



August 26, 2008

*Via Certified Mail*

Ed Schafer  
Secretary of Agriculture  
U.S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

James M. Andrew  
Administrator  
Rural Development Utilities Programs  
U. S. Department of Agriculture  
1400 Independence Avenue, S.W.  
Washington, D.C. 20250

RE: Notice of Violations of the National Environmental Policy Act

Dear Secretary Schafer and Administrator Andrew,

I am writing to inform you that the United States Department of Agriculture (“USDA”) and its Rural Utilities Service (collectively referred to herein as “USDA”) are in violation of federal law by approving investments in a number of new coal-fired power plants across the nation absent any review under the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 – 4370f. We ask that USDA immediately cease and withdraw all approvals for such coal-fired projects, and that the severe greenhouse gas pollution and other environmental impacts of and alternatives to these projects be evaluated under NEPA.

A brief background will help frame the issue of USDA’s non-compliance. In the 1930s, the Rural Electrification Administration (“REA”) was established by President Franklin Roosevelt to provide farmers and rural communities with access to electricity, providing direct loans and loan guarantees to electric cooperatives to serve customers in these areas. The REA was very successful and by the mid-1950s, more than 90 percent of U.S. farms had access to electricity.

In 1994, Congress established the RUS as a federal agency within the USDA, and the RUS absorbed the REA and its responsibilities for rural electrification. Under the authority of the

Rural Electrification Act of 1936, USDA offers financial assistance to electric utility cooperatives to develop electricity generation and transmission capacity. The program's financial assistance can take many forms, including hardship loans, municipal rate loans, and treasury rate loans. The program also offers guaranteed loans, which are provided primarily through the Federal Financing Bank ("FFB"), but also through the National Rural Utilities Cooperative Finance Corporation ("CFC") and the National Bank for Cooperatives ("CoBank").

USDA plays a substantial role in the development of coal-fired power plants. USDA makes direct loans and provides loan guarantees to rural electric cooperatives. USDA issued several billion dollars of new loans for generation and transmission in 2006 and 2007, and is authorized to provide \$7 billion of such loans in FY 2008. According to the Congressional Research Service, USDA currently has approximately \$36 billion in outstanding loans and another roughly \$400 million in loan guarantees for the electricity sector. A substantial portion of this total has financed coal-fired power plants.

Until the recent suspension of its loan program for coal-fired power plants, when USDA authorized loans or loan guarantees specifically earmarked for new coal plant construction, the agency typically prepared an environmental impact statement under NEPA. A recent example is the Southern Montana Electric "Highwood" project. In contrast, USDA seems to ignore NEPA when it issues regulatory and loan approvals for the same types of projects. It is imperative for USDA to assume responsibility for the critical role it plays in the development of coal-fired power plants, beyond just the direct financing of new projects.

Through outstanding loans and guarantees made to electric cooperatives, USDA has acquired pervasive control over the operations of rural electric cooperatives. Notably, USDA's loan agreements – which often secure hundreds of millions of dollars of outstanding loans – require explicit USDA approval before a cooperative may invest in, or purchase power from, a new coal-fired generating facility. Notwithstanding the recent suspension of its direct loans for coal-fired power plants, USDA continues to issue loan agreement approvals, thereby authorizing rural cooperatives to invest literally billions of dollars in new coal-fired generating capacity. Such USDA approvals continue unabated in the wake of the suspension of USDA's direct loan program, and such approvals are routinely issued with no environmental review whatsoever. This is the crux of the problem addressed by this letter.

USDA approval of rural cooperatives' investments in new coal-fired generating capacity is a "major federal action" triggering the agency's need to comply with NEPA. Among other facts, rural cooperatives would be expressly prohibited from investing in such projects absent the issuance of USDA approvals. Despite NEPA's legal mandate, USDA continues to undertake such actions without preparing an environmental impact statement or otherwise analyzing the proposed plants' environmental impacts and alternatives to the proposed plants, including clean energy alternatives.

The Sierra Club has already brought its first suit against USDA for such investment approvals regarding Sunflower Electric Power Corporation's expansion of its Holcomb Station in Kansas. In October 2007, Sierra Club filed a lawsuit alleging that USDA violated NEPA by approving the Holcomb loan restructuring without the required analysis of the proposed plant's

environmental impacts or alternatives. The USDA filed a motion to dismiss claiming, among other issues, that it is not authorized to take environmental considerations into account during investment approvals. In its response to this motion, the Club debunked this theory by showing that NEPA makes environmental protection part of the mandate of every federal agency and the regulations that apply to the USDA do not exempt it from NEPA’s requirements. In mid-July 2008, a federal judge denied the USDA’s motion to dismiss, saying he was troubled that no environmental impact study was required.<sup>1</sup>

The Sierra Club has identified at least ten additional coal-fired power plants proposed by various rural utility cooperatives across the nation that rely upon either recent or pending USDA approvals to proceed, all lacking any environmental review whatsoever under NEPA.<sup>2</sup> Assuming, conservatively, a \$1.5 billion price tag for each new coal-fired power plant, USDA is authorizing several billion dollars worth of investments in new coal-fired capacity in the absence of environmental review. A chart detailing these proposed power plants, the cooperatives investing in these projects and their outstanding indebtedness to USDA, and the status of the USDA’s actions is provided below.

<i>Cooperative(s)</i>	<i>Power Plant</i>	<i>Nature and Status of USDA action<sup>3</sup></i>
Brazos Sandy Creek Electric Cooperative	Sandy Creek Energy Facility (TX)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$478,317,000 in debt. <b>Status:</b> “waiver” of approval issued
Prairie Power, Inc.	Prairie State Energy Campus (IL)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$385,000,000 in debt. <b>Status:</b> approval presumed issued (facility under construction)
Central Iowa Power Cooperative  Corn Belt Power Cooperative	Sutherland Generating Station at Marshalltown (IA)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$384,923,214 in debt. <b>Status:</b> uncertain whether approval already issued or pending

<sup>1</sup> Judge refuses to dismiss coal plant expansion case, E&E News, July 18, 2008, <http://www.eenews.net/eenewspm/rss/2008/07/18/2> (last visited August 12, 2008).

<sup>2</sup> The Sierra Club is not conceding that the USDA has not authorized loans or loan guarantees specifically earmarked for some or all of these coal plants. At this time, however, the Club has found no evidence of direct financing.

<sup>3</sup> The Sierra Club has obtained loan documents for several, but not all, rural cooperatives which require explicit USDA authorization for large coal plant investments. We assume such authorization requirements are standard in USDA loan documents for the purposes of this letter.

<i>Cooperative(s)</i>	<i>Power Plant</i>	<i>Nature and Status of USDA action</i>
Arkansas Electric Cooperative Corporation  East Texas Electric Cooperative	John W. Turk, Jr. Power Plant (AR)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$371,000,000 in debt. <b>Status:</b> uncertain whether approval already issued or pending
Central Georgia EMC*  Jackson EMC*  GreyStone Power Corp.*  *under Power4Georgians	Washington County Power Station (GA)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$362,908,570 in debt. <b>Status:</b> approval presumed pending (project in early planning stages)
Dairyland Power Cooperative	Weston #4 Power Plant (WI)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$280,000,000 in debt. <b>Status:</b> approval presumed issued (facility under construction)
East Texas Electric Cooperative  South Mississippi Electric Power Association	Big Cajun II, Unit #4 (LA)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$223,273,000 in debt. <b>Status:</b> uncertain whether approval already issued or pending
Great Lakes Energy (part of Wolverine Power Cooperative)	Wolverine Clean Energy Venture (MI)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$150,675,123 in debt. <b>Status:</b> approval presumed pending (project in early planning stages)
Basin Electric Power Cooperative	Dry Fork Power Plant (WY)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$50,914,000 in debt. <b>Status:</b> presumed issued (facility under construction)

<i>Cooperative(s)</i>	<i>Power Plant</i>	<i>Nature and Status of USDA action</i>
East Texas Electric Cooperative	Plum Point Energy Station (AR)	USDA/RUS approval to invest in coal plant pursuant to existing loan documents securing at least \$419,000 in debt. <b>Status:</b> uncertain whether approval already issued or pending

It is unconscionable for USDA to ignore the environmental effects of its actions listed above. Coal-fired power plants rank among the largest individual sources of greenhouse gas emissions in the United States. If built, the ten coal plants listed above would emit almost forty-five million tons of carbon dioxide into the air each year, thwarting other governmental attempts to reduce carbon dioxide emissions. For instance, in 2007, the EPA's Energy Star program prevented forty million tons of greenhouse gases from being emitted into the atmosphere. The greenhouse gas emissions from the proposed plants listed above would wipe out the emission reductions from the Energy Star program based on its 2007 annual carbon reduction and would exacerbate the climate change crisis.

Climate change is the single greatest environmental challenge facing the world today. Scientists overwhelmingly agree that the global community must reduce emissions from greenhouse gases, including CO<sub>2</sub>, to well below 1990 levels by 2020, if we are to stabilize the climate at acceptable levels. Although climate change is a global problem, effective action at the national, regional, and state level is needed to achieve the necessary reductions in CO<sub>2</sub> emissions.

To that end, there is substantial momentum toward establishing a national policy addressing global warming. Multiple bills have been proposed in Congress that would impose mandatory, market-based limits on carbon dioxide emissions. There is an increasingly widely held expectation that the federal government will adopt legislation or regulations to cap greenhouse gas emissions from power plants within the next few years. If a carbon cap is adopted during a plant's lifetime, a coal-fired power plant with uncontrolled carbon dioxide emissions would likely face substantially higher operating costs. Such a plant would probably either have to buy emissions allowances equal to its emissions or install costly retrofit control technology, assuming that such technology is commercially available and economically viable.

USDA's actions are allowing new coal-fired power plants to move forward, risking taxpayer dollars. Environmental considerations are integral to an evaluation of a borrower's ability to repay. This has been acknowledged by some of the nation's largest banks, who now carefully consider carbon dioxide emissions from power plants and weigh the costs of complying with anticipated regulation of those emissions in determining whether to provide financing for new coal fired power plants. In fact, the House Oversight Committee acknowledged this fact when it informed the USDA that if it failed to consider such costs in approving loans for new power plants and in granting the investment approvals, it is placing taxpayer dollars and ratepayers at risk. By authorizing unsound investments in coal-fired power plants, the agency has jeopardized the repayment of taxpayer funded and guaranteed loans, which currently total \$36 billion in outstanding loans.

USDA must reevaluate its obvious and overwhelming commitment to coal by considering the environmental consequences of and potential alternatives to these proposed plants. The plants' additional greenhouse gas emissions and their resulting exacerbation of the climate change crisis is not the only adverse environmental impact with which the USDA should be concerned. The proposed plants would also emit other dangerous pollutants, such as fine particulate matter and mercury, which the U.S. Environmental Protection Agency has shown to have significant adverse impacts to human health and the environment. For example, the proposed plants would emit more than 1,940 pounds of mercury a year combined, threatening young children with permanent brain and nervous system damage and polluting the environment.

Additionally, the USDA's dedication to coal gives rural cooperatives little incentive to invest in alternatives to these dirty power plants, such as energy efficiency and renewable energy. Most experts consider energy efficiency to be "low-hanging fruit" – the easiest and most cost-effective way to reduce greenhouse gas emissions and ensure reliable and inexpensive power. The renewable energy industry continues to grow, with regular announcements of large scale wind farms and solar facilities across the nation. Devoting resources to energy efficiency and renewable energy will decrease the amount of greenhouse gases emissions and toxic pollutants in the air, as well as providing cleaner, cheaper electricity for the utilities' ratepayers.

NEPA was enacted precisely to compel agencies to take a "hard look" at the environmental consequences of and alternatives to their actions. In light of the severe global warming impacts associated with coal-fired power plants, it is imperative that USDA take a hard look at the environmental impacts of their approvals for such projects. This is the least USDA can do to assist our nation's effort to combat global warming.

Accordingly, the Sierra Club respectfully requests that USDA rescind any and all approvals for rural cooperatives to invest in new coal-fired generation, and that USDA cease from issuing any additional approvals, until such time as the environmental impacts of its actions can be assessed and disclosed properly in accordance with NEPA and other applicable environmental laws. We respectfully ask that you inform us of your decision by September 26, 2008.

Thank you for your consideration of this urgent problem. If you have any questions, please feel free to contact me at 415-977-5709 or [pat.gallagher@sierraclub.org](mailto:pat.gallagher@sierraclub.org).

Sincerely,

Pat Gallagher  
Director of Environmental Law  
Sierra Club

cc:

The Honorable Harry Reid  
U.S. Senate Majority Leader

The Honorable Barbara Boxer, Chairman,  
Committee on Environment and Public Works

The Honorable Max Baucus  
Member, Committee on Environment and  
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The Honorable Joseph I. Lieberman  
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