most of you know, periodically we propose to update our adoption by reference section of the NAC to be consistent with the latest versions of the federal air quality requirements. As shown in Section 1, NAC 445B.221 is the adoption by reference provision within the air regulations and the provision that we propose to update today. Included in each of your binders is an informational guide that was intended to give you some background on the proposed amendments.

The proposed amendments really boil down to three significant changes. First, we are proposing to amend NAC 445B.221 to include the latest version of the federal regulations which is the July 1, 2007 date that you see throughout. Second, you will notice that we are proposing to incorporate a handful of new or revised provisions. This is to ensure that we have adopted the most current requirements affecting sources that are regulated under Nevada's air program and are prepared for those that we believe may be coming to Nevada given the growth that we've seen. Last, we are proposing to update this section to include the Government Printing Offices address for locating free versions of these provisions via the Internet and getting rid of all of the out of date pricing that we've had to provide for in the past. I'll also point out that there are a number of technical corrections, clarifications and regulatory language updates provided by EPA that require us to update the General Provisions sections of these regulations as well, but had not planned to go through that information in any detail.

As always, the amendments were "workshopped." This set was conducted in Carson City on July 17th and no negative comments were received. With that, the Division recommends that Petition R057-07 be adopted as amended.

I'd be happy to answer any questions you may have.

(END OF PREPARED REMARKS BY MIKE ELGES)

There were no questions from commission members and no comments from the public. Chairman Dodgion noted that a letter of support for the petition had been received from the Nevada Mining Association.

Motion: Commissioner Anderson moved that the petition R057-07 be approved as presented. Commissioner Gans seconded, and the vote was unanimous in favor.

The Chairman noted that he hadn't specifically mentioned the agenda item numbers earlier, but that the numbers being used were from the revised agenda,

and that the regulation originally noted as Item 5 had been withdrawn for this meeting.

Chairman Dodgion now moved to Item 7:

7) Regulation R056-07: Nevada Mercury Air Emissions Control Program Fees*

(BEGIN PREPARED REMARKS BY MIKE ELGES)

Mr. Chairman, members of the Commission, for the record, my name is Mike Elges. I'm the Chief of the Bureau of Air Pollution Control. As many of you probably recall, in March of 2006, the SEC adopted the NvMACT program for the regulation of mercury emitted from point sources located at precious metal mining operations. During this 2007 Legislative Session, Assembly Bill 115 was passed, and later signed by Governor Gibbons in early June of this year. This Legislation provides for some revisions to the NvMACT program; in particular it requires the addition of two full time positions to better ensure compliance with the requirements of the NvMACT Program. The Legislation also requires that adequate fees to support those additional positions be provided for by those regulated under the NvMACT provisions.

To meet these new statutory requirements, the Division is proposing to amend NAC 445B.3689 to adjust the fees to support the two additional FTE. We are not proposing to revise the fee distribution methodology previously adopted by the Commission, rather, we are only proposing to increase the total annual amount to account for the two new positions.

If you look at page 2 of the Petition near the bottom of the page, subsection 2.a.1 and 2. you'll see the proposed amended language. I'd like to quickly explain what's going on here, as at first glance it can appear to be a bit confusing. Under number 1, the current provisions require the Division to divide the amount of 250,000 by the total number of thermal units regulated in the program. The result is a dollar amount that each facility must pay based on the number of units they have. Under number 2, we add the additional amount of revenue that we will need to have to support the two new positions. So we adjusted the fee for fiscal year 2008 to consider the costs to fund the new positions for a portion of the year. In doing so, you wind up with is this funny looking provision that basically says that we take the original program base of 250,000 plus 157,500 for a total of 407,500 and divide that by the total number of thermal units. I'll also note that this revenue must be collected before the end of the calendar year for FY 2008 only, so the provisions have an exception built in for this under subsection 3. Again, this is all done to get the new positions transitioned into the program in FY 2008.

After fiscal year 2008, were back to a full year for all FTE's in this program and the provisions are proposed such that the total of 500,000 be divided by the total number of thermal units. You can see that near the top of page 3. This then is the standard until such time as a fee changes is otherwise needed.

The last thing I wanted to mention is a correction that we are proposing. When we last updated our fees for the program we built in an overall 2% adjustment factor that can be used to adjust fees in smaller increments. This provision was inadvertently removed from this section during the last update and we are proposing to place it back into the provisions as you can see about a third of the way down on page 3.

A workshop for these amendments was held in Elko on July 10th. No negative comments were received. With that, the Division recommends that Petition R056-07 be adopted as amended.

I'd be happy to answer any questions you may have.

(END OF PREPARED REMARKS BY MIKE ELGES)

Commissioner Barron noted the new positions mentioned in the legislation, and wondered if more personnel would also be required to oversee the mercury storage regulations heard earlier. Mr. Elges said that was a very good question, and that he was optimistic that the current resources devoted to the CAPP program would be adequate. Commissioner Barron followed up by noting that fees for mines were going up under the regulation being considered to pay for positions and asked if we would “trust” the operators of the mercury storage facilities, the Army overseeing the facility; Mr. Elges clarified that CAPP would be in charge of oversight and that fees to Hawthorne would be going up to support CAPP. Commissioner Anderson asked about the fees and whether they would build a reserve, and Mr. Elges said that given the time uncertainties of filling the positions they tried to avoid it. He added that he didn't believe he'd need to revisit and adjust the fund every budget year for this specific part. Commissioner Gans asked where the two percent inflation factor came from, and Mr. Elges said they had looked at 12 years of fees and that industry said they didn't mind appropriate fees but wished to avoid sudden, large increases. So two percent was meant to smooth it out; also, if the numbers get too far ahead the two percent could be “shut off” (language that says the Director can suspend imposition).

There were no further questions from commission members and no comments from the public. Chairman Dodgion again noted that a letter of support for the petition had been received from the Nevada Mining Association, and said that he would entertain a motion.

Motion: Commissioner Gans moved that the petition R056-07 to increase annual maintenance fees be approved. Commissioner Barron seconded, and the vote was unanimous in favor.

Chairman Dodgion noted that the morning agenda was now completed and that some time remained, since item 8 was scheduled to be heard in the afternoon. He asked Leo Drozdoff, Administrator of the Division of Environmental Conservation (NDEP) to give an Administrator's briefing to the Commission.

Remarks of Administrator Drozdoff:

Mr. Drozdoff noted that NDEP had a very successful legislative session, including the passage of AB 67 which allowed the institution of fees for a cap and trade program for mercury. There was a great deal of interest in many other pieces environmental legislation.

Funding at the federal level—federal dollars are tight and that's made its way down to grants to NDEP. Federal sources are a shrinking percentage of total revenues received by NDEP; fees on the other hand are a growing source. The states seem to be sharing a disproportionate load of budget cuts compared to federal agencies. Also, more strings are being added to federal grants from US EPA. NDEP has expressed concerns to EPA region 9 as well as EPA headquarters that state priorities – based on available money, will have to begin to be advanced first. For example, inputting data in federal databases that we never use is a lesser priority.

Other issues: Good news, perchlorate numbers in Lake Mead continue to drop. Good work with industry.

Commissioner Gans asked if delegation of authority by the federal government was important in the budgetary squeeze the Administrator had described—the state doesn't want to lose authority, but costs are not supported. The Administrator agreed, saying that the State had taken authority over many programs, which was a wise move, and the manner in which work is accomplished (for instance, with the perchlorate situation) is much faster and more efficient. The state will now set priorities, and if these don't always match with federal priorities we will have to see how important that is to US EPA.

Commissioner Anderson asked if a resolution from the Commission might help in any way? Yes, it might reinforce some of the correspondence that has been sent. It would be positive. Chairman Dodgion reinforced the idea, said to put together such a resolution and they would hear it at the next meeting—and he would be ready to add a footnote to it.

Commissioner Mayer asked if there was any issue that had as yet made EPA "sit up straight in their chair?" The Administrator said not really yet, but it was coming or starting with tensions in the work program grant.

Chairman Dodgion asked how things were going at the Weed Heights/Anaconda site? Administrator Drozdoff said in his view "okay at best." He gave background on the management of the site under "tripartite lead." The County requested "106 Action." To sum up, the work is being done at an unnecessarily slow pace, EPA is the lead, however NDEP has some suggestions for alternatives.

Administrator Drozdoff now went through a brief background of the history of the site for the benefit of Commissioners who might not be familiar with it.

Director Allen Biaggi of the Department of Conservation and Natural Resources now briefed the Commission on issues of interest:

Remarks of Director Biaggi:

He reiterated and emphasized the “spectacular” results of the legislative session and the work of NDEP leadership and staff in achieving this. Thanked them for their professionalism. He also mentioned preparation for the next session which would begin within three months—the agenda will probably be more ambitious than in the last legislature. Governor Gibbons has been extremely supportive so far of the work of DCNR and NDEP.

Commissioner Gans asked the Director about underground contamination, if it was a growing problem, especially in Las Vegas? He replied that NDEP is being aggressive and proactive in trying to ensure that the problem doesn’t grow.

Administrator Drozdoff returned to talk about cleanup of an old dry cleaning site (Maryland Parkway) in Las Vegas where NDEP is working directly with property owners to educate and individually contact them (over 130 homes). He expanded on groundwater protection efforts by the Division throughout the state, and on a national level mentioned that Deputy Administrators Cripps and Porta are treasurers of the national associations of clean air and clean water agencies, respectively.

Director Biaggi added that the Advisory Board for Natural Resources had also passed a resolution supporting NDEP regarding budget priorities and constraints.

Chairman Dodgion asked about some recent agricultural burning he’d witnessed and whether there was anything in the future that might regulate this. Administrator Drozdoff replied that the agency had proposed open burn regulations but doubted that NDEP would regulate open burn—agricultural exemptions were “pretty powerful.” Director Biaggi talked about a working group with Dept. of Agriculture to address the issues, but exemptions limited what can be done from a regulatory perspective.

Since there was some time available before the end of the morning session, at the request of Dan Randolph, Chairman of Great Basin Mine Watch, Chairman Dodgion allowed Mr. Randolph to make public comments on items previously covered. Mr. Randolph stated that regarding the Queenstake Resources settlement under Item 2, they felt that the amount was too low. Regarding the regulation approved in Item 4 they wished to state the issue of heap draindown

was a real issue, and there are constituents that are a concern. There should be other constituent limits placed on the effluent.

(End of morning session)

The meeting resumed at 1:00 pm.

Chairman Dodgion announced the order of presentations for the afternoon: First, he would call on the SEC legal counsel to advise the Commission on duties, responsibilities and authorities with respect to the regulatory petition. Then a representative from the Governor's office would make a presentation, followed by the petitioner.

It was the Chairman's understanding that Charles Benjamin of Western Resource Advocates would be the lead presenter. He requested that the oral presentation to supplement the written petition be limited to 30 minutes. Following the petitioner would be presentations from the Nevada Public Utilities Commission (PUC), the power companies and NDEP. Then he would call for public comment.

Commissioner Rackley stated that he wished to disclose that his firm has a power division that, although not involved with the three power plants at question in the petition, does have a client relationship with LS Power. Commissioner Rackley further stated the he works for the water division, not the power division, of the firm. Also, the power division is doing an intertie design for Nevada Power.

Regulatory Petitions by Western Resource Advocates * ACTION ITEM

8) Public Petition - Western Resource Advocates (WRA):

Chairman Dodgion now asked Rose Marie Reynolds, Deputy Attorney General and Counsel to the SEC to address the Commission.

Ms. Reynolds made the following points:

The petition before the Commission was filed pursuant to NAC 233B.100.

The SEC has two options; to deny the petition in writing stating the reasons for the denial, or initiate rulemaking proceedings. The Commission has limited jurisdiction—its powers and authority under NRS 445.210, and two areas listed in the statute are relevant to the petition. Under subsection 1, the Commission may adopt regulations consistent with the general intent and purposes of NRS 445B.100 to .640 inclusive, to prevent, abate and control air pollution; under subsection 5, the Commission may establish such requirements for the control of emissions such to prevent, abate and control air pollution.

The petition requests five regulatory changes, but does not state the authority for the SEC to act on these changes. A list of the five changes and authority under the NRS:

- 1) Suspending the issuance of air control permits, the SEC has no statutory or regulatory authority to tell the Administrator of NDEP that he cannot grant an operating permit. Under NAC 445B.318(3) the Director must issue a permit if the specified conditions are met. (read cited section).
- 2) Similarly, there is no statutory or regulatory authority for the SEC to step in and stop the regulatory process itself. The SEC has the authority to begin the rulemaking process and enact a regulation that stops the permitting process until a greenhouse gas standard is developed, or it can initiate rulemaking to develop regulation setting a greenhouse gas standard such as the one proposed by the petition.
- 3) Regarding requiring merchants of electricity to provide certification that the source of the electricity complies with a greenhouse gas standard, the SEC has no jurisdiction over the purchase of power—that is regulated by the PUCN.
- 4) To make regulations enforceable and require that they be reviewed every five years; the SEC could enact such a regulation
- 5) To make regulations retroactive to all pending permits as of August 1, 2007; the SEC has no authority to enact such a regulation.

Chairman Dodgion stated that to clarify, the Commission had two choices—deny the petition, or move towards rulemaking. But they could take no action today, if they agreed with the petition, just start into the rulemaking process.

Ms. Reynolds agreed.

Commissioner Gans asked for clarification, stating that he had read in the submitted public comments something challenging the SEC's legal ability to take action on this matter. Did Ms. Reynolds' opinion cover what these comments said? Ms. Reynolds said she believed so.

Chairman Dodgion now asked the Governor's representative to present his statement. Jody Stevens of the Governor's staff read the following letter that had been addressed to the SEC into the record:

(BEGIN GOVERNOR'S LETTER TEXT)

Dear Chairman Dodgion,

As Governor of the State of Nevada I have a responsibility to protect the physical health and well being of the residents and visitors to Nevada, our magnificent environment, and also the state's economic well being and vitality. I have long believed these factors are not mutually exclusive.

The petition before you today is of great concern to me due to its environmental and economic implications to Nevada.

Since I took office in January of this year I have been very concerned about climate change and what it means for Nevada and the west in general. As a result, I have written executive orders encouraging the development of renewable energy resources, creating the Renewable Energy Transmission Access Advisory Committee, and creating the Climate Change Advisory Committee. This last committee is made up of members of academia, government, environmental advocates and business leaders. That committee has been tasked to evaluate the implications of climate change on Nevada and provide recommendations to me by May 31, 2008, as to how greenhouse gas emissions can be further reduced in Nevada, including through the use of renewable energy resources. Each of these committees will provide recommendations to my administration within the year so that a coordinated and well thought out plan on climate change and renewable energy can be established.

Additionally, in June of this year I signed SB 422 which establishes, for the first time in Nevada, a registry for the tracking of greenhouse gasses and requires the creation and continued update of a state-wide emissions inventory. Understanding and quantifying emissions in Nevada is a necessary first step in developing sound solutions for a reduction of those emissions.

In July, I directed the Division of Environmental Protection (NDEP) to participate in the Western States Climate Initiative in an observer role to monitor climate change activities in the western U.S., as well as in Canadian Provinces and Mexican States. We must be aware of what is being done on this issue at the regional level and coordinate and leverage our efforts with our neighbors. Additionally, at my direction, Nevada has joined the Climate Registry as a member. The Registry includes 38 states, as well as Native American governments, Canadian Provinces and Mexican States. The Climate Registry establishes a mechanism to measure and verify greenhouse gas emissions consistently across industry sectors and borders. It also encourages voluntary early actions to increase energy efficiency and decrease greenhouse gas emissions.

Finally, there are no fewer than a dozen major climate change bills currently undergoing debate in Congress. As a former Congressman, I know well the federal legislative process and the time it takes to formulate national policy and direction on complex and emotional issues such as climate change.

With regard to the petition before you today, I have two fundamental concerns; timeliness and fairness.

As you may be aware, Nevada currently imports more than half of its power needs. Estimates put the cost of that power importation at \$1.5 billion annually. The three major coal fired power plants proposed in White Pine and Lincoln Counties will boost Nevada's domestic energy production and will greatly reduce Nevada's dependence on outside sources of energy that have proved to be expensive and unpredictable in the past. This goal is especially critical as Nevada continues to grow while power plant shutdowns occur, such as the Mohave Generating Station in Laughlin.

Perhaps just as important as the power generation provided by these plants is the much needed infrastructure they bring to the state in terms of transmission capabilities. There is a very strong need to tie the 1-80 power corridor and Las Vegas area together. A transmission line in eastern Nevada will accomplish this necessary task. I strongly support renewable energy resources. However, without a way to efficiently get the power to the market, we cannot build on our renewable portfolio and develop our extensive wind, solar and geothermal resources. The planned transmission lines associated with some of these projects in eastern Nevada will help bring an extra 500 Megawatts of renewable energy resources on line.

While there is a lot of well founded excitement about Nevada's renewable resources, we must recognize that it will be years before these facilities can come on-line in a meaningful way. Solar and wind projects also have inherent shortcomings. They are intermittent sources that can not be relied upon exclusively for reliable base load energy. These plants along with renewable energy projects can all be part of Nevada's energy plan. However, it is unrealistic to rely on those projects to solve energy problems in the short term.

With regard to fairness, these power companies have invested years and spent millions of dollars in facility design and the permitting process. These facilities and applications have been designed and completed in accordance with sound scientific principles and state and federal laws. Taking actions that would effectively enact a moratorium on the permitting process will not be fair to the applicants and would place the state in a vulnerable position. I understand that there have been advancements on the issue of climate change from the time these applications have been tiled. To that end I have instructed the Division of Environmental Protection to establish agreements with these companies so that the facilities can implement carbon capturing technologies, such as carbon sequestration, when those technologies become technically and commercially viable.

Given all of these factors, I strongly urge you to deny the petition before you today. It is not in the best interest of our state to implement what, in effect, will be a moratorium on coal fired power plants in Nevada nor is it wise to institute unrealistic or non-science based emission limits which have not gone through a public process. In addition, I would recommend that the petitioners work with representatives on the Advisory Committee. Likewise, The Division of Environmental Protection could certainly update the State Environmental Commission on a periodic basis on these activities and other efforts with regard to climate change. At some point in the future we will have the information available to make sound, science based decisions with regard to the greenhouse gas control that not only are protective of public health and environmental quality but also allows for a continued vibrant economy for Nevada.

Thank you for your consideration and your efforts on behalf of the citizens of the State of Nevada and your service on the State Environmental Commission.

Sincerely,

Jim Gibbons,

Governor

(END OF LETTER TEXT)

Chairman Dodgion now called on Charles Benjamin, Western Resource Advocates, representing the petitioners. Mr. Benjamin stated that he would highlight some of the points in the petition. (Following is a summary of the main points of his presentation; the petition and accompanying documents are in **Appendix 3**)

Mr. Benjamin expressed his desire to reserve some of the 30 minutes the Chairman had allotted to him to respond or answer questions after the other parties had made their presentations. Chairman Dodgion said he thought that would be fair.

Mr. Benjamin's points:

- Requesting a "time-out" on permitting while the state considers a standard of 1100/lbs of carbon dioxide per megawatt hour;
- Nevada is about to become major source of CO₂; Basis of calculations for amount of CO₂ from proposed power units; Future generations to bear brunt of global warming consequences;
- History of "global warming;" Possible impacts in State of Nevada—some already being felt (Reno temperatures, Las Vegas water supply). No control in place over coming coal plants.

- Legal issues: *Massachusetts v. EPA*—carbon dioxide is a pollutant. Cases moving forward for stationary sources; No controls under Nevada law; SEC has the authority to regulate CO₂.
- Economic effects: How do you measure impacts of pollution? Very difficult to measure impact of global warming; Acknowledge that there will be greater upfront costs to regulate;
- Asking only for the SEC to go through “usual vetting process” for regulations; Legislature provided SEC authority to begin orderly process of regulation;

Commissioner Gans asked according to Mr. Benjamin, how long that regulatory process should take? Mr. Benjamin envisioned workshops and some kind of recommendation to SEC at its December meeting.

Chairman Dodgion noted that Mr. Benjamin still had approximately 15 minutes of his time, and said that the Commission might call him back for further questioning after hearing other presentations. He now called on the Public Utilities Commission (PUC) for their presentation.

Jan Cullen, General Counsel for the PUCN, and Paul McGuire, electrical engineer from the Regulatory Operations staff, gave the presentation. Ms. Cullen stated that the presentation would be highlights from the documents submitted to the Commission on the Integrated Resource Plan (IRP). In view of this, see **Appendix 4**, which contains the full Power Point presentation.

Ms. Cullen added clarification—LS Power is an independent power producer *not* regulated by PUC.

Chairman Dodgion asked if, or how, PUC factors in independent producers when looking at Nevada power company’s needs? Ms. Cullen stated that there was no evidence presented over whether independents could be a better option, so it couldn’t be considered.

Commissioner Gans asked about big investments in demand side management by Nevada Power, and Mr. McGuire explained that due to power crisis and purchasing problems demand side reductions made economic sense.

Commissioner Mayer asked about Carson City biomass plant and sources of biomass; Mr. McGuire stated that various scrap wood and waste wood, etc. was being used.

When there were no further questions the Chairman called on industry representatives to testify. First to speak was Sierra Pacific Resources,

represented by Tony Sanchez, Corporate Senior V.P., Roberto Dennis, Senior V.P. and Starla Lacy, Director of Environmental Affairs.

He referred to the 36 pages of comments filed by Sierra Pacific and Nevada Power on the petition, and these are provided as **Appendix 5**. His additional main points to the Commission included:

- The current high dependence of Nevada on power generation from natural gas—one of the highest in the nation.
- The open market (i.e., power purchases) has possible large price swings.
- Nevada is no. 1 per capita in use of geothermal and solar energy.
- The [power line] Intertie is needed to carry renewable energy to southern Nevada.
- The Commission should deny the petition— greenhouse gas regulation should go through legislature, or be enacted at the national level.

Commissioner Anderson asked about retrofitting power plants for carbon sequestration—the witnesses noted that space has been reserved at the proposed coal fired power plant sites in eastern Nevada.

Commissioner Rackley asked for some expansion on that, and Mr. Dennis said capture and sequestration are two separate activities. Estimated time for commercially viable technology is 2017 to 2020—in view of not knowing exact technology. He noted that a space the “size of a football field” has been set aside at the Ely Energy Center for carbon sequestration. Another point, natural gas emits approximately 50 percent of CO₂ as these coal plants under discussion. Retrofitting for coal and gas is better solution than stopping plants. Ms. Lacy added that the company was participating in a pilot project on carbon capture in Wisconsin.

Commissioner Rackley clarified that the plants in question would open around 2011? Correct. Commissioner Barron asked about Reed-Gardner plant shutdown? It was noted the various units will closed in the 2012-16 time frame. It was also clarified by the witnesses that some power purchases from the open market would continue, and that the proposed plants would not meet 100 percent of Nevada energy needs.

Commissioner Mayer asked about EPA curbs on CO₂ and interpretations of *Massachusetts v. EPA*? Mr. Sanchez noted no current limits are in place. Mr. Dennis added that in 2020, over the entire system, there would be less CO₂ emissions than 2005. The Ely plant is a part of improving the system.

Commissioner Gans asked about the California standard—Mr. Dennis noted that California had significant nuclear capability and clarified that California regulations will *not* prohibit purchase from coal plants as had been implied, but only long-term contracts. He added that they are trying hard and fast to bring renewables online, but it will not be enough to meet immediate future needs.

When there were no further questions Chairman Dodgion called on LS Power to make their presentation. Presenting for the company were Eric Crawford, Director of Project Development, and Michael Tomko, Environmental Counsel.

(Mr. Crawford's presentation was a briefer version of the written comments submitted by the company—these are included in **Appendix 6**).

Commissioner Anderson asked about the timeframe for the proposed plant to come online. Mr. Crawford said they expected construction of the first unit to start in 2008, online in 2012-13.

When there were no further questions the Chairman called on Toquop Energy LLC to make their presentation. Thomas Johns, Senior V.P. of Sithe Global (parent company) and Pat Fagan, Nevada Counsel, represented Toquop.

(Mr. Johns' presentation followed the written comments submitted by the company, which are included in **Appendix 7**).

When there were no questions from the Commission, Chairman Dodgion called upon NDEP to make its presentation.

Leo Drozdoff, Administrator, and Mike Elges, Bureau Chief of Air Pollution Control presented for NDEP. They were joined by Bill Frye, Deputy Attorney General and Counsel for NDEP. The main points made by Mr. Drozdoff and Mr. Elges were as follows:

Mr. Drozdoff: I'll try to cover information about greenhouse gases, and some specifics about the permitting process.

As noted in the Governor's letter -- quite a bit of progress has been made in Nevada to address CO₂ emissions.

NDEP is now charged with implementing a Greenhouse Gas Registry – per legislative directive (SB422). The Governor's Office and NDEP worked very hard to get this bill passed during the last session of the Legislature.

In addition to this effort, by executive order, the Governor has established a Climate Change Advisory Committee; and NDEP is a participant in the committee process. This committee is set to make recommendations in May 2008.

As well, the Western States Climate Initiative, which Nevada is an observer, will make recommendations about CO2 emissions by September 2008. In addition to these initiatives, the Climate Registry, which involves 38 States and portions of Mexico, will produce standardize reporting for CO2 emissions in the near term. All of this means that time frames for making recommendations concerning CO2 emissions will happen over the next couple of years.

Accordingly, NDEP is now in the information gathering stage and our plan is to work through all of the CO2 issues during 2007 and 2008 and then become part of a comprehensive solution to address climate change.

In regard to the permits, the Governor basically directed NDEP to work out agreements with the companies who are proposing new coal fired power plants to make sure these new plants are carbon-capture ready. We acknowledge the technology doesn't exist at this time, but the costs and timeline will decrease with demand. NDEP experienced this eventuality with water treatment issues concerning arsenic.

In any event, when a state, regional or national program is developed for containing CO2 emissions everyone including the power plants being discussed today will be required to comply with whatever standards or program requirements are mandated.

Mr. Elges: NDEP has conducted a technical evaluation of the proposed coal fired power plants -- it's quite a task, and all of the projects did return necessary data, which was then evaluated by engineers and scientists at NDEP. We also conducted a public process including hearings. All of this will drive a decision for issuance or denial of permits for the proposed coal fired power plants under discussion.

Timelines: for the LS project, we anticipate issuing a permit before the end of 2007. Regarding Sithe, we will likely have a permit out before the end of 2007. Nevada Power is not out to public notice yet, but that will likely happen in the October/November time frame. A permit for Nevada Power could be issued at year's end.

Appeals: There are two avenues for appealing the permits; an appeal could be filed with this body (State Environmental Commission), or to US EPA's Environmental Appeals Board. If appeals are denied, the "appellants" could then take there case to the court of jurisdictions.

Mr. Drozdoff — To sum up, NDEP would be in a very vulnerable position if we stopped working on the permits for the coal fired power plants being disused today. In regard to the proposed regulation, I do believe Nevada does have the ability to regulate greenhouse gases. However, to institute the proposed limit

without study and science, and without the input of the Governor's Advisory Committee, and other entities working on this, seems counterproductive at this time.

A better approach would be to act when all information becomes available. Accordingly, the SEC should deny the petition otherwise NDEP will be placed in a vulnerable position because it must meet legally required time frame for the permitting process. We also believe the greenhouse gas standard proposed by the petitioner is premature; we further contend that more time is needed to assess information from the initiative previously mentioned to identify solutions to the CO2 emission questions at the state, regional or national level.

With that -- NDEP will work with the companies to ensure that the proposed plants are carbon capture ready. NDEP will also keep the SEC advised of issues and outcomes being addressed through the Governor's Climate Change Advisory Committee, the Western States Climate Initiative etc.

Commissioner Barron then asked why Nevada Power had to go through the PUCN process but the other entities did not? Jan Cullen from PUCN came forward and clarified that they have authority over public utilities—Sierra Pacific Resources is a public utility, while the other two are not. They are regulated by the Federal Energy Regulatory Commission; they can sell power around the country.

Commissioner Barron followed up by making sure she was clear, that all three of these facilities had gone through the same state process, and that there were plans for some type of Memorandum of Understanding (MOU) for carbon capture technology. Mr. Frye reiterated that all the state standards and processes were the same for each plant, regardless of the PUCN process or lack of same. He added that regarding this petition there was a request to suspend the permitting process, and that Ms. Reynolds had advised the SEC that there was no authority for them to suspend the permitting process—he also wanted to make clear that his reading of regulations was that there was no authority for NDEP to unilaterally suspend it, either. If applicant meets requirements, the permit must be issued.

Commissioner Gans stated that though he was sympathetic to global warning concerns, he emphasized that even if regulations could be rushed through he would not want to do that, preferred to wait for sound information; Mr. Drozdoff agreed, stated it would not be possible to develop anything in three or four months, in any case.

Chairman Dodgion now opened up public comment, starting in Las Vegas.

Following are names of members of the public and a summary of their remarks.

Raelene Makley, White Pine County Commissioner:

On behalf of the White Pine County Commission, request to deny the petition. Contrary to standards of fairness, seeks to override the Legislature and Governor. The petition also does not address the need to close older plants. Support balanced approach. Cited changes in plant plans to preserve water, capture carbon emissions. County is also working with renewable energy providers. Solutions require careful research and consideration. The prepared comments by the White Pine County Commission are in **Appendix 8**.

Danny Thompson, Executive Secretary Nevada AFL-CIO:

AFL-CIO supports renewable energy and has impacted legislation in this area. The regulation before the Commission could have profound effects on economy and environment—these decisions ought to be made by the Legislature. Projects in southern Nevada will increase demand, forcing purchase of power on the spot market; this would be bad for ratepayers and others. We oppose the petition.

Lydia Ball, Sierra Club:

Sierra Club supports petition. Power company responses to petition have no bearing on the question. SEC charged with protecting public health and environment. Letting these plants be permitted “just under the wire” would be digging a hole deeper in respect to clean air and healthy climate. The prepared comments by Sierra Club are in **Appendix 9**.

Steve Rybka, representing self:

Green living consultant; supports petition. Respects utilities and essential energy services, but time for a change. Better technology to conserve available. Can't afford to wait. Prudent decision—just because work has been done, still can do the right thing. We (USA) need to set example for others. Step back, look at releasing huge amounts of carbon. Listed books and reports on the subject.

Comments in Carson City

Rick Spilsbury of McGill, Nevada stated that he was a member of the Bristlecone Alliance of White Pine County. He read from testimony that he also submitted in writing, and this is reproduced in **Appendix 10**.

Delain Spilsbury of McGill, Nevada also read written testimony which is **Appendix 11**.

Kyle Davis, Policy Director of the Nevada Conservation League Education Fund and member of the Climate Change Advisory Committee, also read from

submitted written comments, which are **Appendix 12**. He added comments regarding SB 422, saying that it didn't settle Nevada's position on greenhouse gases, that it originally included carbon reductions, and that while he agrees on studying scientific standards, while these are being studied these plants are going to add to the problem we're trying to solve. Arguments about power loads and transmission lines don't apply. It's much cheaper to save a megawatt than produce a megawatt. It's clear that greenhouse gases damage the environment, and it's the duty of the Commission to protect the environment.

In Las Vegas there was one additional commenter,

Scott Rutledge, Executive Director of the Nevada Conservation League. He stated that Kyle Davis had summed up the League's prepared testimony well, wanted to add that Mr. Drozdoff has stated on the record that it was the State's "right" to regulate greenhouse gas emissions. The Commission should not take into consideration any delays in the permitting of these power plants. Have the plants threatened legal action or is NDEP just assuming that? He wanted it on the record that he hadn't heard any of that in the record testimony from the power providers. Also, before Congress Mr. Dennis [Sierra Pacific Resources] stated that growth regions like the Southwest should get a pass on greenhouse gas regulation, but now they're saying they're concerned with greenhouse gasses. Their chart showing fewer emissions in 2020 by closing Mojave [power station] is based on the assumption that the same base level is okay. The Commission should be informed that Mr. Dennis before Congress asked for a pass on greenhouse gas emissions.

There was no more public comment on the petition, and Chairman Dodgion asked Charles Benjamin to come forward for the balance of his testimony.

Mr. Benjamin thanked the Commission for their attention and stated that he'd like to briefly respond to a few points. First, the PUC—the PUC is concerned with power reliability and rates; they're not an environmental organization. The SEC mission is to protect the environment. He wanted to point that out.

Next, Nevada has the highest electric rates next to California, but California has adopted a greenhouse gas standard, and has flattened per capita consumption rates for 30 years—Nevada has not. Rates are not a reason not to regulate greenhouse gases.

Sierra Pacific mentioned cleaner electricity with their new plants, but didn't mention greenhouse gases. He disputed their testimony that the approval of the Utah plant showed that non-mobile sources would not be regulated.

He reemphasized that NDEP said they could regulate CO₂, so doing so would not "override the authority of the Legislature."

The problem with the comments by us made on the draft LS Power permit is that NDEP is not regulating CO₂, as we pointed out, but the permits will be issued anyway. So will the other two. Our only other choice is litigation. Protecting the future generations is what we are asking for.

Chairman Dodgion now closed the public comment portion of the hearing and asked for Commission discussion.

Commissioner Gans reiterated his previous remarks and asked Ms. Reynolds to confirm that the SEC did not have authority to suspend the permit process (she so confirmed), but given that we might need regulation, it will take too much time to do it properly. So he was in a quandary.

Commissioner Barron asked for confirmation about starting the rulemaking process for CO₂ emissions, and a timeline, and Ms. Reynolds confirmed that rulemaking could be initiated—however, it would almost certainly not be ready for the December meeting as had been mentioned by the petitioners. Commissioner Barron then asked Mr. Elges if directed, how long would it take to develop a regulation, and Chairman Dodgion added *any* regulation, even the simplest? Mr. Elges answered 4-5 months for the simplest, most uncontested regulation before it could be brought to the SEC. Greenhouse gases? Perhaps 12-18 months.

Commissioner Rackley inquired about legislative oversight after the regulation might be approved by the Commission—Mr. Elges added that might be additional 30 days or more.

Commissioner Anderson stated that he felt there was not that much difference between industry, government and those with concern for the environment—all had concerns with greenhouse gases. However, it was important to him that regulation be based on sound science; we don't want to make a decision not based on sound science.

Commissioner Barron commented that the discussion of Memoranda of Understanding on carbon capture might lead the Commission in the right direction—that we require these MOUs that they be carbon capture ready when the technology is available, and that the Commission be kept informed of the activities of Greenhouse Gas Registry, Western States Climate Initiative and Governor's Advisory Committee. Chairman Dodgion said that sounded like the beginnings of a motion. She stated that she would make the motion.

Chairman Dodgion asked if there was a second, and the motion was seconded by Commissioner Mayer, who added that he was concerned; that he agreed that they should move forward with the time tested process, with the caveat that's in the motion.

Commissioner Gans asked Administrator Drozdoff if that that was what NDEP was (already) doing? Mr. Drozdoff affirmed that was their plan.

Commissioner Barron now refined and rested her motion, previously seconded:

Motion: I move that we deny the petition, but require the Nevada Division of Environmental Protection (NDEP) to develop agreements with the companies proposing new coal-fired power plants in Nevada. This Memorandum of Agreement would require the companies to implement carbon-capture technologies as soon as such technologies are commercially available. I further move that the State Environmental Commission receive regular reports from NDEP on the activities of the Governor's Climate Change Advisory Committee, the Climate Registry Steering Committee, and the Western States Climate Initiative.

There were some further questions and discussion about the language:

Commissioner Gans asked about the language "carbon-capture ready" and if it was enforceable? Commissioner Barron said that was her intention. Mr. Drozdoff said it was certainly NDEP's intent, they did not want just a piece of paper, and also there were existing units and he didn't want these three to be singled out for something that might apply elsewhere. Commissioner Barron asked if he would bring language to the next meeting, and that was acceptable.

Commissioner Gans now asked Tony Sanchez if this was acceptable to him (and his company). Mr. Sanchez' only concern was the approval of the PUCN and the definition of "commercially available," whether that would be without regard to cost.

Commissioner Anderson asked Mr. Drozdoff to confirm that these were conditional permits and that conditions could be written into the permit to allow for the development of the MOU? Mr. Drozdoff said the short answer was "yes," but to be clear, NDEP's plan was to include these as part of the Notice of Decision or as part of what is taken to public notice. That will happen before the next SEC meeting. So to table it would create a quandary. He stated that the Governor had given clear direction already that these MOUs would be included in the permit process. Chairman Dodgion asked that when the draft was developed it be forwarded to the SEC staff, who would distribute it to Commission members. Mr. Drozdoff said he would do so.

Chairman Dodgion now called for the question, and the motion was approved by a unanimous vote in favor.

9) Public Comments

There was no additional public comment.

The Chairman noted the next meeting of the SEC would be December 4, 2007.

The meeting adjourned at 4:40 pm.

Appendix 1: NDEP-BAPC Settlement Agreements – 09/07/07 (1 page)

Appendix 2: Arsenic Exemptions Background Document (includes the list of water systems, and the SEC's arsenic exemption document (4 pages)

Appendix 3: Petition by Western Resource Advocates (35 pages)

Appendix 4: Presentation by Nevada Public Utility Commission (14 pages)

Appendix 5: Written Comment - Sierra Pacific Resources (36 pages)

Appendix 6: Written Comments - LS Power (6 pages)

Appendix 7: Written Comments – Sithe Global (4 pages)

Appendix 8: Written Comments – White Pine County Commission

Appendix 9: Written Comments – Sierra Club

Appendix 10: Written Comments - Rick Spilsbury

Appendix 11: Written Comments - Delain Spilsbury

Appendix 12: Written Comments - Nevada Conservation League

Read Note: Additional information about the SEC meeting held on September 07, 2007 is available on the SEC website at: http://sec.nv.gov/main/hearing_0907.htm

Appendix 1: NDEP-BAPC Settlement Agreements – 09/07/07

NDEP-BAPC SETTLEMENT AGREEMENTS – September 7, 2007

COMPANY NAME	VIOLATION	NOAV NUMBER(S)	PROPOSED SETTLEMENT AMOUNT
Bing Construction Company of Nevada, Douglas County	NAC445B.275 “Violations: Acts Constituting; notice.” For conducting emissions compliance testing of an asphalt plant five months after the required date, and for exceeding the permitted limit for emissions of sulfur dioxide during the tests.	2102, 2113, 2114	\$4,000
Cortez Gold Mines, Lander County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to provide 30-days notice of scheduled emissions compliance testing. Because of the short notice provided, the NDEP-BAPC did not have the opportunity to observe the tests.	2098	\$1,000
Harrah’s Lake Tahoe Resort Casino, and Harvey’s Resort Hotel Casino, Douglas County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to conduct emissions compliance testing of a steam boiler within the required 180-day timeframe, and for testing the boiler at less than maximum capacity (heat rate). The violation represents Harvey’s second violation within the last 12 months, which increased the assessed penalty by 15 percent.	2118, 2119	\$3,225 [\$1,500 + \$1,725]
Marigold Mining Company, Humboldt County	NAC445B.275 “Violations: Acts Constituting; notice.” For exceeding the permitted limit for emissions of mercury during source testing. Because mercury is a toxic air pollutant, the penalty is increased from \$600 to \$1,000.	2036	\$1,000
Queenstake Resources USA, Inc., Elko County	NAC445B.275 “Violations: Acts Constituting; notice.” For excess emissions resulting from failure to maintain process equipment to ensure complete capture of fugitive emissions, and for failing to report excess emissions within 24 hours.	2095, 2096, 2097	\$2,600
Wilkin Mining and Trucking, Inc., Lincoln County	NAC445B.275 “Violations: Acts Constituting; notice.” For failure to conduct emissions compliance testing of a perlite processing plant within the required timeframe, and for excess emissions resulting from failure to maintain process equipment to ensure complete capture of fugitive emissions.	2105, 2106	\$6,000

Appendix 2: Arsenic Exemptions Background Document (includes the list of water systems, and the SEC's arsenic exemption document)

Arsenic Exemptions Before the State Environmental Commission (SEC)

Water systems in Nevada with arsenic concentrations greater than 10 parts per billion (ppb) but below 50 ppb may apply for an exemption from the State Environmental Commission (SEC). The Nevada Division of Environmental Protection (NDEP) has received exemption applications from 83 water systems and is recommending the SEC approve 2 of those requests (see list below). 36 systems' requests were approved at the September 2006 SEC meeting; and an additional 17 were approved at the May 2007 meeting.

Background: An exemption is an administrative tool allowed under the federal Safe Drinking Water Act (and Nevada law). Exemptions can be used to grant water systems additional time to acquire financial and technical assistance to meet new or revised federal drinking water standards, such as the newly adopted arsenic standard.

Of note, the revised arsenic standard of 10 ppb became effective on January 23, 2006. The old standard of 50 ppb had been in place for more than 60 years. If the list of 2 exemptions are approved by the SEC, then the respective water systems listed below would be granted additional time (until January 23, 2009) to comply with the new arsenic standard.

It's worth mentioning that water systems serving less than 3,300 persons may also be eligible for up to 3 exemption extensions of 2 years each, allowing up to 9 total years (January 23, 2015) to comply with the new arsenic standard.

A "boiler plate" Arsenic Exemption document for the requested 2 water system exemptions is presented below. The exemption document contains standard language that addresses compliance schedule and reporting requirements.

Public Notification Requirements: By statute, each water system seeking an exemption was required to notify their customers of their intent to obtain an exemption along with the date, time, and location of the SEC hearing. Upon receiving an exemption, statutory requirements mandate that a water system notify their customers that they have been granted an exemption. NRS 445A.950 further provides for civil penalties and administrative fines if a water system fails to comply with the conditions of an exemption approved by the Commission.

List of Water Systems applying for the Arsenic Rule Exemptions: Pursuant to the federal Safe Drinking Water Act and Nevada Revised Statute (NRS) 445A.935, the State Environmental Commission may grant exemptions from the regulations of the Commission. The following public water systems have submitted arsenic exemption applications. These applications have been reviewed and are being recommended for approval by the Nevada Division of Environmental Protection.

<u>WATER SYSTEM ID #</u>	<u>SYSTEM NAME</u>
NV0000903	CMC STEEL FABRICATORS dba CMC JOIST
NV0000206	PIONEER HILLS MHP

ARSENIC EXEMPTION
NEVADA STATE ENVIRONMENTAL COMMISSION

IN THE MATTER OF THE REQUEST)
OF THE)
<< PWS NAME >>)
FOR AN EXEMPTION FROM)
REGULATIONS GOVERNING PUBLIC)
WATER SYSTEMS, ARSENIC)

FINDINGS OF FACT

The above entitled matter came before the Nevada State Environmental Commission, hereafter known as the Commission, at a duly noticed public hearing on September 07, 2007. The Commission, having heard the presentation from staff of the Nevada Division of Environmental Protection (NDEP) recommending approval of the request and having extended an opportunity to the public to be heard, finds as follows:

The <<PWS NAME>> public water system, hereafter known as the System, was in operation prior to January 23, 2006, the effective date of the revised arsenic standard of 10 parts per billion (ppb). The System has a source or sources of drinking water that exceed the revised standard but is below the previous standard of 50 ppb. The federal Safe Drinking Water Act and the regulations of the Commission provide for the granting of exemptions if the following conditions exist:

1. Because of compelling factors, including economic considerations, the public water system is unable to comply or to implement measures to develop an alternative source of supply;
2. The granting of the exemption will not result in an unreasonable risk to health; and
3. Management or restructuring changes, or both, cannot reasonably be made that will result in compliance with the primary drinking water standards or, if compliance cannot be achieved, improve the quality of the drinking water.

Review of the exemption request by NDEP staff has found the system meets the above stated conditions. Furthermore, NDEP staff has found that the System has established that it needs financial resources to comply with the maximum contaminant level and has either entered into a financial assistance agreement to make capital improvements or has shown that financial assistance or resources are reasonably likely to be available within the period of time that the exemption will be in effect. In consideration of the above, the System is seeking an exemption to comply, by January 23, 2009.

CONCLUSIONS

This matter is properly before the Commission pursuant to Nevada Administrative Code (NAC) 445A.489, and the determination of this matter is properly within the subject matter jurisdiction of the Commission.

The Commission specifically finds that the System was in operation prior to January 23, 2006, is unable to comply with the regulation due to compelling factors and no unreasonable risk to public health will result if the exemption is granted. The Commission, having considered the relative interests of first, the public and second, the System, being fully advised and by vote, does grant the exemption until January 23, 2009.

DECISION

It is the decision of the Commission to grant the requested exemption, effective through January 23, 2009, subject to the following schedule of compliance:

1. The System shall investigate and secure, to the extent that funds are available, all sources of financial assistance by January 23, 2008;
2. The System shall complete an evaluation of compliance alternatives, including retaining the services of an engineer and conducting pilot testing as needed and select a final compliance option by June 23, 2008;
3. The System shall install, test and have in full operation a treatment system or other compliance option capable of producing drinking water that meets the arsenic standard of 10 ppb by January 23, 2009; and
4. The System shall provide semi-annual progress reports to NDEP by January 1st and July 1st of each year of the exemption period.

Systems serving a population less than 3,300 may qualify for up to three, two-year extensions to this exemption if the system demonstrates significant progress during this exemption period; and the extension is approved by the State Environmental Commission.

Date: _____

Lew Dodgion, Chairman
Nevada State Environmental
Commission

Appendix 3: Petition by Western Resource Advocates (35 pages)

**FORM FOR PETITIONING THE STATE ENVIRONMENTAL COMMISSION FOR
ADOPTION, FILING AMENDMENTS OR REPEAL OF COMMISSION
REGULATIONS**

Form #1

1. Name, Address, telephone number, date of petition, representative capacity and signature of petitioner, authorized individual, officer or attorney.

Name:

Nevadans for Clean Affordable Reliable Energy (NCARE), a Nevada non-profit cooperative association¹

Western Resource Advocates (WRA), foreign non-profit corporation registered to do business in Nevada

Bristlecone Alliance, a Nevada non-profit cooperative corporation without stock

Citizen Alert, a Nevada non-profit corporation

Nevada Conservation League (NCL), a Nevada non-profit corporation

Progressive Leadership Alliance of Nevada (PLAN), a Nevada non-profit organization

Sierra Club, a foreign non-profit corporation registered to do business in Nevada

Address: c/o Western Resource Advocates, 769 Basque Way, Suite 300, Carson City, NV 89706

Telephone Numbers: (775) 841-2400 (office); (866) 223-8365 (fax)

Date of Petition: July 31, 2007

Representative capacity and signature of petitioner:

s/s Charles M. Benjamin

President/Director

Authorized Individual: Charles M. Benjamin

¹ The contact persons, addresses and telephone numbers are as follows:

NCARE: Charles Benjamin, President/Director, c/o Western Resource Advocates, 769 Basque Way, Ste 300, Carson City, NV 89706, 775-841-2400

WRA: Charles Benjamin, 769 Basque Way, Ste 300, Carson City, NV 89706, 775-841-2400

Bristlecone Alliance, Delaine Spilsbury, P.O. Box 1055, McGill, NV 89301, 775-235-7557

Citizen Alert: Peggy Maze Johnson: P.O. Box 17173, Las Vegas, NV 89117, 702-807-1884

NCL, Scot Rutledge, 7473 W. Lake Mead Blvd., Ste 100, Las Vegas, NV 89128, 702-562-8147.

PLAN: Bob Fulkerson, 821 Riverside Dr., Reno, NV 89503, 775-348-7557.

Sierra Club, Lydia Ball, 732 S. Sixth St., Ste 200B, Las Vegas, NV 89101, 702-732-4450.

2. **Specific type of petitioner (individual, partnership, corporation, government agency, or other) and the exact occupation or business, including a description of the occupation or business if necessary.**

Specific Type of Petitioner: Non-profit cooperative associations duly organized pursuant to NRS 81.170-81.270, and foreign non-profit organizations registered to do business in Nevada.

Occupation or Business: Coalition of Nevada-based conservation/environmental organizations.

3. **Exact and specific nature of changes sought, including delineation of the regulations, statutory provisions of Commission decisions involved. May include a statement of the written term or substance of the proposed regulatory action, or a description of the subjects and issues involved.**

Suspension, by the Nevada Department of Environmental Protection (NDEP), of the air pollution control permitting process for any coal-fired electric generating plants to be located in the State of Nevada, pursuant to Nevada Revised Statutes (NRS) Chapter 445B, the Nevada Administrative Code (NAC) Chapter 445B and the Clean Air Act, until such time as NDEP promulgates regulations enacting a GHG emission standard as follows:

New electricity generating facilities located in the State of Nevada shall emit into the atmosphere no more than 1100 pounds of carbon dioxide pollution per megawatt hour.

Before a Nevada public utility, a cooperative generation and/or transmission electric association, a municipally-owned utility; a privately-owned “merchant” or any other electric generating facility subject to air permitting regulations under the NRS, the NAC or federal regulation constructs, operates, acquires, or makes a long-term electricity purchase from a new electricity generating facility, it must first obtain a certification from the NDEP that the electricity generating facility is designed, and will be operated, to emit into the atmosphere no more than 1100 pounds of carbon dioxide pollution per megawatt-hour. Long-term electricity

purchases that do not specify a generation source for which carbon dioxide emission rates can be determined shall be denied certification. The governing body of each municipally-owned utility shall require compliance with the emission limitations set forth above.

The NDEP, in consultation with the Nevada Public Utilities Commission, shall publish rules and regulations, and establish penalties, to implement and enforce this requirement. The NDEP shall review the emission standard at least every five (5) years and may revise the emission standard to make it more stringent as necessary and appropriate to achieve the purposes of this regulation.

For purposes of these new carbon dioxide emission standards the following definitions shall apply:

- “Long term electricity purchase” is a contract or series of contracts that allows the public utility to purchase electricity.
- “New electricity generating facility” is a power plant, located within Nevada, with a nameplate capacity rating exceeding ten (10) megawatts that has been developed to operate and produce electricity more than 2000 hours per year, and that had not as of August 1, 2007 obtained all required pre-construction permits from the NDEP or such other air quality permits as are required by the location of the facility.

4. A statement of the need for and purpose of the proposed regulations.

The need for the proposed regulations is to ensure that new coal-fired electricity generating units are not permitted and constructed without accounting for greenhouse gas (GHG) emissions. The State should contribute to global efforts to reduce GHG emissions, to scientifically prescribed safe levels, by enacting regulations mandating that no more than 1100 pounds of carbon dioxide pollution per megawatt-hour can be emitted from an electricity generating facility.

The United Nations' Intergovernmental Panel on Climate Change (IPCC) has announced that there is overwhelming consensus in the scientific community that global warming is occurring and that its cause is man-made. Nevertheless, Nevada is considering the permitting of 3,840 megawatts of new coal-fired generated electricity. Altogether, these proposed coal-fired electricity generating units will emit 48.6 million tons of carbon dioxide per year.² Nevada simply cannot afford the environmental, economic, and social costs of allowing this much GHG emissions to be released into the atmosphere over the next 50 to 75 years – the estimated life time of coal plants.

The purpose of the proposed regulations is to regulate carbon dioxide and other GHG emissions from new power plants in order to safeguard Nevada's future. The Petitioners urge the Commission to suspend the air pollution control permitting process until the State adopts regulations limiting GHG emissions from new stationary sources of pollution for the following scientific, political, and legal reasons.

I. Nevada is potentially facing a large growth in GHG emissions.

Six new coal-fired electricity generating units are currently being considered without any precautionary regulations limiting carbon dioxide and other GHG emissions. Currently, 50 percent of Nevada's electricity comes from coal.³ The proposed new facilities to be built in Nevada are in various stages of the air permitting and National Environmental Protection Act

² According to the April 2007 draft Environmental Impact Statement issued by the Bureau of Land Management (Table 4.6-31, page 4-119), the White Pine Energy Station Project will produce 20,131,362 tons of carbon dioxide (CO₂) per year. By dividing the yearly amount of CO₂ emissions by the amount of energy the power plant will produce yearly (1590 MW), on average the power plant will produce 12,661 tons of CO₂ per megawatt per year. This number multiplied by the total amount of electricity that may be generated by the proposed coals facilities (3,840 MW) provides a rough estimate of 48.6 million tons of CO₂ per year produced by the proposed coal-fired generating units. Since the technology for all the proposed coal-fired electricity generating units is similar, we can safely assume that they will emit a comparable amount of CO₂.

³ Energy Information Administration, *Nevada*, http://tonto.eia.doe.gov/state/state_energy_profiles.cfm?sid=NV (last updated July 5, 2007).

(NEPA) processes. If approved, the units would further increase the State's dependence on coal.

Below is an overview of each proposed unit.

- Sierra Pacific Resources has proposed to construct the Ely Energy Center. It will consist of two-750 megawatt coal-fired electricity generating units in White Pine County. The Ely Energy Center is expected to go on-line by 2013.⁴
- White Pine Energy Associates, LLC (White Pine Energy), a wholly-owned subsidiary of LS Power Associates, L.P., is proposing to construct and operate three-530 megawatt coal-fired electricity generating units in White Pine County. The project would bring on-line 1590 megawatts of coal power by 2012.⁵
- Sithe Global Power, LLC (Sithe) is proposing to construct a 750 megawatt coal-fired electricity generating unit in Lincoln County. No date has been set to bring this project on line.⁶

The Petitioners request that the air permitting process for the above proposed coal-fired electricity generating units be suspended until NDEP establishes regulations limiting GHG emissions.

Less than half of the 48.6 million tons of carbon dioxide per year emitted from these coal plants will be the result of electricity production for Nevadans. Sierra Pacific Resources' two coal-fired generating units are to provide power for the company's customers in Nevada. White Pine Energy Associates and Sithe are proposing to construct merchant coal-fired electricity generating units in Nevada. White Pine Energy Associates and Sithe currently do not have customers but are likely to provide electricity to customers outside Nevada. Thus, Nevada's lack of GHG regulations is enticing companies to construct GHG polluting facilities inside the State's borders for the purpose of out-of-state consumption. With no GHG regulations in place, Nevada will become a GHG emission sacrifice zone for the West.

⁴ Sierra Pacific Resources, *The Ely Energy Center*, <http://www.sierrapacificresources.com/projects/ely/> (accessed on July 10, 2007).

⁵ White Pine Energy Associates, LLC, *Application for Class I Operating Permit to Construct*, <http://ndep.nv.gov/bapc/download/ls/app.pdf> (accessed on July 10, 2007).

⁶ Bureau of Land Management, *Toquop Energy Project*, http://www.blm.gov/nv/st/en/fo/ely_field_office/blm_programs/energy/toquop_energy.html (accessed on July 10, 2007).

Instead, Nevada has the opportunity to establish regulations before the State deepens its carbon liability. Nevada should avoid placing itself in a risky position by enacting regulations now.

II. Nevada needs to establish GHG regulations because climate change is real and already causing severe impacts.

The Intergovernmental Panel on Climate Change (IPCC) has recently issued a series of assessment reports that add to the growing body of scientific evidence that the planet is warming and humans are largely responsible. The IPCC summary of the contribution of Working Group I (the physical science basis working group) to its Fourth Assessment Report contains findings that bear on the need for and purpose of this petition. The Fourth Assessment Report concludes, among other things:

- There is a greater than a 90% likelihood that most of the observed increases in global average temperatures since the mid-20th century are due to the observed increases in anthropogenic GHG emissions.⁷
- The global atmospheric concentration of carbon dioxide has increased from a pre-industrial value of about 280 ppm to 379 ppm in 2005.⁸
- The atmospheric concentration of carbon dioxide in 2005 exceeds by far the natural range over the last 650,000 years.⁹
- The primary source of increased atmospheric concentration of carbon dioxide since the pre-industrial period results from fossil fuel use.¹⁰
- Warming of the climate is unequivocal, as is now evident from observations of increases in global average air and ocean temperatures, widespread melting of snow and ice, and rising global average sea level.¹¹
- At continental, regional and ocean basin scales, numerous long term changes have been observed. These include changes in the Arctic temperatures and ice, widespread changes in

⁷ IPCC, *Climate Change 2007: The Physical Science Basis, Summary for Policymakers*, <http://www.ipcc.ch/SPM2feb07.pdf>, 10 (accessed on July 10, 2007).

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.* at 5.

precipitation amounts, ocean salinity, wind patterns and aspects of extreme weather including droughts, heavy precipitation, heat waves and intensity of tropical cyclones.¹²

- For the next two decades a warming of about 0.2° C per decade is projected for a range of emission scenarios.¹³
- There is a 90% likelihood that hot extremes, heat waves, and heavy precipitation events will continue to become more frequent.¹⁴
- Anthropogenic warming and sea level rise would continue for centuries due to the timescales associated with climate processes and feedbacks, even if GHGs were to be stabilized.¹⁵

The April 2007 IPCC summary of the contribution of Working Group II (climate change impacts, adaptation and vulnerability working group) to its Fourth Assessment Report contains findings specific to North America, the West, and the Southwest that should be of particular concern to Nevadans. The findings include the following:

- Warming in western mountains is projected to cause decreased snowpack, more winter flooding, and reduced summer flows, exacerbating competition for over allocated water resources.¹⁶
- Cities that currently experience heat waves are expected to be further challenged by increased number, intensity and duration of heat waves during the course of the century, with potential for adverse health impacts. The growing number of elderly population will be most at risk.¹⁷

The May 2007 IPCC summary of the contribution of Working Group III (mitigation of climate change working group) to its Fourth Assessment Report contains the following findings:

- Global GHG emissions have grown since pre-industrial times, with an increase of 70% between 1970 and 2004.¹⁸
- The largest growth in global GHG emissions between 1970 – 2004 has come from the energy supply sector (an increase of 145%).¹⁹

¹² *Id.* at 8.

¹³ *Id.* at 12.

¹⁴ *Id.* at 16.

¹⁵ *Id.* at 17.

¹⁶ IPCC, *Climate Change 2007: Climate Change Impacts, Adaptation and Vulnerability, Summary for Policymakers*, <http://www.ipcc.ch/SPM6avr07.pdf>, 12 (accessed on July 10, 2007).

¹⁷ *Id.* at 13

¹⁸ IPCC, *Climate Change 2007: Mitigation of Climate Change, Summary for Policymakers*, http://www.mnp.nl/ipcc/docs/FAR/SPM_%20WGIII_rev5.pdf, 3 (accessed on July 10, 2007).

- There is substantial economic potential for the mitigation of global GHG emissions over the coming decades that could offset projected growth of global emissions or reduce emissions below current levels.²⁰
- The key mitigation technologies and practices that are currently commercially available are: improved supply and distribution efficiency, fuel switching from coal to gas, renewable heat and power (hydropower, solar, wind, geothermal and bioenergy), and early applications of carbon capture and storage.²¹
- Near-term health co-benefits from reduced air pollution as a result of actions to reduce GHG emissions can be substantial and may offset a substantial fraction of mitigation costs.²²
- In order to stabilize the concentrations of GHGs in the atmosphere, emissions would need to peak and decline thereafter.²³
- Climate change policies related to energy efficiency and renewable energy are often economically beneficial, improve energy security, and reduce local pollutant emissions.²⁴

Other studies are also pointing to the impacts of global warming on the western part of the United States:

- "If warming continues and raises the mean winter wet-day minimum temperatures in more of the West above about -5C, snowfall declines (and rainfall increases), combined with earlier melting of the remaining accumulations of snowpack, will diminish the West's natural freshwater storage capacity. The shift from snowfall to rainfall also may be expected to increase risks of winter and spring flooding in many settings."²⁵
- "It is becoming ever clearer that these projected declines in SWE (snow water equivalent), which are already well underway, will have profound consequences for water use in a region already contending with the clash between rising demands and increasing allocations of water for endangered fish and wildlife."²⁶
- "We show that large wildfire activity increased suddenly and markedly in the mid-1980s, with higher large-wildfire frequency, longer wildfire durations, and longer wildfire seasons. The greatest increases occurred in mid-elevation, Northern Rockies forests, where land-use

¹⁹ *Id.*

²⁰ *Id.* at 11.

²¹ *Id.* at 14.

²² *Id.* at 17.

²³ *Id.* at 22.

²⁴ *Id.* at 33.

²⁵ *Trends in Snowfall versus Rainfall in the Western United States*, Knowles, N., et al. (2006) <http://sciencepolicy.colorado.edu/admin/publicationfiles/resource-1699-2005.06.pdf>

²⁶ "Warming and Earlier Spring Increase Western U.S. Wildfire Activity" Westerling, A., et al. (2006) <http://www.sciencemag.org/cgi/content/full/313/5789/940>.

histories have relatively little effect on fire risks and are strongly associated with increased spring and summer temperatures and an earlier spring snowmelt."²⁷

On July 24, 2007, the U.S. Public Interest Research Group (U.S. PIRG) Education Fund issued a report "Feeling the Heat: Global Warming and Rising Temperatures in the United States" U.S. PIRG Education Fund, July 2007. One of the findings of the report is:

The 2006 summer heat wave was marked by above-average minimum temperatures – the lowest temperatures recorded on a given day, usually at night. The average minimum temperature was at least 0.5°F above the 30-year average at 81% of the locations studied and 9.7°F above normal in Reno, Nevada, the highest in the country. Warmer nighttime temperatures exacerbate the public health effects of heat waves, since people need cooler nighttime temperatures to recover from excessive heat exposure during the day.²⁸

The State of Nevada is already experiencing the impacts of the climate change as described in the IPCC and other reports. The Sierra Nevada snowpack provides almost all of Northern Nevada with water.²⁹ The increase in temperatures causes more mountain precipitation to fall in the form of rain instead of snow, and snow fall becomes limited to higher elevations. Also, springtime runoff could come earlier in the year.³⁰ As a result of the changing snowpack conditions, water supplies will decrease. According to Michael Dettinger, a hydrologist with the Scripps Institution of Oceanography, in the West:

- The April 1st, 2007 snowpack was 20 percent less on average than it was in the 1950s and 1960s; and
- By the middle of the century, snowpack will decrease by a third.³¹

²⁷ *Id.*

²⁸ *Feeling the Heat, Global Warming and Rising Temperatures in the United States*, U.S. PIRG Education Fund, www.uspirg.org (July 2007).

²⁹ Kerri L. Timmer, Sierra Nevada Alliance, *Troubled Water of the Sierra*, http://www.sierranevadaalliance.org/publications/db/pics/1111704195_9128.f_pdf.pdf, 5 (accessed on July 11, 2007).

³⁰ Jeff DeLong, Reno Gazette Journal, *The Warming Sierra: Water Woes Ahead*, <http://news.rgj.com/apps/pbcs.dll/article?AID=/20070514/NEWS16/705140331/1016/NEWS> (accessed on July 11, 2007).

³¹ *Id.*

Northern Nevada communities that do not have major high-altitude reservoirs will suffer from warming temperatures. According to Ken Arnold, public works operation manager for Carson City, Nevada's capital city is already taking steps to adapt to the impacts of climate change. For example, the city is expanding the aquifer storage and recovery system to capture excess river runoff and injecting the water into storage wells for use later in the summer.³² Williams has stated that the state officials are taking the possible impacts of climate change "very seriously."

Other parts of Nevada will also be negatively affected by climate change. According to a new report by the Natural Resource Defense Council, the Colorado River has received just over half its average flow for the past eight years.³³ Recent climate change studies, investigating the possible effects of climate change on future flows of the Colorado River, projected even further reductions in flows. Martin Hoerling of the National Oceanic and Atmospheric Administration's Earth System Research Laboratory and John Eischeid of University of Colorado's Cooperative Institute for Research in Environmental Sciences projected a reduction of up to 50 of Colorado River flows as a result of drought conditions further intensified by heat during 2035 and 2060.³⁴

It is also projected that if GHG emissions continue to increase at the present rate, temperatures in the West could increase by 11.5 degrees Fahrenheit.³⁵

These projections of decreased water supply and increased temperatures paint a grim picture for the Las Vegas area. Currently, the Southern Nevada Water Authority, a water wholesaler for the Las Vegas Valley, receives 90 percent of their water from surface water of the

³² *Id.*

³³ NRDC, *Water Officials Warned: Get Used to Drought, Says New Climate Report*, <http://www.commondreams.org/news2007/0710-08.htm> (accessed on July 13, 2007).

³⁴ Martin Hoerling and John Eischeid, *Past Peak Water in the Southwest*, <http://www.livingrivers.org/pdfs/LRlibrary/ClimateChangeDocs/Hoerling2007.pdf>, 3 (accessed on July 18, 2007).

³⁵ Natural Resource Defense Council, *In Hot Water: Water Management Strategies to Weather the Effects of Climate Change*, July 2007, <http://www.nrdc.org/globalWarming/hotwater/hotwater.pdf>, iv (accessed on July 11, 2007).

Colorado River.³⁶ Traditional water management approaches, such as dams, diversions, and groundwater, “are likely to perform more poorly in the future” and “will likely be less effective in a warmer, drier climate.”³⁷ Las Vegas will face a hotter and drier future unless Nevada acts now by implementing regulations limiting GHG emissions in addition to water conservation efforts.³⁸

Nevada’s growing population is at great risk because of the dwindling water supplies and increased temperatures resulting from GHG emissions. Nevada must regulate GHG emissions now from the six coal-fired units currently at various stages of permitting in Nevada. Nevada will not be able to turn back the clock on the proposed coal-fired electricity generating units or climate change. In fact, the State may have to pay a high price for stalling regulatory action. For example, the retrofitting of existing coal-fired electricity generating units for carbon dioxide capture and sequestration may be prohibitively expensive.³⁹ Just as the State relies on energy demand forecasts that look 20, 30, and even 50 years into the future, Nevada should also take into account climate projections when making energy procurement decisions. The amount of GHG emissions must be a deciding factor on how new coal-fired electricity generating units are constructed and operated in Nevada. The State cannot afford to allow 48.6 million tons of carbon dioxide to be emitted per year over the next 50 to 75 years.

³⁶ Southern Nevada Water Authority, 2006 Water Resources Plan, Las Vegas, NV, pg. 22.

³⁷ NRDC, Water Officials Warned: Get Used to Drought, Says New Climate Report; <http://www.commondreams.org/news2007/0710-08.htm> (accessed on July 13, 2007).

³⁸ See Launce Rake, *Hotter, Drier years in Store for LV, Study Says*, <http://www.lasvegassun.com/sunbin/stories/sun/2005/sep/23/519404393.html?rocky%20mountain%20climate%20organization> (accessed on July 17, 2007).

³⁹ Bohm, M.C., H.J. Herzog, J.E. Parsons and R.C. Sekar, “Capture-ready coal plants - Options, technologies and economics,” *International Journal of Greenhouse Gas Control*, Vol 1, pages 113-120, 114, (2007).

III. There is a groundswell of political and public support for the regulation of GHG emissions.

Six Western U.S. states, two Canadian provinces, and one Mexican state have signed onto the Western Regional Climate Action Initiative (WRCAI). Although the details of the commitments ultimately elected have not yet been disclosed, it is quite possible the WRCAI will commit to GHG emission levels well below 1999 levels, consistent with the commitment California has made individually. On July 2, 2007 Governor Gibbons informed the governors of the six states that are part of WRCAI that Nevada would send observers to be part of WRCAI. Congress is also currently debating national legislation on GHG emissions. These activities demonstrate the local, regional, and national political and public will to limit GHG emissions. The State of Nevada can respond to this growing movement by suspending the processing of air permits for new coal plants until NDEP develops limits on carbon dioxide and other GHG emissions.

Developing a GHG emission standard would be consistent with other steps Nevada has taken to address climate change. The State has enacted a Renewable Portfolio Standard in which 20 percent of the states energy generated by Investor Owned Utilities must come from renewable energy sources by 2015.⁴⁰ On April 4, 2007, Governor Gibbons signed an executive order creating the Nevada Climate Change Advisory Committee. The committee was tasked with the responsibility of making recommendations about ways the State can reduce GHG emissions. The Governor stated that he was “looking forward to Nevada joining the world in its quest to reduce GHG emissions” and further explained that “[w]e live in a global society and Nevada has to be a

⁴⁰ DSIRE, *Nevada Incentives for Renewables and Efficiency*, http://www.dsireusa.org/library/includes/incentive2.cfm?Incentive_Code=Nv01R&state=Nv&CurrentPageID=1&RE=1&EE=1 (accessed on July 18, 2007).

responsible member of this society.”⁴¹ The Governor also created the Nevada Renewable Energy Transmission Access Advisory Committee on May 9, 2007. The Committee will develop solutions to overcome transmission barriers to getting renewable electricity, such as solar, wind, and geothermal, generated in Nevada to market.⁴² On July 2, 2007 Governor Gibbons notified the Climate Registry Steering Committee of Nevada’s intention to join.

The cities of Las Vegas, Reno, Sparks, and Henderson have joined more than 400 other U.S. communities in signing the U.S. Mayors Climate Protection Agreement. The Agreement requires the cities to meet the GHG reduction targets set by the international climate agreement, the Kyoto Protocol.⁴³

A few key states have enacted legislation or committed to policies that will regulate GHG emissions. California’s “Global Warming Solutions Act of 2006” requires the reduction of GHG emissions by 80 percent below 1990 levels by 2050.⁴⁴ California is also regulating carbon dioxide from auto tailpipe emissions.⁴⁵ Arizona, through an executive order, has committed to reduce emissions by 50 percent of 2000 levels by 2040.⁴⁶ New Mexico has developed plans to reduce emissions by 75 percent of 2000 levels by 2050 by increasing renewable energy use, creating a “clean car” program, and mandating green buildings. Nevada would be among these leading states if it regulates GHG emissions through its air pollution permitting process.

⁴¹ Office of the Governor, *Governor Gibbons Creates Climate Change Advisory Committee*, <http://gov.state.nv.us/PressReleases/2007/2007-04-10ClimateControlCommittee.htm> (accessed on July 10, 2007)

⁴² The State of Nevada, *Governor Gibbons Established Energy Transmission Access Advisory Committee*, <http://gov.state.nv.us/PressReleases/2007/2007-05-09RenewableEnergyTransmissionAccessAdvisoryCommittee.htm> (accessed on July 18, 2007).

⁴³ U.S. Conference of Mayors, *U.S. Mayors for Climate Protection Center*, <http://www.usmayors.org/Climateprotection/> (accessed on July 18, 2007).

⁴⁴ State of California, *Gov. Schwarzenegger Signs Landmark Legislation to Reduce Greenhouse Gas Emissions*, <http://gov.ca.gov/index.php?/press-release/4111/> (accessed on July 13, 2007).

⁴⁵ California Air Resources Board, *AB 1493*, <http://www.arb.ca.gov/cc/ab1493.pdf> (accessed on July 19, 2007).

⁴⁶ State of Arizona Executive Office, *Governor Napolitano Issues Executive Order to Promote Energy Efficiency*, http://www.governor.state.az.us/dms/upload/NR_090806_CCAG.pdf (accessed on July 13, 2007).

People in the United States are demanding national legislation as well. Currently, Congress is considering six climate change bills. One of the proposed bills, the Sanders-Boxer Global Warming Pollution Reduction Act (S.309), would establish a long-term framework to gradually reduce the nation's global warming emissions to 80 percent below 1990 levels by 2050.

Industry is even calling for climate action. The auto giant General Motors joined with PNM Resources, PG&E Corporation, Alcoa, BP America, Caterpillar Inc., Duke Energy, DuPont, FPL Group, General Electric, Lehman Brothers, and leading environmental groups in the creation of the United States Climate Action Partnership.⁴⁷ The Partnership issued a set of principles and recommendations to underscore the urgent need for a policy framework on climate change.⁴⁸

On July 24, 2007 United States Senator Harry Reid sent a letter to the Executives of Sierra Pacific Resources, LS Power, Dynegy, and Sithe Global Power expressing his "strong opposition" to the proposed coal plants these companies plan to build in Nevada. Senator Reid's letter is attached to this petition.

Two-thirds of voters in Nevada believe that climate change is taking place and action should be taken.⁴⁹ The need for regulation of GHG emissions is commonly accepted by all sectors of society in Nevada. Nevada should respond by establishing GHG regulations before allowing the permitting of any more new coal-fired electricity generating units.

⁴⁷ U.S. Climate Action Partnership, *Home*, <http://www.us-cap.org/> (accessed on July 13, 2007).

⁴⁸ U.S. Climate Action Partnership, *A Call for Action*, <http://www.us-cap.org/USCAPCallForAction.pdf>, 4 (accessed on July 18, 2007).

⁴⁹ Public Opinion Strategies, *Nevada: Global Warming and Public Opinion*, February 27, 2007 – March 1, 2007.

IV. The proposed regulations on GHG emissions will place Nevada in compliance with the Clean Air Act and the Supreme Court’s interpretation of the Act.

Nevada will be acting lawfully under the recent Supreme Court decision, *Massachusetts v. EPA*, and the Clean Air Act (the Act), if the State develops regulations mandating that no more than 1100 pounds of carbon dioxide pollution per megawatt-hour can be emitted from any one coal-fired electricity generating unit. Nevada, as a surrogate of EPA, has the statutory authority under the Act to regulate carbon dioxide emissions and other GHGs from coal-fired electricity generating units. NDEP does not currently regulate carbon dioxide or other GHGs emissions pursuant to the state air pollution requirements established in NRS 445B.100 through 445B.825 and 486A.010 through 468A.180.

On April 2, 2007, the U.S Supreme Court issued its landmark ruling in *Massachusetts* overturning EPA’s long-held position that carbon dioxide and other GHGs are not Clean Air Act “pollutants.” *Massachusetts v. EPA*, 127 S. Ct. 1438, 1460 (2007). The Court found that carbon dioxide and other GHGs are air pollutants subject to regulation under the Clean Air Act (Act). *See Id.* at 1459-60. Nevada may also have the statutory authority to regulate carbon dioxide and other GHGs under the plain meanings of the provisions and programs under the Act, such as the 1990 Amendments and Section 202 and Section 111 programs. Also, Nevada may have the ability to limit carbon dioxide under the prevention of significant deterioration (PSD) permit process for new coal-fired electricity generating units where pollutants must be analyzed and emissions limits set. Thus, the six proposed coal plants should only be permitted if: (1) new regulations limiting coal-fired electricity generating units from emitting no more than 1100 pounds of carbon dioxide pollution per megawatt-hour is adopted; and (2) the PSD permits for the power plants include an analysis and limit for carbon dioxide and other GHG emissions.

Nevada's statutory authority to regulate GHG emissions is rooted in the Act. The NDEP Bureau of Air Pollution Control implements the Act in lieu of the EPA as a delegated authority. According to 40 C.F.R. 52.1485, Nevada's state implementation plan under the Act has not been approved. Until Nevada adopts its own air pollution regulations that are approved by the EPA, NDEP is required to implement the Act including the PSD requirements when permitting new sources of pollution such as new coal-fired electricity generating units. *See* NAC 445B.221 (2007). The Act and the U.S. Supreme Court's decision in *Massachusetts* demonstrate that the NDEP has the statutory authority to regulate GHGs.

A. Carbon dioxide is a Clean Air Act air pollutant subject to Nevada's regulations.

1. NDEP should respond to the recent legal developments by establishing GHG regulations.

NDEP's failure to regulate carbon dioxide and other GHG emissions is inconsistent with the U.S. Supreme Court decision in *Massachusetts v. EPA*. The Court held that carbon dioxide and other GHGs are air pollutants as defined in § 302(g) and 42 U.S.C. § 7602(g) of the Act. *Massachusetts*, 127 S.Ct. at 1459-60. The Court based its decision on the "unambiguous" language in the Clean Air Act's "sweeping definition" of an "air pollutant." *Id.* at 1460. As a result of carbon dioxide being within the Act's broad definition of "air pollutant," the EPA has the statutory authority to regulate carbon dioxide under the Act. *Id.* at 1462. The petitioners in *Massachusetts* claimed that EPA had abdicated its rulemaking responsibilities under Section 202 of the Act by not regulating GHG emissions from new motor vehicles. *Id.* at 1446. With this ruling, it is now accepted that the EPA has the authority to issue regulations limiting carbon emissions from motor vehicles. *Id.* at 1459-63.

In accordance with *Massachusetts*, the President issued an Executive Order on May 14, 2007, confirming the Supreme Court's ruling by acknowledging the EPA's authority to regulate

GHG emissions, including carbon dioxide from motor vehicles, nonroad vehicles and engines under the CAA. The Executive Order directed the EPA to work with other federal agencies in undertaking regulatory action.⁵⁰

2. *Carbon dioxide is an “air pollutant” subject to regulation within the meaning of the Clean Air Act.*

The Act defines “air pollutant” as “any physical, chemical, biological, radioactive (including source material, special nuclear material, and byproduct material) substance or matter which is emitted into or otherwise enters the ambient air.” 42 USC § 7602(g). The Court in *Massachusetts* dispelled with EPA’s claim the agency did not have to regulate carbon dioxide and other GHG emission because these gases were not air pollutants under the act.

Massachusetts, 127 S. Ct. at 1460.

The statutory text forecloses EPA's reading. The Clean Air Act's sweeping definition of "air pollutant" includes "*any* air pollution agent or combination of such agents, including *any* physical, chemical . . . substance or matter which is emitted into or otherwise enters the ambient air" § 7602(g) (emphasis added). On its face, the definition embraces all airborne compounds of whatever stripe, and underscores that intent through the repeated use of the word "any." Carbon dioxide, methane, nitrous oxide, and hydrofluorocarbons are without a doubt "physical [and] chemical . . . substances which [are] emitted into . . . the ambient air." The statute is unambiguous.

Id. According to the Court, GHGs are Clean Air Act pollutants.

There is also evidence in the specific provisions of the Act that carbon dioxide is an “air pollutant” subject to regulation. Section 821 of the 1990 Clean Air Act Amendments mandated the EPA to promulgate regulations to require certain sources, including coal-fire electric

⁵⁰ White House, *Press Release*, <http://www.whitehouse.gov/news/releases/2007/05/20070514-2.html> (last visited July 5, 2007); White House, *Executive Order: Cooperation Among Agencies in Protecting the Environment with Respect to Greenhouse Gas Emissions From Motor Vehicles, Nonroad Vehicles, and Nonroad Engines*, <http://www.whitehouse.gov/news/releases/2007/05/20070514-1.html> (accessed on July 13, 2007).

generating stations, to monitor carbon dioxide emissions and to report monitoring data to the EPA. 42 U.S.C. § 7651k. The regulations were promulgated in 1993 and set forth in 40 C.F.R. Part 75. The regulations required: (1) monitoring of carbon dioxide through installation, certification, operation, and maintenance of a continuous emission monitoring system or an alternative method (40 C.F.R. §§ 75.1(b), 75.10(a)(3)); (2) preparation and maintenance of monitoring plans (40 C.F.R. § 75.33); (3) maintenance of certain records (40 C.F.R. § 75.57); and (4) reporting of certain information to EPA, including electronic quarterly reports of carbon dioxide emissions data (40 C.F.R. §§ 75.60-64). Section 75.5, 40 C.F.R., prohibits operation of an affected source in the absence of compliance with the substantive requirements of Part 75, and provides that a violation of any requirement in Part 75 is a violation of the Act. Thus, GHG emissions are already regulated under the Act.

Carbon dioxide is also subject to regulation under two of the Act's programs. Section 202 requires standards for the emissions of "any air pollutant" from motor vehicles. 42 U.S.C. § 7521(a)(1). Section 111 requires standard of performance for emissions of "air pollutants" from new stationary sources, where air pollution "may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A). There is a pending legal action against the Agency for its failure to establish emissions limits under Section 111. Carbon dioxide and other GHG emissions are air pollutants subject to regulation under the Act.

3. *A Federal Court of Appeals is currently considering whether GHG emissions from coal-fired electricity generating units are regulated under Section 111 of the Clean Air Act.*

State of New York, et. al. v. EPA is a challenge to EPA's claim that it does not have the statutory authority to regulate carbon dioxide and other GHG emissions from power plants under the Act. The case is pending before the United States Court of Appeals for the District of Columbia. The petitioners claim Section 111 of the Clean Air Act, 42 U.S.C. § 7411, requires

EPA to set performance standards applicable to new sources of air pollution. The petitioners assert that “[u]nder Section 111(b)(1)(A), the EPA must adopt performance standards for each category of sources that ‘causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare.’” Petrs. Mot. Remand for Further Procs. 2 (May 2, 2007).

State of New York is an important case because it will decide whether carbon dioxide is subject to regulation under the Act’s stationary source program. In response to *Massachusetts*, the petitioners in *State of New York* requested the Court of Appeals to vacate the EPA’s determination that it lacks the authority to regulate carbon dioxide under section 111 and to remand the matter to EPA for further proceedings consistent with *Massachusetts*. Specifically, the petitioners state that the “statutory definitions of ‘air pollutant’ and ‘welfare’ that govern EPA’s authority to regulate CO₂ emissions from motor vehicles . . . apply for all purposes under the Clean Air Act.” Petrs. Mot. Remand for Further Procs. 4 (May 2, 2007). Thus petitioners are asking the U.S. Court of Appeals to decide whether the EPA’s determination to not set a standard for power plant carbon dioxide emissions under Section 111 is “arbitrary, capricious, or otherwise not in accordance with law.” *Id.*

4. *The recent Supreme Court decision and the statutory provisions of the Clean Air Act require Nevada to regulate GHGs.*

In accordance with *Massachusetts*, the 1990 Amendments, Section 202 and Section 111, NDEP should set limits on carbon dioxide and other GHG emissions from coal-fired electricity generating units because: (1) carbon dioxide and other GHG emissions are air pollutants under the State’s air pollution regulations, and (2) these gases are subject to Nevada’s regulations.

Carbon dioxide is an air pollutant under the Act and Nevada’s air pollution regulations. The “sweeping definition” of “air pollutant” applies to both the federal Act and the NDEP air

pollution regulation. NRS 445B.110 defines “air contaminant” as “any substance discharged into the atmosphere except water vapor and water droplets.” Furthermore, NRS 445B.115 defines “air pollution” as:

[t]he 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.

Just as the Act’s definition of “air pollutant” includes carbon dioxide and other GHG emissions, Nevada’s definitions of “air contaminant” and “air pollution” are inclusive of carbon dioxide and other GHG emissions.

Carbon dioxide and other GHGs are subject to regulation in Nevada because NDEP, acting on behalf of the EPA, is required to regulate carbon dioxide and other GHG emissions from power plants. In light of the Supreme Court’s recent ruling NDEP, as a surrogate to the EPA, has the statutory authority to regulate GHG emissions. Just like the EPA was directed to work with other federal agencies in undertaking regulatory action to regulate GHG emissions from new motor vehicles, NDEP should be directed to undertake regulatory action to regulate GHG emissions.

Also, NDEP is required to set performance standards for carbon dioxide emissions under Section 111. The statutory authority given to the EPA in *Massachusetts* to regulate GHG emissions from motor vehicles, nonroad vehicles, and engines should apply to all provisions of the Act including Section 111. Carbon dioxide and GHG emissions are “air pollutants” which “may reasonably be anticipated to endanger public health or welfare.” 42 U.S.C. § 7411(b)(1)(A). *Massachusetts* stated that “[t]he harms associated with climate change are serious and well recognized,” reaffirming that overwhelming consensus in the international scientific

community that global warming is occurring, its cause is man-made, and the impacts are and will be devastating. *Massachusetts*, 127 S.Ct. at 1455. Thus, NDEP has the statutory authority under the Act to regulate GHGs.

B. In accordance with its statutory obligations under the Clean Air Act, Nevada’s PSD permitting process should include a BACT analysis and limit of GHG emissions.

The State is responsible for performing a best available control technology (BACT) analysis and setting a BACT limit for GHG emissions from new coal-fired electricity generating units in order to obtain a PSD air permit. The Act and Nevada’s air pollution regulations prohibit the construction of a new major stationary source of air pollutants or a major modification of an existing source in the State of Nevada except in accordance with a PSD construction permit issued by NDEP. 42 U.S.C. § 7475, 40 C.F.R. § 52.21, 40 C.F.R. 52.1485; NAC 445B.221. The PSD permits as they apply to new or modified major sources are designed to keep an attainment area in continued compliance with the Act. The air permits for the six proposed coal-fired electricity generating units should analyze and limit GHG emissions.

I. The carbon dioxide and GHG emissions from coal-fired electricity generating units are subject to a BACT analysis and limit under the PSD permitting process.

The PSD permit process for new coal-fired electricity generating facilities should include a BACT analysis and limit for GHG pollutants. PSD permits are issued to new major stationary sources or major modifications to existing stationary sources that can demonstrate no significant deterioration of ambient air quality in an attainment area. The BACT analysis under a PSD permit is “an emissions limitation” on new major stationary sources which analyzes “energy, environmental, and economic impacts and other costs.” *See* 40 C.F.R. § 52.21(b)(12); *See also* CAA § 169(3), 42 U.S.C. §7479(3). The limitations are set by determining what is achievable for such source or modification “through application of production processes or

available methods, systems, and techniques, including fuel cleaning or treatment or innovative fuel combustion techniques for control of such pollutant.” *Id.*

When issuing a PSD permit for a new coal-fired power plant, the NDEP should conduct a best available control technology (BACT) analysis and set a limit on carbon dioxide and other GHGs emissions. The Act’s best available control technology (BACT) limitation applies to “each pollutant subject to regulation under [the Clean Air Act].” 40 C.F.R. § 52.21(b)(12). As discussed earlier “subject to regulation” applies to air pollutants that are currently being regulated. Pollutants regulated by Section 202 and Section 111 are subject to BACT. Yet air pollutants that EPA or a state possess, but have not exercised authority under the Act’s provisions, are also subject to regulation. For example, EPA itself has recognized the principle that “[t]echnically, 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. (See 61 FR 38250, 38309, July 23, 1996.)” 40 CFR Part 70, Change to Definition of Major Source, 66 Fed. Reg. 59161 (Nov. 27, 2001) (emphasis added). Thus, even if carbon dioxide was not regulated under specific provisions of the Act, such as Section 111, the BACT limitation still applies.

NDEP should set a BACT emission limit for carbon dioxide in each PSD permit for new coal-fired electricity generating unit. A BACT limit is required “for each pollutant subject to regulation under [the Clean Air Act]” for which emissions exceed specified significance levels. Clean Air Act §§ 165(a), 169, 42 U.S.C. §§ 7475(a) 7479, 40 CFR 52.1485; NAC 445B.221. BACT is further required “for each regulated NSR pollutant that [a source] would have the potential to emit in significant amounts.” 40 C.F.R. § 52.21(j)(1) (emphasis added). For any regulated NSR (new source review) pollutant that is not listed in the table at 40 C.F.R. §

52.21(b)(23)(i), a significant rate is “any net emission increase.” 40 C.F.R. § 52.21(b)(23)(ii).

Section 52.21(b)(50), in turn, defines “Regulated NSR pollutant” as:

- (i) Any pollutant for which a national ambient air quality standard has been promulgated and any constituents or precursors for such pollutants identified by the Administrator (e.g., volatile organic compounds are precursors for ozone);
- (ii) Any pollutant that is subject to any standard promulgated under Section 111 of the Act;
- (iii) Any Class I or Class II substance subject to a standard promulgated under or established by title VI of the Act; or
- (iv) Any pollutant that otherwise is subject to regulation under the Act; except that any or all hazardous air pollutants either listed in section 112 of the Act or added to the list pursuant to section 112(b)(2) of the Act, which have not been delisted pursuant to section 112(b)(3) of the Act, are not regulated NSR pollutants unless the listed hazardous air pollutant is also regulated as a constituent or precursor of a general pollutant listed under section 108 of the Act.

40 C.F.R. § 52.21(b)(50) (emphasis added).

As a NSR pollutant, any increase of carbon dioxide from a new source would require the implementation of a BACT limit. The significance level triggering PSD applicability for a regulated NSR pollutant, other than the 15 listed in 40 C.F.R. § 52.21(b)(23)(i), is *any* net increase. 40 C.F.R. § 52.21(b)(23)(ii). Carbon dioxide is not one of the 15 pollutants listed in 40 C.F.R. § 52.21(b)(23)(i). Therefore, because carbon dioxide is a regulated NSR pollutant, as shown below, *any* increase in emissions is significant and requires a BACT limit for carbon dioxide. 42 U.S.C. §§ 7475(a)(1), (4), 7479(3); 40 C.F.R. § 52.21(j)(2); 40 C.F.R. § 52.21(b)(23)(ii). Thus, under the Act a BACT limit is required for carbon dioxide emissions from new coal-fired electricity generating units.

II. The PSD permits for the six proposed coal-fired electricity generating units in Nevada must include a BACT analysis and limit.

Even if new regulations of GHG emissions are not adopted, Nevada’s air pollution control permitting process should be suspended until a BACT analysis and limitation imposed on carbon dioxide and GHG emissions from any new coal-fired electricity generating unit is

developed by NDEP. NDEP's current PSD construction permitting process is unlawful because it fails to address carbon dioxide and other GHG emissions in the BACT analysis. In implementing the BACT analysis, NDEP should be evaluating IGCC, ultra supercritical coal technology, and 'capture-ready' design decisions. Thus a proper BACT analysis would consider clean fuels such as co-firing of biomass, natural gas, and renewable sources of energy as a means of mitigating carbon dioxide emissions.

All of the six coal-fired electricity generating units proposed in Nevada will emit carbon dioxide well above "any" net increase in emissions. White Pine alone will emit over 20 million tons of carbon dioxide annually, and all the proposed plants together will emit 48.6 million tons of carbon dioxide per year over the next 50 to 75 years. All current and draft air permits must address carbon dioxide because the BACT requirement applies to GHG emissions. It is recommended that the BACT limit allow no more than 1100 pounds of carbon dioxide pollution per megawatt-hour to be emitted from any new electricity generating facility.

Nevada has the statutory authority to regulate GHG emissions from new electricity generating facilities. Carbon Dioxide and other GHG emissions are air pollutants and subject to regulation under the Act and Nevada's air pollution regulations. Even if the State does not enact new GHG regulations, carbon dioxide should be analyzed and limited under BACT in order for a facility to acquire a PSD permit. The State will be acting lawfully under the recent Supreme Court decision in *Massachusetts* and the Act by moving forward with GHG regulations.

V. Conclusion

Nevada should act on its own initiative and build a regulatory framework to limit and to reduce climate change pollution from new coal-fired electricity generating units. Now is the time to regulate the enormous volume of new greenhouse emissions that will emanate from Nevada.

The State needs to establish GHG regulations because climate change is real and already causing severe impacts. Carbon dioxide is a Clean Air Act air pollutant subject to Nevada's regulations. The State already has the statutory authority to regulate GHG. The Petitioners therefore request that the State's air pollution control permitting process reflect the international consensus that the world needs to immediately reduce GHG emissions in order to avoid the devastating environmental, social, and economic costs of climate change.

5. A statement of the:

(a) Estimated economic effect of the regulation on the business which it is to regulate;

(1) Adverse and Beneficial Effects

In order to comply with the proposed regulation, an electricity generating facility must be designed, and operated, to emit into the atmosphere no more than 1100 pounds of carbon dioxide pollution per megawatt-hour. This cannot be done via a traditional pulverized coal plant.

However, the owner(s) of any proposed facilities could meet this emission standard through the construction of natural gas combined cycle plants or renewable sources. Like any alternative course of action, higher total capital costs will be incurred as compared to pulverized coal plants. But this cost is not unreasonable. (Gas-fired units are cheaper to build, but more expensive to operate.) According to the California Public Utilities Commission final decision adopting SB 1368, "While national displacement of coal may have some economic effects, this does not establish an impermissible burden..."⁵¹

The economic benefits of the new regulation far outweigh the upfront cost. The operating life of a new pulverized coal plant is likely to be 60 years or longer, and the 3,840 MW of power

⁵¹ California Public Utilities Commission, "Interim Opinion on Phase 1 Issues: Greenhouse Gas Emissions Performance Standard," January 25, 2007, p. 222.

proposed in Nevada would emit 48.6 million tons of carbon dioxide per year.⁵² Federal regulations of GHG emissions are expected to be enacted within this time frame. A very conservative estimate puts the cost of future carbon emissions at \$12 per metric ton, which, for a 500 MW pulverized coal plant, would result in \$76 million annual cost exposure. Considering that the six new coal-fired electricity generating units proposed to be built in Nevada collectively make up 3,840 MW, this conservative estimate would result in an annual additional economic burden to the utility of \$583 million. On the other hand, installation of 3,750 MW of electricity generation through combined cycle natural gas would cause an economic burden of only \$153 million per year, and IGCC with 90 percent carbon capture would cost as little as \$30.7 million annually for its carbon emissions.⁵³

A more realistic estimate of the cost of carbon was recently provided in New Mexico. State regulators have ordered electric utilities to begin taking into account the cost of carbon emissions in their Integrated Resource Plans beginning in 2010. Utilities are required to do their price sensitivity analyses with costs of \$8, \$20 and \$40 per metric ton of CO₂, with \$20 being perceived as the most likely base price. Beginning in 2011, the standardized cost of carbon emissions will be escalated by 2.5 percent per year.⁵⁴ Renewable energy sources that emit little to no carbon would clearly have little to no additional costs in paying for carbon emissions.

(2) Immediate and Long-Term Effects.

The immediate economic effects on the business are upfront costs associated with paying for fitting the coal plants with carbon sequestration or other CO₂ reducing technology, or paying

⁵² Based off the expected emissions of the 1,590 MW White Pine coal plant, White Pine Draft Environmental Impact Statement, p. 4-119.

⁵³ Karl Bokenkamp, Hal LaFlash, Virinder Singh and Devra Wang, "Hedging Carbon Risk: Protecting Customers and Shareholders from the Financial Risk Associated with Carbon Dioxide Emissions," The Electricity Journal, Volume 18, Issue 6, July 2005, p.15.

⁵⁴ New Mexico Public Regulation Commission, "Order Approving Recommended Decision and Adopting Standardized Carbon Emission Costs for Integrated Resource Plans," June 25th, 2007.

the slightly higher capital costs of renewable energy sources. However, recent regulatory developments, and the likelihood of federal legislation on GHG emissions continue to shift the competitive balance away from new coal capacity and towards cleaner forms of power generation.⁵⁵ In the long term, the utility would most likely benefit from the new regulations because, according to the California Public Utilities Commission, “Federal regulation of emissions of GHGs is likely during [the next decade].”⁵⁶

(b) Estimated economic effect on the public;

(1) Adverse and Beneficial Effects

The regulations of coal plant emissions will be almost singularly beneficial for the public due to: the threat of global climate change, the future cost of carbon, unstable fuel costs, and the health problems that emissions from traditional pulverized coal plants cause.

Global climate change: The public benefits in regards to climate change are the benefits of absence. By not emitting as much CO₂, the public will benefit in not needing to cope with as many of the effects and, therefore, costs associated with climate change. The Stern Review has quantified the cost of every ton of CO₂ that we emit today and into the future. The Review calls this price the “Social Cost of Carbon” (SCC), which is the “calculation of the damage done over time (suitably discounted) by a ton of CO₂ emitted this year.” If climate change continues unmitigated, then the SCC is \$85/ton of CO₂, a number that would rise over time. If significant actions are taken to reduce carbon emissions, then the damage due to climate change will not be as immense, and the cost per ton of CO₂ will be less; however, it would still fall between \$25 and

⁵⁵ Eric Kane, “Dynergy: Carbon Risk Accompanies LS Power Merger,” Innovest Strategic Value Advisors, March 27, 2007, p. 1.

⁵⁶ SB 1368, Section 1(e,f).

\$30/ton.⁵⁷ The six new coal-fired electricity generating units proposed to be built in Nevada collectively make up 3,840 MW of power and would collectively emit 2.9 billion tons of carbon dioxide over their lifetime of approximately 60 years.⁵⁸ Considering that the installation of new coal plants would lead towards a price tag of \$85/ton of CO₂, it is likely that the SCC of the six new coal-fired electricity generating units would be \$246.5 billion. Even the lower estimate would result in an SCC of \$87 billion.⁵⁹

Future cost of carbon: The carbon costs to utilities mentioned above in Section a(1) would almost certainly be passed on to some extent to rate payers. The new regulations would prevent the worst case, highest cost carbon scenarios by ensuring that plants that emit the greatest amount of carbon would not be constructed. The regulations would therefore protect consumers from price hikes due to massive annual expenditures in paying for carbon emissions.

Unstable fuel costs: The new regulations will encourage development of renewable sources, which are immune to price instability caused by dependence on coal and natural gas. If a greater proportion of customers are depending on renewable sources for their energy, then there will be less of a chance that customers will see a sharp rise in rates if there is a dramatic change in the price of coal or natural gas. Furthermore, capital costs for new coal-fired power plants have increased 90-100 percent since 2002, and 40 percent in 2006 alone, while the cost of renewable energy continues to decrease. Many utilities have had to reassess their coal plant construction costs due to higher prices of necessary materials, and these costs will only continue

⁵⁷ Sir Nicholas Stern, "Stern Review: Frequently Asked Questions," October 30, 2006, http://www.hm-treasury.gov.uk/independent_reviews/stern_review_economics_climate_change/sternreview_faq.cfm.

⁵⁸ White Pine Draft Environmental Impact Statement, p. 4-119.

⁵⁹ Since global climate change is not a local problem, it is not possible to say that the carbon emitted by Nevada plants would result in a certain cost only to Nevada, but Nevada will certainly feel many of the effects of global climate change, and tax payers will have to pay the price. By adding excess carbon to the atmosphere, utilities are increasing the economic burden worldwide as well as in Nevada.

to rise.⁶⁰ Finally, the regulations will also encourage the implementation of efficiency measures, which are the most cost-effective method of coping with energy demands, and in most cases, result in a net economic gain.

Public health: Pulverized coal plants emit the vast majority of SO₂, NO_x and mercury among all the types of electricity generating plants. These pollutants contribute to premature death, asthma, birth defects, loss in sensory or cognitive ability and potentially autism, to name a few negative effects.⁶¹ The regulations will ensure that conventional pulverized coal plants will no longer be constructed, and encourage the creation of renewable energy sources, which generally emit none of the dangerous toxic chemicals. This will not only result in a healthier populace, but also prevent an overburdening of the local health care system caused by excess toxins in the air.

(2) Immediate and Long-Term Effects

It is possible that rate payers would experience a slight increase in their bills in the short term, as the utilities invest in new, cleaner technologies. In the near future, however, customers should be paying less for their power due to the regulation, because they will not have to shoulder the future cost of carbon regulation, or be affected by the rising, and often unstable, prices of fuels.

(c) **Estimated cost by the agency for enforcement of the proposed regulation.**

There would be no additional cost to the Nevada Division of Environmental Protection due to this regulation. SB 422 was recently passed in the Nevada legislature, and it required NDEP to “mandate the reporting of all GHGs emitted by each affected unit [defined as an

⁶⁰ Innovest Strategic Value Advisors Report, “TXU: Beyond Carbon Risk: Regulatory Delays and Increased Costs of Construction,” February 22, 2007, http://www.net.org/documents/2007-02-22_Innovest_Report.pdf.

⁶¹ Clear the Air, “Power Plants, Your Health and the Environment,” <http://www.cleartheair.org/proactive/newsroom/release.vtml?id=17320>.

electricity generating unit that is at least 5 MW, sells its electricity, and created GHGs] in this State for inclusion in a registry of GHG emissions...”⁶² Additionally, NDEP is already required under the Clean Air Act and Nevada statute to review applications for new sources of stationary air pollution. Therefore, the assessment, measurement, and monitoring of GHG emissions will already be occurring, and this regulation will incur no additional cost.

- 6. A description of any regulations of other state or government agencies which the proposed regulation overlaps or duplicates and a statement explaining why the duplication or overlapping is necessary. If the regulation overlaps or duplicates a federal regulation, the name of the regulating federal agency.**

The proposed regulations do not overlap with any regulations of other state or government agencies in Nevada, nor do the proposed regulations overlap or duplicate a federal regulation.

- 7. If the regulation includes provisions which are more stringent than a federal regulation which regulates the same activity, a summary of such provisions. The statement must include the specific citation of the federal statute or regulation requiring such adoption.**

The proposed regulations do not overlap or duplicate a federal regulation.

- 8. If the regulation provides a new fee or increases an existing fee, the total annual amount the agency expects to collect and the manner in which the money will be used.**

The proposed regulations do not provide for a new fee or increases in an existing fee.

⁶² Senator Titus, “Senate Bill 422,” May 31, 2007.

United States Senate

WASHINGTON, DC 20510-7012

July 24, 2007

Walter M. Higgins III
Chairman and Chief Executive Officer of Sierra Pacific Resources; Director and Chief Executive Officer of Nevada Power Company and Sierra Pacific Power Company.
Michael W. Yackira
President and Chief Operating Officer of Sierra Pacific Resources
6100 Neil Road
Reno, NV 89511

Mike Segal, Chairman and CEO
LS Power
Two Tower Center, 11th Floor
East Brunswick, NJ 08816

Bruce A. Williamson, Chairman and Chief Executive Officer
Dynegy Inc.
1000 Louisiana Street - Suite 5800
Houston, Texas 77002

Mr. Bruce Wrobel, Chief Executive Officer
Sithe Global Power, LLC
245 Park Avenue - 38th Floor
New York, NY 10167

Dear Sirs:

I am writing to each of you regarding your company's proposal to build new coal-fired power plants in eastern Nevada and to express my strong opposition to those plants. Rather than making long-term commitments to old and inefficient combustion technologies, I believe that the goal for Nevada must be greater independence from fossil fuel and electricity imports. Nevada's financial and ratepayer resources should be heavily focused on rapid and significant investments in clean renewable energy and energy efficiency to ensure a more stable, affordable and secure energy future and to reduce the growing risks of global warming.

As I write this, tens of thousands of acres of Nevada are on fire – over 400,000 acres have already burned this year. Nearly 10 million acres across the West burned in 2006 – the highest number since records began in 1960. Scientists tell us that the same deep drought that has brought on these dangerous fire conditions may very likely be a normal condition far into the future, and that the Southwest will become increasingly drier and more arid if we and the world conduct business as usual. Studies have also shown that Lake Tahoe is warmer and its level is lower due to increasing average global and regional temperatures.

I am not a scientist, but I have spoken with many scientists about their research and know they are gravely concerned about the strong linkage between manmade greenhouse gas emissions and global warming. Neither I nor they can say without a doubt that the symptoms I described above are wholly due to global warming caused by manmade emissions. But it would be prudent for Nevada, the United States, and the entire world to begin reducing those emissions immediately and dramatically so that we can stabilize the global climate system before the middle of this century. Our nation has the moral responsibility to lead in these reductions, since more than forty percent of the carbon now in the atmosphere is related to America's industrial expansion over the last hundred years.

Fortunately, Nevada is blessed with a magnificent abundance of clean renewable energy resources that could provide most, if not all, of the energy needs of our fast growing state and perhaps beyond. However, this means making the right strategic investments now and choosing safe and sustainable technologies that will decrease emissions. According to the U.S. Department of Energy, "the solar energy resource in a 100-mile-square area of Nevada could supply the United States with all its electricity (about 800 gigawatts) using modestly efficient (10%) commercial photovoltaic modules." Similarly, the National Renewable Energy Laboratory reports that the largely untapped geothermal potential of Nevada and the Great Basin could provide tens of thousands of megawatts of baseload electricity generation as well as thermal energy within just a decade or two.

Please find enclosed a set of draft maps, prepared at my request by a variety of federal agencies with state agency assistance, of renewable energy resource areas within Nevada that are deemed "developable." These draft maps are not a formal endorsement by those agencies for specific renewable energy development in these areas, but I intend them to help direct investors, utilities and municipalities toward those areas for the best resource use that will not interfere with existing land uses or classified missions. Such information will be central to identifying where some of Nevada's potent wind resources may be developed, since very large amounts of airspace are blocked off from wind energy development due to mission-critical radar testing by the Air Force. Once the maps are final, they will be posted on a public website for further discussion and action.

It is my strong hope that the progress made to date by the utilities and federal agencies in installing significant solar electric and solar thermal production and buying renewables will grow exponentially. Such growth would create new jobs in every corner of Nevada, particularly rural areas, and encourage the development of a strong and sustainable clean energy industrial base. The state's renewable portfolio standard is a good start but should be considered a floor rather than a ceiling.

With the appropriate incentives and foresight, including decoupling electricity sales from utility return where appropriate, Nevada could and should become significantly more energy independent through greater development of renewables and penetration of energy efficiency. With an aggressive strategy, we could reduce the amount of fossil fuels – natural gas and coal – that Nevada ratepayers continue importing and paying more for every year, while, by any fair and balanced comparison, the free fuel of the sun, wind and earth continues getting cheaper. I encourage you to consider the outline of a Nevada Energy Independence plan (see enclosed) developed originally by Jon Wellinghoff.

former Nevada state consumer advocate and now a FERC Commissioner, which indicates that the state's growing demand for energy can be met largely through new renewable energy, energy efficiency and demand-side management.

As I wrote to the Governor recently, I believe Nevada should join the Western Regional Climate Initiative. It also makes sense for Nevada to work cooperatively with the Initiative states in rapidly deploying regional energy efficiency and demand-side management programs. Like several other Western states, the state of Nevada should also adopt stringent carbon emission performance standards for any new electricity generation in-state or for any necessary purchases of electricity from out of state. This will help build a West-wide pull for clean energy that Nevada is perfectly poised to satisfy and ensure that dirty power does not obtain an unfair advantage.

Meeting Nevada's demands for electricity, including the building of transmission lines to rural areas with significant renewable potential, is no easy task. But the decisions that are being made right now in boardrooms, by utility regulators, on Wall Street, and elsewhere, will affect ratepayers, the state, the West and perhaps the world for decades or longer. It is absolutely essential that in solving short-term electricity problems, we not commit our valuable and finite financial resources to technologies or energy sources that will pollute the air, increase the risks of global warming, and likely be far more expensive in the future than currently estimated.

By conservative estimates, the first phase of the coal plants proposed to be built in White Pine County will cost more than \$3.25 billion to construct. Once these plants are built, Nevada's ratepayers will pay up to half a billion dollars annually for 50 years or more in fossil fuel costs. The plants are expected to burn 166 rail cars or 20,000 tons of coal every single day. That will send more than 13 million tons of pollution into the air annually. This pollution will decrease visibility for miles, including in the Great Basin and Zion National Parks, as well as depositing unhealthy levels in ecosystems near and far from the plants, and contribute to further imbalancing the global climate system. This pollution will have a negative effect on the health of the people living near the plants, on tourism, hunting and wildlife populations.

Rather than spending over \$8 billion in the first ten years of these proposed coal plants' construction and operation, that money could instead be used to put a 3 kilowatt solar electric (PV) system on the roof of about 600,000 houses across the state. This is only one example of a much better way to spend finite fiscal resources. Such a shift to solar could produce 350 MW of electricity and increase the energy independence of millions of Nevadans. The solar electricity generated would be useful during peak hours, improve air quality, and never cost another penny in fuel costs. Furthermore, the cost of solar energy systems will go down dramatically and PV efficiency and output will increase.

Because I believe that renewable energy makes far more sense than coal for Nevada, I will continue my efforts at the Federal level to obtain funds for the development of renewable energy projects. I will also be working to pass long-term production and investment tax incentives and to enact energy policy changes such as a national renewable electricity standard to make Nevada's renewable efforts even more profitable.

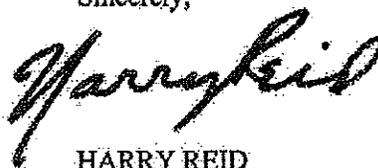
I will also introduce legislation and support efforts to increase sustainable rural economic development through renewable energy and financing of related transmission access.

But because I believe that developing renewable energy in Nevada is far preferable to coal for the sake of the economy, public health and the environment, I will use every means at my disposal to prevent the construction of new coal-fired power plants in Nevada that do not capture and permanently store greenhouse gas emissions.

I look forward to working with you, the Governor, the congressional delegation, the state assembly, the public utilities commission, financiers, and the public, on realizing the vision of making Nevada more energy independent through the use of renewable energy and energy efficiency. To that end, I hope you will join with me and other interested parties to begin what will be an important state-wide discussion on how to transform Nevada into a national and global leader in the deployment of renewable energy technology in Ely to Fallon to Pahrump and beyond.

Thank you for your time and attention to my concerns.

Sincerely,

A handwritten signature in black ink that reads "Harry Reid". The signature is written in a cursive, flowing style.

HARRY REID

CC:

Senator John Ensign

Congressman Dean Heller

Congressman Jon Porter

Congresswoman Shelley Berkley

Governor Jim Gibbons

Lieutenant Governor Krolnicki

State Controller Kim Wallin

Speaker Barbara Buckley

Assembly Minority Leader Garn Mabey

Senate Majority Leader Bill Raggio

Senate Minority Leader Dina Titus

State Senator Dean Rhoads

State Senator Randolph Townsend

Assemblyman Pete Goicoechea

Commissioner Jo Ann Kelly, Chairman

Commissioner Rebecca Wagner

Commissioner Sam Thompson

Director Hatice Gecol – State Office of Energy

Director Allen Biaggi – Department of Conservation and Natural Resources

Administrator Leo Drozdoff - Department of Environmental Protection

White Pine County Commissioner Brent Eldridge, Chairman

White Pine County Commissioner Laurie Carson

White Pine County Commissioner David Pound

White Pine County Commissioner Gary Lane

White Pine County Commissioner Raleene Makley

Mayor John Hickman

Councilman Shane Bybee

Councilman Steven Marich

Councilman Rom Dicianno

Councilman Jerrold Meyer

Councilman Jim Northness

General Manager Pat Mulroy – SNWA

Colonel Michael L. Bartley, Commander, 99th Air Base Wing,

Captain Michael Glaser, Fallon Naval Air Station

Cindy Nielsen, Superintendent – Great Basin National Park

Kimball Goddard, Director – US Geological Survey –

Chief of the Nevada Water Science Center

Ron Wenker, Director – BLM – Nevada State Director

Ed Monnig, Supervisor – US Forest Service

Appendix 4: Presentation by Nevada Public Utility Commission (14 pages)

Integrated Resource Plan ("IRP")

Public Utilities Commission of
Nevada ("PUCN")



PUCN's Statutory Authority

- NRS 704.741 - Requires that a Utility file every three years a plan to increase its supply of electricity or decrease its demand. This plan is commonly referred to as an Integrated Resource Plan (“IRP”).
- NRS 704.746 - Requires that the PUCN hold hearings on the adequacy of the IRP. It allows the PUCN to give preference to the measures and sources of supply that:
 - Provide the greatest economic and environmental benefits to the State;
 - Provide levels of service that are adequate and reliable.



PUCN's Statutory Authority

- NRS 704.751 – Requires the PUCN to accept the IRP or specify any portions of the IRP that the PUCN deems to be inadequate.
- NRS 704.7821 – Requires that the PUCN establish a portfolio standard that directs each provider of electric service to generate, acquire or save electricity from portfolio energy systems (i.e. renewable) or efficiency measures in an amount that is not less than 20% of the provider's total sales by the year 2015.

PUCN's Regulation Governing Utility Supply Plans

- NAC 704.937 outlines the criteria by which Utility supply plans are presented and evaluated. The criteria includes:
 - Flexibility
 - Diversity
 - Reduced size of commitments
 - Choice of projects that can be completed in short periods
 - Displacement of fuel
 - Reliability
 - Selection of fuel and energy supply portfolios
 - Financial instruments or electricity products



PUCN's Regulation Governing Utility Supply Plans

- (NAC 704.937 continued)
All of the supply plans proposed by the Utility must:
 - Provide adequate reliability;
 - Be within regulatory and financial constraints;
 - Meet the portfolio standard;
 - Meet the requirements for environmental protection.
- The Utility is required to identify its “preferred plan” and fully justify why that supply plan was selected.



What the PUCN Approved (2006)

Docket Nos. 06-06051 / 06-07010

- Approved NPC/SPPC's request to proceed with the development of Phase 1 of the Ely Energy Center ("EEC") and the North-South Intertie.
- Granted resource planning approval of \$300 million for development activities associated with the EEC and the Intertie.
 - Limited NPC/SPPC's expenditure authority to \$155 million until the final air permit for the EEC is granted.
 - Authorized NPC/SPPC to spend the additional \$145 million once the final air permit is granted.

What the PUCN Approved (2006)

Docket Nos. 06-06051 / 06-07010

- Ordered NPC/SPPC to file a resource plan amendment (“EEC Amendment”) once the air permit is received (Q2 of 2008).
- The EEC Amendment is to contain the following information:
 - A detailed cost estimate for the EEC
 - An updated project schedule (and status)
 - A new economic analysis using updated fuel and rail costs, as well as updated environmental factors (including CO₂ regulation)

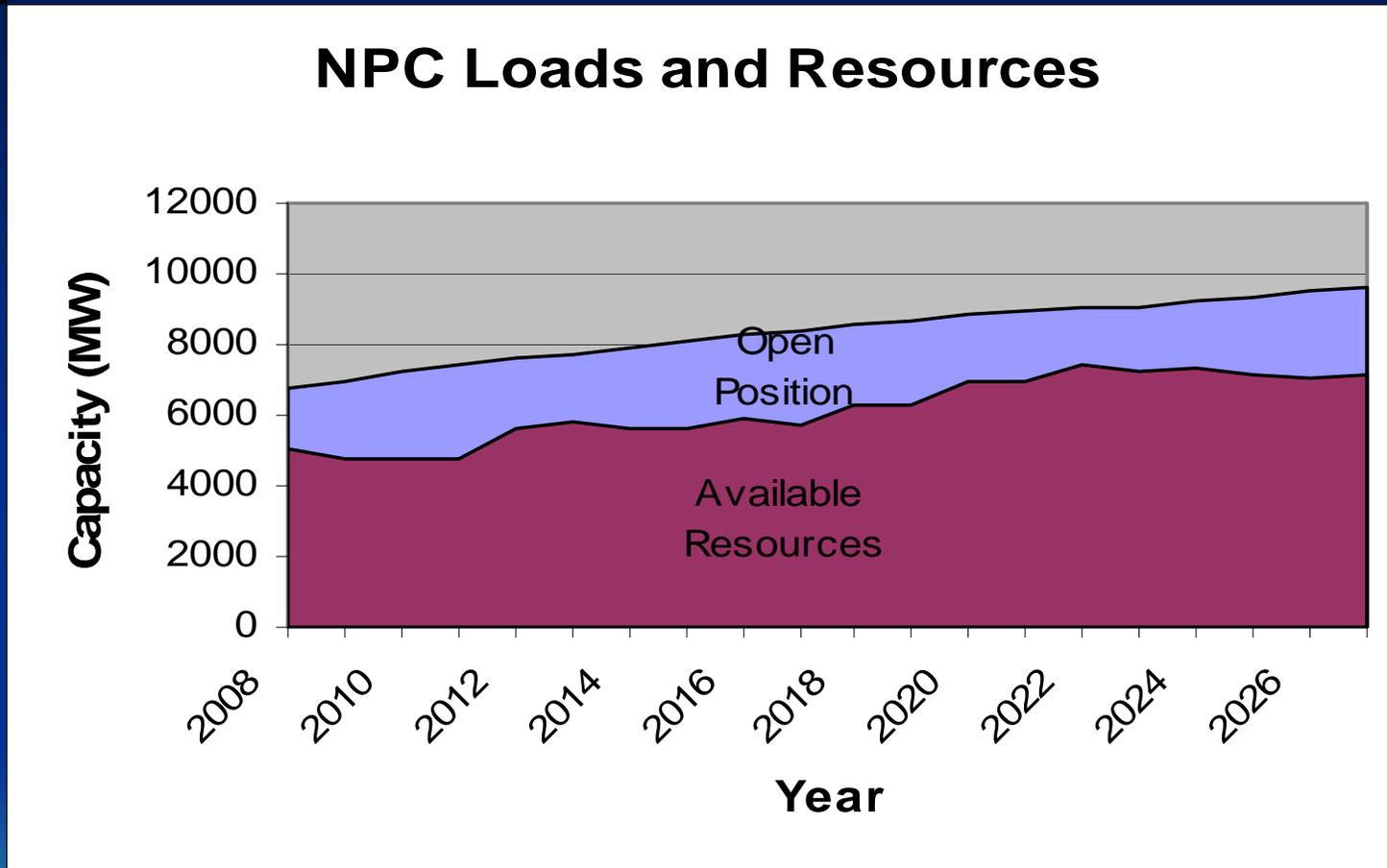


Why the PUCN Authorized NPC/SPPC to Proceed with Development of the EEC

- The PUCN took into consideration:
 - Infrastructure needed to support the State's economy;
 - Resource adequacy in Nevada and the Western United States;
 - Fuel diversity, fuel costs, and fuel availability;
 - Economic benefits associated with construction of the EEC;
 - Impact on customer rates;
 - Projected environmental impacts and costs;
 - The timing of new resources;
 - Available generation options;
 - Level of capacity available from renewable resources;
 - Conservation and load management (i.e. Demand Side).



Specific Information Considered



- Even with the EEC, NPC is still going to be short resources

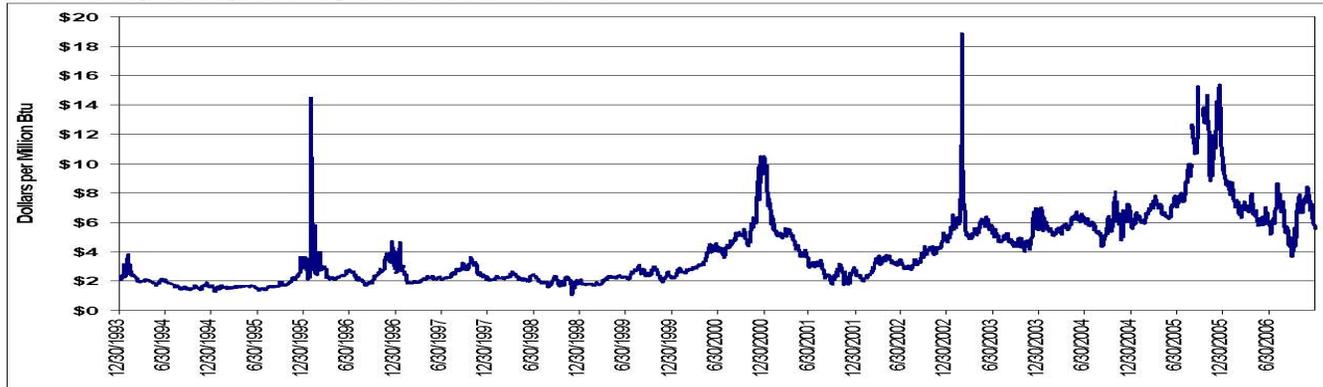
Fuel Diversity

- From 1995 to 2006, NPC's peak load almost doubled from 3000 MW to 5600 MW.
- During that 11 year period, NPC constructed only one new generating unit (a 72 MW CT).
- In 2006, NPC acquired 1600 MW of natural gas fired generation (Lenzie & Silverhawk plants).
- NPC is 75% to 80% dependent on natural gas fired generation for meeting electricity demand.



Price Stability

Figure 1: Daily Henry Hub Spot Price, 1994-2006



Source: NGI's Daily Gas Price Index, Intelligence Press

- Natural Gas prices have been very volatile:
 - Weather Conditions (Hurricanes)
 - World events
 - Price of oil (natural gas and oil prices are correlated)
 - Dwindling North American Supplies
 - Difficulties in permitting Liquefied Natural Gas facilities

**** The EEC will lessen this dependency on Natural Gas ****

Price Stability

- Nevada Power Company:

- Since 1990 Residential Electricity Rates have increased by almost 120%

1990
5 cents/kwh

2006
11 cents/kwh

- Sierra Pacific Power Company:

- Since 1990 Residential Electricity Rates have increased by almost 73%

1990
7.5 cents/kwh

2006
13 cents/kwh

NEVADA HAS THE HIGHEST ELECTRICITY RATES IN
THE WESTERN UNITED STATES (Excluding California)



Other Actions Taken By The PUCN

- Demand Side Management/Conservation
 - NPC's budget has increased from \$2.8 million per year (2001) to \$37 million per year (2008)
**** A 1200% Increase in the DSM Budget ****
 - SPPC's budget has increased from \$2.8 million per year (2002) to \$10 million per year (2008)
**** A 257% increase in the DSM Budget ****



Other Actions Taken By The PUCN

- Renewable Energy Resources
 - The PUCN has approved between 50 MW to 100 MW of new renewable energy contracts every year since 2003.
 - The plan is to approve even more renewable resource contracts as NPC becomes compliant with the State's Renewable Portfolio Standard.
 - Key projects include
 - 5 new geothermal contracts with Ormat (100 MW)
 - The 65 MW Nevada Solar One facility
 - A 10 MW Solar PV facility at Nellis Air force Base
 - 1 MW Biomass Plant at the Carson Prison



Appendix 5: Written Comment - Sierra Pacific Ressources (36 pages)

P.O. Box 10100, Reno, Nevada 89520-0024 • 6100 Neil Road, Reno, Nevada 89511 • 775.834.4011
P.O. Box 98910, Las Vegas, Nevada 89151-0001 • 6226 West Sahara Avenue, Las Vegas, Nevada 89146 • 702.367.5000

August 31, 2007

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

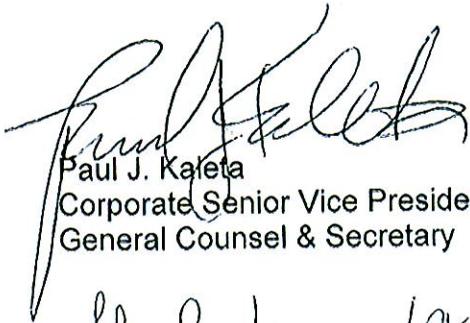
Sent Via Email – jbwalker@ndep.nv.gov

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 (CO₂) 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 CO₂ 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.¹

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.²

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.³ White Pine County and area communities will

¹ *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”).

² 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).

³ 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.⁴

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 PUCN⁵ 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.⁶

The evidence regarding Nevada's continued growing demand for electricity cannot be disputed.⁷ 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.

⁴ 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.

⁵ 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.

⁶ 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").

⁷ 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.⁸ 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.⁹

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.¹⁰

⁸ 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.

⁹ These are estimates and will necessarily change as forecasts are refined.

¹⁰ 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.¹¹ 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.¹²

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.

¹¹ *Id.*

¹² 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.¹³ 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

¹³ 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.

it, that it was a risk that should be avoided. Order, ¶198.¹⁴ 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.¹⁵

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

¹⁴ 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.

¹⁵ 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 CO₂ 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 CO₂ renewables from the EEC transmission line and other demand side management, SPR estimates that more than 50% of any of the increases in CO₂ emissions from the EEC will be offset.

Further, SPR does not presently anticipate that the CO₂ emissions will continue throughout the life of the proposed units. Rather, SPR has planned Phase 1 of the EEC to allow room for CO₂ 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 CO₂ emissions than the super critical units in Phase 1.¹⁶

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.¹⁷ 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.¹⁸ 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 SO₂ emissions.¹⁹ SPR's analysis is that a wet scrubber is beyond what is required for BACT, and will reduce SO₂ emissions 40% more than the alternative dry scrubber.²⁰ EEC has also proposed selective catalytic reduction, along with low NO_x burners and over fire air, to capture 87% of NO_x emissions.²¹ These are three,

¹⁶ 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>.

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

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

¹⁹ Permit Application, Appendix B 2, 25, 39.

²⁰ Permit Application, Appendix B 38-39.

²¹ 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.²² SPR has also proposed state of the art fabric filters to control particulate and other emission sources.²³

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.*²⁴

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.

²² Permit Application.

²³ Permit Application, Appendix B 2.

²⁴ 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.²⁵

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, ¶200.²⁶

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

²⁶ 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.²⁷

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.

²⁷ 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.²⁸ 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

²⁸ 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);²⁹ *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

²⁹ “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.”³⁰; *see also* *Alabama Power Co. v. Costle*, 636 F.2d 323, 370 n. 134 (D.C. Cir. 1979).³¹

The EAB has in fact already twice considered and expressly rejected the claim that a state is “required” to address CO₂ 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 CO₂ is an unregulated pollutant and, therefore, a BACT analysis is not required. EPA guidance documents provide additional confirmation.³² Petitioners offer no relevant authority to the contrary.³³

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,

³⁰ *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...”).

³¹ 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.”

³² 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 CO₂ was the subject of a study and if those studies indicate CO₂ 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>.

³³ 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.³⁴

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.³⁵

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

³⁴ 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.

³⁵ Order ¶ 180.

predict that the EEC will generate almost 19 million metric tons of CO₂ per year.³⁶ Yet in reality, it is estimated that the Ely Energy Center will produce only 10.5 million metric tons of CO₂ per year,³⁷ more than half of which will be offset, as explained above.

- **Petitioners’ artificially inflate their “cost” estimates by using the overestimate of CO₂ emissions.** Petitioners offer estimates of the “economic” and “social” cost of CO₂ 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 CO₂ 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.³⁸ 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.³⁹

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.

³⁶ Petitioners multiplied the generating capacity of phase 1 of the EEC (1500 MW) by a faulty emissions factor of 12,661 tons of CO₂ per megawatt per year. Petition at 4 n.2.

³⁷ 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>.

³⁸ 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).

³⁹ 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.

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.⁴⁰

⁴⁰ 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.⁴¹ 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

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.

⁴¹ 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. 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.⁴² 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.⁴³

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.⁴⁴ The Committee represents a wide spectrum of viewpoints in

⁴² 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/.

⁴³ 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.

⁴⁴ 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.⁴⁵
- 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.⁴⁶

In addition, the legislature enacted SB 422 which establishes a statewide registry of greenhouse gases emitted in Nevada.⁴⁷ The law defines a "greenhouse gas" to include not only CO₂, 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 CO₂ equivalent emissions and a program by which allowances would be banked and traded. The

⁴⁵ http://www.eere.energy.gov/states/news_detail.cfm/news_id=11045

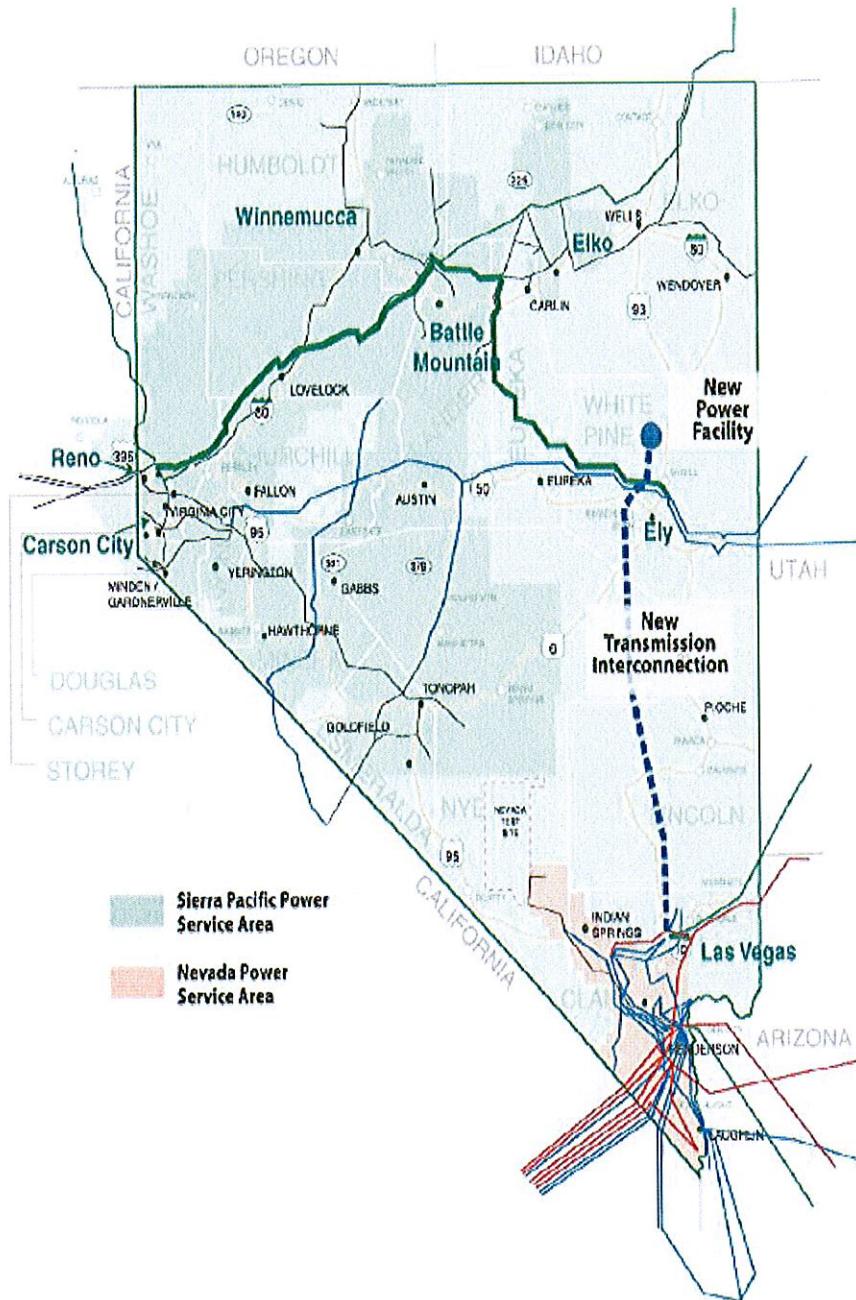
⁴⁶ *Id.* <http://www.leg.state.nv.us/74th/Reports/history.cfm?ID=403>

⁴⁷ 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.

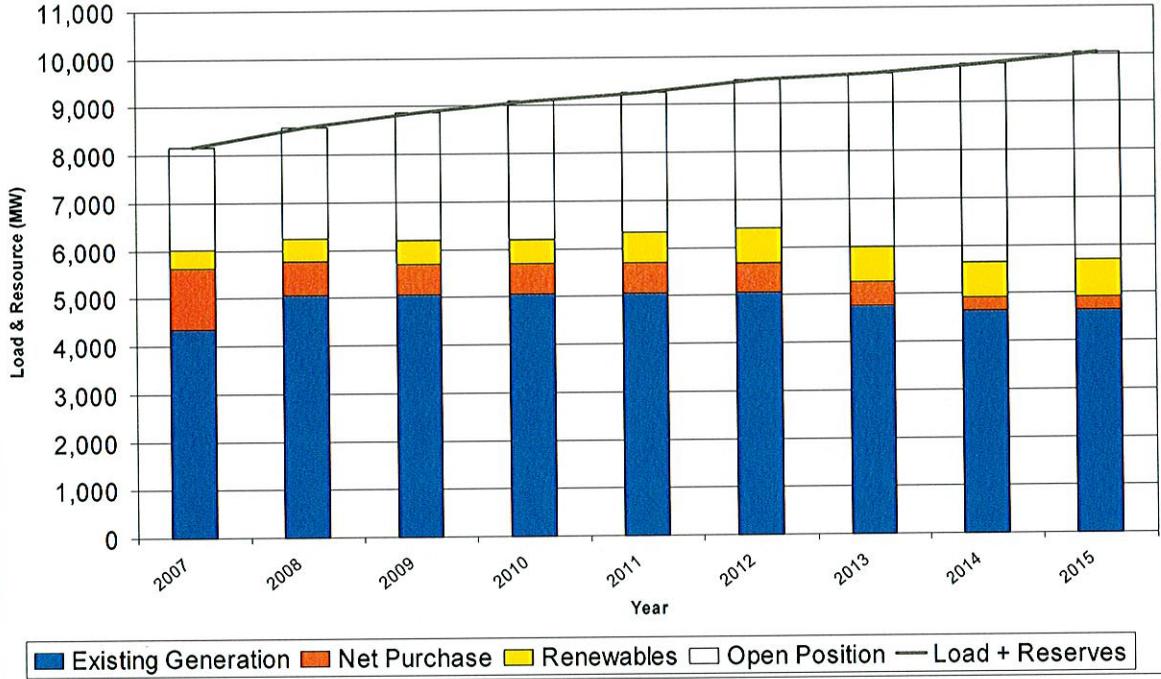
Accordingly, the Nevada Legislature evaluated the issue and determined that a rulemaking like that the Petitioners are advocating was premature, so they instead required a registry. The registry, combined with the Governor's Advisory Committee, is a logical approach. Moreover, this Commission should 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**



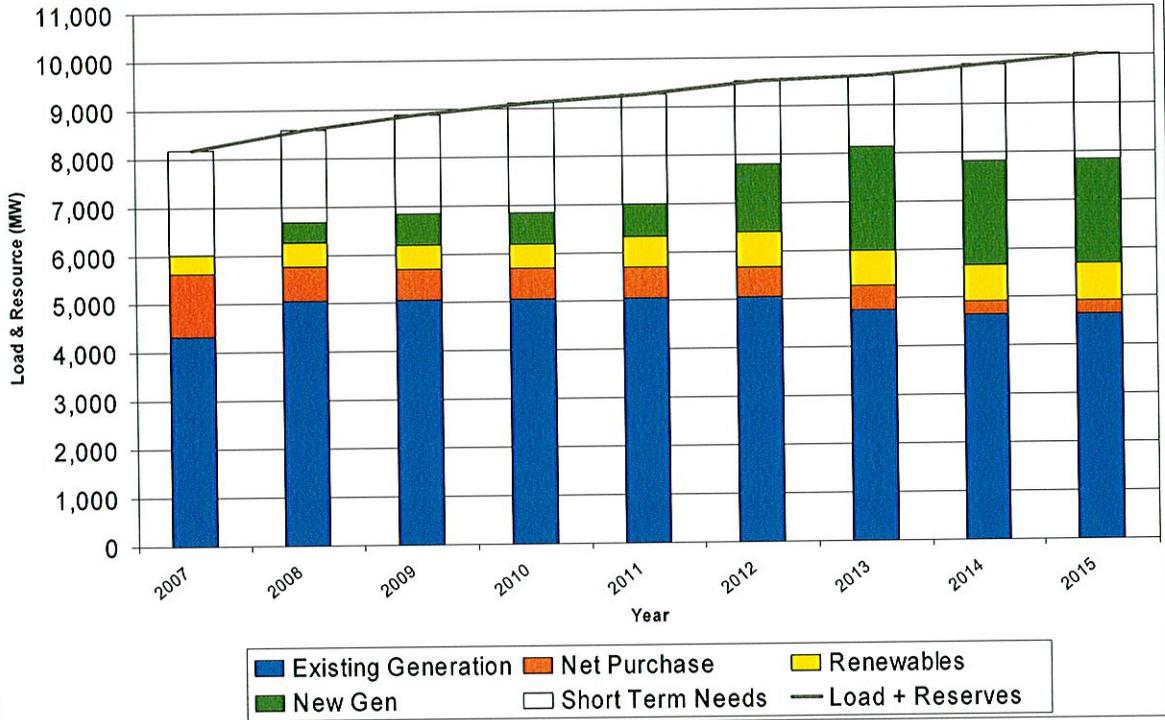
Source: Sierra Pacific Resources, Application for Operating Permit to Construct, Figure 1-1 (Feb. 2007)

**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.

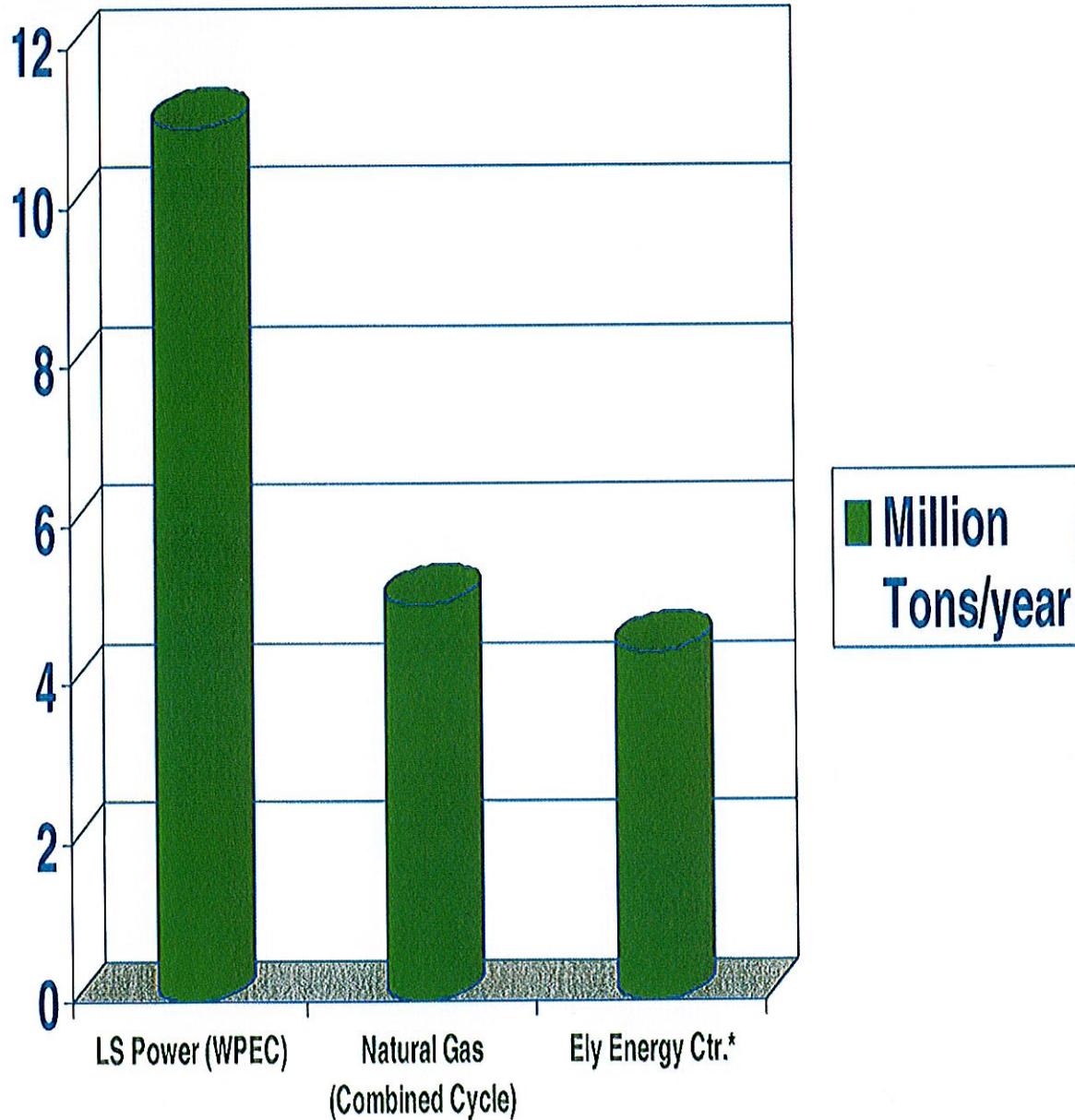
Sincerely,



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 51st 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.

Appendix 6: Written Comments - LS Power (6 pages)



LS Power Development, LLC

400 Chesterfield Center, Suite 110
St. Louis, MO 63017
(636) 532-2200 · Fax (636) 532-2250

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

Appendix 7: Written Comments – Sithe Global [Toquop Energy LLC] (4 pages)

Toquop Energy LLC

Toquop Energy LLC
NEW YORK OFFICE / HEADQUARTERS
245 PARK AVENUE · 38TH FLOOR
NEW YORK, NY 10167
PHONE 212-351-0000
FAX 212-351-0002

HOUSTON OFFICE
THREE RIVERWAY · SUITE 1100
HOUSTON, TEXAS 77056
PHONE 713-499-1155
FAX 713-499-1167

August 31, 2007

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

Re: Toquop Energy's Comments on the Petition by Western Resource Advocates

Dear Mr. Walker:

Toquop Energy LLC (Toquop) appreciates the opportunity to submit the following comments on the Petition by Western Resource Advocates to the Nevada State Environmental Commission dated July 31, 2007 (Petition). In this letter we provide comments addressing: i) Effect of Suspension of Permitting, ii) The need for new generation, iii) The Role of Renewable Generation, iv) Dependency on Natural Gas, v) New efficient plants reduce CO₂, and vi) CO₂ Capturing and Sequestration.

Toquop Energy Project is a 750-megawatt (MW) coal-fired power plant being developed by Toquop Energy LLC, an affiliate of Sithe Global Power in southeastern Lincoln County. The project originally began permitting as a 1,100 MW gas plant in 2002. However, high natural gas prices lead to the conversion to a coal-fired project. Permitting on the Toquop project began in 2005 and we expect to receive final permits by February 2008. The plant will be one of the most efficient plants in the U.S., with a supercritical pulverized coal-fired boiler operating at a net heat rate of 8,650 Btu/kWh. Very low emission rates have been proposed for this project including 0.06 lb/MMBtu for both NO_x and SO₂ and 0.01 lb/MMBtu for filterable PM, all on a 24-hour average, which will make Toquop the lowest emitting coal fired power plant in the U.S. – 10-20 times cleaner than older facilities. The plant will also use dry cooling to reduce water consumption by 80% compared to a water-cooled plant and has committed to use municipal waste water to meet its needs as it becomes available. Toquop also has the lowest water usage per megawatt hour of any coal project proposed in the State. Toquop expects both a Draft Air Permit and Draft EIS to be issued in September 2007.

Toquop with its state of the art design not only results in unique environmental performance, but it is also about economic opportunity and revenues for rural Lincoln County. The \$1.3 billion power plant will increase the tax base in Lincoln County more than 15 times over the current assessed value of \$83 million. The plant will average 812 construction workers for the four-year construction period and 110 full-time operations personnel. The direct and indirect payroll during

Toquop Energy LLC

construction will average \$159 million per year over the construction period and \$14.8 million per year during plant operations. Construction is expected to begin in 2008 with operations planned in 2013.

Effect of the Suspension of Permitting

Power consumers expect adequate supplies of reasonable priced reliable power. Utilities and power plant developers need a level of certainty in the permitting process to develop new resources. It takes up approximately 3 years and \$20-200 million dollars to permit and perform preliminary engineering for a new base load plant and an additional 4-5 years to construct. Granting the petitioners request to suspend permitting while new environmental standards are considered would discourage the future development of any new electric resources in Nevada. Not only would this impact consumers' access to reliable and affordable power, it would substantially increase development risks if the permit process were suspended each time revisions in environmental standards were considered. Any significant delay in getting new generation online to meet the load growth will put a severe strain on the electric system and could lead to another energy crisis and result in significantly higher electric prices.

Need for New Generation

The Southwest and the State of Nevada, face severe shortages of reliable and affordable electrical power. One reason is the region's substantial growth. According to recent U.S. Census data, Nevada is the fastest growing state in the Union, with an increase in population of over 60% in the last ten years. As well, Clark County and Las Vegas are the nation's fastest growing county and city. Nevada Power experienced a 5.1% increase in customers in 2006 and had to purchase 45% of the energy used by their customers in 2006. Further, the region is also facing reductions in what has been reliable generation. The 1,580-megawatt (MW) Mohave Generating Station near Laughlin, NV, has been out of service since January of 2006 and is considered by many to be permanently retired. The 175 MW's of generation capacity at the Clark Generating facility in Las Vegas was recently retired and three units – with nearly 300 MW – at Clark County's Reid Gardner Station are scheduled to be shutdown in the next few years. This leaves the region without 2,000 MW from its current outstretched baseload generating capacity. The Western Electric Coordinating Council's (WECC) 2006 10-year plan forecasts that load growth in Southern Nevada, Arizona and New Mexico will increase over 8,245 MW over the time period 2006-2015. When this load growth is added to units expected to be retired there is a need for over 10,000 MW of new capacity or almost 30% of the existing generation in the region. Because it takes up to 6-8 years to permit and construct new base load generation, the projects that are currently being permitted will not likely become operational before 2012 at the earliest. Toquop's generation is expected to largely serve Nevada customers including significant expected load growth in Lincoln County the result from Lincoln County Land Act and Coyote Springs developments.

The Role of Renewable Generation

The State of Nevada has enacted a Renewable Portfolio Standard (RPS) in which 20% of the state's retail load must come from renewable generation. We believe that there must be a strong role for energy efficiency and conservation, solar, wind, and other renewable power in conjunction with new highly efficient coal-fired base load capacity in meeting Nevada -- and the region's -- significant power needs. At the same time, this strategy will dramatically reduce the state's and the country's dependency on natural gas and energy imports. It is unrealistic to assume there will not be the need for significant baseload electricity resources to meet Nevada's power needs in addition to renewables. One must remember that most renewable generation is intermittent and needs to be supported by base load generation to meet customer demand at all hours. New large-scale, baseload generation options are limited to coal, natural gas, and nuclear.

Toquop Energy LLC

While renewable power does not produce carbon dioxide (CO₂) emissions they are not without environmental impacts. To build a solar project that generates the same amount of annual generation as the Toquop Energy Project would require over 20,000 acres and risk habitat of several endangered species.

Current Dependency on Natural Gas

Adding to the complexity of the power supply issue, Southern Nevada, Arizona and New Mexico relies much too heavily on natural gas-fired electric generation to meet its current needs, with more than 51% of the region's capacity coming from gas compared to 26% from coal. This compares to the entire U.S. which generates more than 50% of its generation from coal and 18% from natural gas. U.S. natural gas prices have increased over 60% since the start of this decade. The U.S. Energy Information Administration reports that natural gas wellhead prices averaged less than \$4.00/MMBtu from 2001 to 2003 and from 2004 to 2006 have averaged approximately \$6.40/MMBtu. In response to higher prices, drilling rig counts and gas well completions have increased dramatically but U.S. natural gas production has barely changed. U.S. natural gas producers say that they face difficult challenges and may not be able to increase U.S. natural gas production very much even with higher prices. They report that costs are increasing even faster than natural gas prices, new fields tend to produce far less gas per well than old areas, and decline rates across the board are getting steeper every year. The WECC 2005 10-year coordinated plan notes that an area wide interruption of gas supply can pose an electric supply reliability problem. On August 27, 2007 the Chair of the Nevada Public Service Commission announced plans for a summit to discuss gas supplies in the State. Chairwoman Jo Ann Kelly said that the PUC staff has concerns that the supply basins of natural gas that serve Nevada are flattening out. She also noted that Southern Nevada uses natural gas to generate all but 18% of its electric power.

It seems certain that the U.S. will be forced to rely on increasing imports of natural gas, but Canada the traditional source of imported natural gas is facing the same difficulty with flat or declining domestic gas production and growing demand. The growing global market for liquefied natural gas (LNG) is certainly a promising source of supply given that 96% of the world's proven natural gas reserves are located outside of North America. However, just as with the global oil market, there needs to be recognition that LNG suppliers will look to sell to the highest price market and European and Asian demand for natural gas is expected to be strong. Furthermore, the top LNG export countries notes several in the top 10 with recent security or instability issues including Indonesia, Algeria, and Nigeria.

Since CO₂ is a global issue the evaluation of fuel related CO₂ emissions needs to include the full fuel cycle, this especially applies to LNG. According to a recent article published in the July 2007 Environmental Science and Technology by researchers at Carnegie Mellon University, the life cycle CO₂ emissions of LNG used to produce electricity approach the CO₂ emissions from coal. If LNG is the incremental fuel for new gas fired plants the life cycle CO₂ emissions may not be less than modern efficient coal plants.

New Efficient Power Plants Reduce CO₂

Preventing the construction of new efficient coal plants and while allowing old plants to continue to operate will not further the goal of reducing carbon emissions. Any long-term solution to climate change will have to include replacement of older and less efficient generating units with cleaner, more efficient modern plants. This replacement would significantly reduce U.S. carbon emissions. According to the Department of Energy (DOE), the U.S. has approximately 315,000 MW of installed coal-fired generation capacity. By 2030, over 150,000 MW of such coal-fired capacity will be more than 50 years old. The simple, though time-consuming and costly, effort to replace these older coal units with new supercritical coal-fired boilers of the same total capacity would reduce greenhouse gases emitted by such coal-fired projects by 25% due to the increased

Toquop Energy LLC

efficiency of the new, advanced coal technologies. For example, the technology proposed for Toquop is approximately 25% more efficient than the typical 50 year old coal plant, meaning it will use 25% less fuel, as measured by Btu content, to produce a similar amount of electricity on an average annual basis. The replacement of old coal capacity with new efficient coal plants would allow the U.S. to reach its goal to reduce electric power related CO2 emission by up to 25% and will have the added benefit of reducing other power plant emissions by up to 90%.

CO2 Capture and Sequestration

Today, more than ever, we know that solutions to climate change are a significant challenge. Toquop has been working with governmental agencies and industry to develop laws and policies – and most importantly, advanced technologies – that will reduce man-made emissions of CO2 and other greenhouse gases. We are actively exploring options that may allow us to capture and sequester CO2 emissions from our Toquop Energy Project. We are also actively studying the technological and commercial implications of carbon capture and sequestration (CCS). After meetings with experts from the national laboratories and with major equipment suppliers and CO2 users, we have determined that, at this time, we are unable to identify a commercially feasible solution to CCS. We are optimistic that CCS will become feasible in the future and the Toquop Energy Project is being designed to enable a future CCS retrofit.

The Petition requests that the State of Nevada develop a discriminatory standard of 1,100 pounds of CO2 per MWh that would only apply to new coal plants. This is a standard that cannot be met by even the most efficient new coal plants, such as Toquop, which emit approximately 2000 lbs/MWh and would have the effect of prohibiting new coal generation. If Toquop were not built there would likely be little effect on regional CO2 emissions, as Toquop's generation would likely be replaced by a combination of existing and new baseload plants that would also generate CO2. The range of CO2 emitted could range from over 7.5 million tons by extending the life of existing subcritical coal units, to 3.2 million tons if replaced by a new natural gas fired unit. CO2 emissions from older less efficient gas units or from gas peaking units would likely range from approximately 3.9-4.6 millions tons per year. This compares with Toquop's projected CO2 emissions of approximately 5.4 million ton per year.

Finally, it is important to understand that CO2 emissions and its potential effects are not a local air quality issue. CO2 emissions from any new source in China or India will have precisely the same impact on climate change in Nevada as CO2 emissions from Toquop.

Thank you for the opportunity to provide the above comments on the Petition. Toquop is committed to being a partner in meeting Nevada's energy needs in an environmentally responsible manner. If you have any questions or we can be of assistance, please let me know.

Sincerely,



Dirk Straussfeld
Executive Vice President

Appendix 8: Written Comments – White Pine County Commission

Laurie L. Carson, Commissioner
Brent Eldridge, Commissioner
Gary Lane, Commissioner
RaLeene Makley, Commissioner
David Pound, Commissioner
Donna M. Bath, Ex-Officio Clerk of the Board

Courthouse Annex
801 Clark Street, Suite #4
Ely, Nevada 89301
(775) 289-2341
Fax (775) 289-2544

White Pine County Board of County Commissioners

September 6, 2007

RECEIVED

SEP 12 2007

ENVIRONMENTAL PROTECTION

Mr. Lew Dodgion, Chairman
Nevada State Environmental Commission
94 Ruby Lane
Carson City, NV 9706

Dear Mr. Dodgion:

I am appearing before the Nevada State Environmental Commission today on behalf of the White Pine County Commission to respectfully request that you deny the petition submitted by the Western Resource Advocates. As the host county for two of the power projects targeted by the petition, the Nevada State Environmental Commission's action will have a direct impact on White Pine County government and its citizens. The County Commission has two concerns with petition submitted by Western Resource Advocates: 1) We believe that the regulation requested is contrary to standards of fairness in the regulatory process and seeks to over-ride clear policy direction from the state legislature and governor; and 2) The petition attempts to establish the state policies and priorities for energy development that exclude construction of new coal fired power plants.

- 1) The petition asks that the Environmental Commission suspend all activity on air quality permit applications and to establish rules to restrict any new power plants to a standard of 1,100 pounds of CO₂ per megawatt hour for all new plant construction as well as purchases of out-of-state power generated by new coal plants. The County believes that it is not fair to change the rules on applications that are in progress.

The petition bases the need for the new rules on the recent ruling by the Supreme Court (Massachusetts vs. EPA) regarding CO₂ emissions for new motor vehicles and an appeal of an EPA determination not to extend regulations of CO₂ emissions to power plants that is pending (State of New York et al v. EPA). The petition urges the new rules because the court case appears to authorize the state to regulate CO₂ for power plants, claiming that Nevada's current regulatory processes are unlawful and inconsistent with the Supreme Court and supporting the new rules so that, "Nevada will be a leader in the area of climate change

regulation.” White Pine County believes that Nevada should take action based on firm direction from EPA.

The White Pine County Commission followed the discussion on SB 422 throughout the last legislative session. Both the Senate and the Assembly approved the bill unanimously, it was signed into law by the Governor on June 13 and became effective July 1. The discussion, including testimony by the Western Resource Advocates, determined that the state is not ready for a full-scale cap and trade program and it focused on the need for the state to initiate a registry and reporting process to establish a baseline before proceeding with regulations to restrict greenhouse gases. It should be noted that during the hearings, the companies proposing coal plants in White Pine County supported SB 422.

- 2) White Pine County has worked on the potential of a coal fired electrical power plant since 1978, and the community is well versed on energy issues. The members of the White Pine County Commission and the majority of White Pine County residents support the construction of modern coal fired electrical power plants. The plants will generate much needed jobs and business activity, provide opportunities for our young people to return to our area for jobs with potential for career advancement and wage rates comparable to those in the rest of the state, and provide tax revenues that will allow us to meet the needs of our citizens. We also value White Pine County’s environment. Many of us are lifelong residents. All of us care deeply about our mountains, our hunting and fishing, and our quality of life. The County is a cooperating agency on the EIS processes for both White Pine Energy Station and Ely Energy Center. In both cases, the Commission has been impressed with the level of environmental analysis required, the attention to potential environmental impacts, and the willingness of the companies to work with federal and state agencies to develop projects that are environmentally responsible. White Pine Energy Station is nearing completion of its development phase. During the past three and a half years, the company voluntarily modified its design to reduce water consumption by 80 percent to reduce potential impact to ground water, it modified the configuration of the plant site to accommodate concerns raised by NDOW regarding impact on wildlife habitat, it is using an activated carbon injection system to reduce mercury emissions to one-fifth the required level, and the company is working with a wind energy project to integrate renewable energy into its energy development program in White Pine County. Ely Energy Center is in the early stages of its development process, but our experience with Nevada Power and Sierra Pacific Power indicates that they are approaching the development of their project with the same level of concern for the environment and the people of White Pine County and the State of Nevada. In addition to the two coal projects, the County has worked with wind energy projects and recently met with representatives of a solar project.

The petition assumes that the proposed standard will force Nevada to turn to alternate methods of power generation. Nevada needs base load electrical power generation. Economically feasible base load power generation through coal gasification and carbon capture or renewable energy projects is not available. Increased reliance on natural gas puts Nevada at risk. The petition does not address the issue of older coal plants either in the state or restrictions on purchasing power generated outside the state. A comparison with the Mohave Generating Plant shows that the emissions from the proposed plants in White Pine County will be a small fraction of the emissions from the Mohave Plant.

The companies proposing the power plants have worked with NDEP in good faith, they have expended a great deal of money and followed the procedures required to submit their applications and work with the procedures established by the agency. The White Pine County Commission opposes the petition submitted by Western Resource Advocates because it seeks to "change the rules in mid-stream," to over-ride the direction set by the State Legislature and Governor through SB 422, and to dictate policy and thresholds that should be thoroughly researched and developed through careful consideration and input from all parties.

The White Pine County Commission believes that the state's approach to meeting its energy needs should combine concerns about the full range of environmental issues, the ability to meet current and future energy demand, and the need to provide Nevada citizens with electrical power at a reasonably economical rate. The White Pine County Commission supports a balanced approach to energy development that includes one modern pulverized coal plants, continued improvements in coal gasification and emissions control technology, and development of renewable energy potential.

Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "RaLeene Makley". The signature is written in dark ink and is positioned above the typed name.

RaLeene Makley,
County Commissioner

Appendix 9: Written Comments – Sierra Club



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

Appendix 10: Written Comments - Rick Spilsbury

Now is **Not** the Time to Put Our Heads in the Sand

I love the Central Great Basin. It's beautiful. It's clean. It's open. And it's free. But life in the high deserts of Nevada is not easy. There is very little water. There is very little vegetation. Life here has found a fragile balance in a rugged home. However; it is not inconceivable, that if things get tougher here, the Central Great Basin may become environmentally too harsh to support communities.

We're already starting to see signs here in Nevada of Global warming. Our glacier at Great Basin National Park disappears in the summer. Drought is more common. Wildfires are far more prevalent. Pine beetles have killed a third of the Schell Creek Range White Pine forest near my home.

If it were just Rural Nevada, I suspect that the rest of the country would just ignore our plight. The coal industry doesn't care if we suffer. The only losses they appear to care about are those on their accountants' spreadsheets. But **you** should care. This isn't just happening in Rural Nevada.

Since 1850, Glacier National Park has lost 90% of its glacier ice.

A 2006 Scripps Institute study reports that, because of higher temperatures, four times as many fires burned 6 ½ times more acreage between 1987 and 2003 than in the previous 16 years.

Just in 2006, in Colorado, pine beetles killed 640,000 acres of trees. In British Columbia, where temperatures have risen 4°F in the last century, the largest pine beetle infestation in recorded history has killed 23 million acres of pines. The infestation has reached as far north as Alaska, where 3 million acres have been devastated in the Kenai Peninsula alone.

These catastrophes aren't decades in the future. They've already happened. They're continuing to happen right now. This is humanity's life support system we've put into jeopardy. At this rate, we may be well on our way to a "Hell on Earth" scenario. Need I remind you - nearly every civilization before our own has collapsed.

Now is the time to reduce CO2 emissions. If we only reduce particulate emissions, Global Warming could end up twice as devastating because of reduced Global dimming.

I implore you to make the right decision. Let's take the time to get this right.

Let's Not Take the Extinction Option

On top of all the dangerous chemicals LS Power and Sierra Pacific will emit from coal-fired power plants in White Pine County, they will also emit over **two billion tons** of Global warming pollutants over the next 50 years.

No one knows how bad Global warming could get. Ignoring the possible consequences could be like stepping out in front of traffic without looking. To some extent today, we hold the fate of the world in our hands.

You may not think this is an obvious decision. So, let's simplify this. We have options. Let's weigh the risks of Global Warming. Here are four possible outcomes:

	We go Green	Status Quo
No Global Warming	<p>The over-prepared outcome. We clean up our act environmentally, and it wasn't necessary. America's economy falters because we can't compete with China, and we fall into a recession, or even a depression. But at least we'll breath clean air.</p> <p style="text-align: center;">Bad, but survivable</p>	<p>The miracle outcome. We continue to pollute the Earth and there are no significant consequences.</p> <p style="text-align: center;">OK</p>
Global Warming	<p>The outcome we prepare for. We clean up our act, and avert an environmental disaster. It cost more, but it was worth it.</p> <p style="text-align: center;">OK</p>	<p>The Hell on Earth outcome. We continue to pollute everything and ravage our planet's resources. This leads to an environmental collapse, which leads to an economic collapse – or worse. Millions, even billions could die.</p> <p style="text-align: center;">NO WAY!</p>

We **must** avoid that fourth outcome. But, so far, people seem to think it won't happen – at least not right away. They're wrong. For multiple compounding reasons; the planet is heating, and our weather is getting more inhospitable. We may not be able to control all of the causes of Global warming. But the more causes, the more we need to take control of those we can.

Need I remind you that the most resilient systems adapt – quickly. And those that don't adapt eventually cease to exist.

“Clean coal” is hype.

LS Power and Sierra Pacific intend to burn **750 million tons** of coal in White Pine County. That's almost two train loads of coal a day, for the next 50 years. And of course, **none** of the chemical byproducts from burning this mountain of coal will just disappear. What doesn't end up in our skies will be left in Nevada forever – in giant toxic waste piles.

Over the next 50 years, these “clean coal” power plants will release into **our** air:

- 20 tons of mercury
- 880,000 tons of carbon monoxide
- 26,000 tons of sulfuric acid
- 530,000 tons of sulfur oxides
- 470,000 tons of nitrogen oxides
- 230,000 tons of micro particulates
- 190 tons of arsenic
- 600 tons of benzene
- 330 tons of benzyl chloride
- 4,400 tons of hydrogen fluoride
- 270 tons of acetaldehyde
- 250 tons of methyl chloride
- 140 tons of acrolein
- 200 tons of lead
- and many more tons over 50 other chemicals

All of the chemicals just mentioned are dangerous. Some of these chemicals have even been used as weapons in war. Some of these chemicals are the primary components of acid rain. Even the micro particulates are dangerous. Some of these chemicals are poisonous in extremely small amounts. Some of these chemicals can cause learning and language disabilities, and brain damage.

According to an EPA study; 24,000 people die prematurely in the US every year from coal-fired emissions. This should be enough of a reason in itself to generate power by some other means. I don't want to risk people I care for getting sick or dieing. And I definitely don't want to risk the future of our planet so that some ruthless corporation can make an extra billion or two.

Thank you,

A handwritten signature in black ink, appearing to read 'Richard A. Spilsbury', written in a cursive style.

Richard A. Spilsbury
PO Box 1055
McGill, NV 89318
775-235-7557

Appendix 11: Written Comments - Delain Spilsbury

Ranching, Mining, and Hunting, & Gathering have sustained the people of the Great Basin for centuries.

In recent years, the newer residents of the Basin have been attempting to improve the economy of the area by promoting Eco-Tourism to the pristine environment of the Basin. They are experiencing success attracting tourism to the austere area. Great Basin National Park and the Great Basin National Heritage Area have been established by Congressional vote. Attracting more tourists to these remote, pure areas is next on the agenda.

Most of the rest of our Nation believes there is nothing in the Great Basin – they believe it is a wasteland. When the Basin purity is replaced with pollution from the proposed power projects, our only alternative will be to succumb to the rest of the Nation. The pollution will be the first step in creating an actual wasteland. The established plans of the developers is to drain the water, sully the air, soil and what's left of the water for their own financial benefit.

Please give "Time Out For Coal (burning)" serious thought. You will be saving the Great Basin and Nevada, and also be participating in an effort to save the World.

Thank you,



Delaine Spilsbury
PO Box 1055
McGill, NV 89318

Appendix 12: Written Comments - Nevada Conservation League



Nevada
Conservation
League Education Fund

September 5, 2007

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

Dear Mr. Walker,

Please find attached the written comments of the Nevada Conservation League Education Fund regarding Petition P2007-03. Our organization would also appreciate the ability to provide commentary at the hearing on Friday, September 7th, 2007.

Sincerely,



Kyle Davis
Policy Director

COMMENTS OF THE NEVADA CONSERVATION LEAGUE
EDUCATION FUND ON PETITION P2007-03

The Nevada Conservation League Education Fund is a Nevada 501 C3 charitable organization. Our organization's mission is to provide the citizens of Nevada and our state and local government with important information about conservation and the protection of our state's unique environment for Nevadans and for future generations. As a signatory to the petition being considered today, we want to express our full support for the provisions of the petition, and would ask that the Commission rule favorably on these issues.

Global warming is one of the most important issues facing the State of Nevada. As set forth in the IPCC Fourth Assessment Report, scientists are in near universal agreement that our planet is warming and that this warming is caused by human activities that release greenhouse gases into the atmosphere. The consequences of doing nothing about this problem are significant, and we are already seeing some of the impacts here in our state. Most of the scientific models predict that even if we can keep our greenhouse gas emissions at current levels, our state faces the strong likelihood of increased drought and wildfires. According to the Natural Resources Defense Council, this will be most pronounced in a decrease of water throughout the Great Basin as well as decreased stream flows on most Nevada rivers, including the Colorado River, which provides over 90% of the water for the Las Vegas Valley. A shorter winter, characterized by more precipitation falling as rain rather than snow, will lead to drier conditions earlier in our forests and a lengthening fire season.

Keep in mind; these are the likely impacts if we curb our emissions today. If we increase our emissions, as the construction of coal plants would do, the consequences would be much worse.

Nevadans are already seeing the impacts right now. We have experienced a very warm summer in both Northern and Southern Nevada, and last year, both of our major cities were among the top cities in increase in summer temperature lows. Our fire season has been long and intense, with the Angora and Hawken fires threatening our neighborhoods and cities.

The time for action is now. We cannot continue to hide behind excuses and obfuscations of the facts. Global warming is a real problem; the scientific community is united on this. The impacts of global warming are likely to hit Nevada harder than many other states. All this petition is asking for is a standard for global warming pollution. Our state is taking the time right now to study the issue of climate change, through the Nevada Climate Change Advisory Committee, our participation in the Climate Registry and our observations of the Western Climate Initiative. It does not make sense to allow for the increase in Nevada's global warming pollution at the same time that we are studying how to decrease that pollution. We would encourage the Commission to act within their authority and regulate global warming pollution to protect the quality of life of Nevada's citizens.