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Another Setback for a Coal-Fired Power Plant in Texas

Environmental Groups Win a Victory for Public Health

Plans for a new NRG coal-fired power plant in Limestone County, Texas have been dealt a significant setback. The Texas state administrative law judges (ALJs) conducting the contested permit proceeding over the proposed air pollution control permit for the coal plant have put the proceeding on hold. Their action came in response to a motion filed by attorneys of the Environmental Integrity Project on behalf of Sierra Club, Environmental Defense, and a local citizens group called Robertson County: Our Land, Our Lives. The three groups are parties protesting the permit for the proposed plant, and Environmental Integrity Project attorneys are representing the Sierra Club in the proceeding.

A spokesperson for the Sierra Club called the action by the ALJs “a victory for public health” because it requires the proposed plant operator to do a careful analysis of what pollution controls on the coal plant are necessary to limit emissions of mercury and other hazardous air pollutants before the contested permit proceeding may be resumed.

The proposed coal plant – actually a third unit at an existing coal facility in Limestone County – would generate 800 megawatts of electric power by burning up to 4.3 million tons of coal per year. In doing so, the plant would emit up to an estimated 10 million tons of carbon dioxide each year, which would be a substantial increase in global warming gases. Texas already leads the nation in power plant CO₂ emissions, according to data from the U. S. Environmental Protection Agency (EPA). If permitted the new NRG Limestone Unit 3 would also emit substantial quantities of mercury and certain other hazardous pollutants into the air.

Victory for Public Health

“Putting the NRG plant permit on hold to analyze more carefully the problems with mercury and other hazardous pollutant emissions from the plant is a victory for public health,” said Neil Carman, Clean Air Director for the Lone Star Chapter of the Sierra Club.

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“Mercury is a neurotoxin associated with developmental and cognitive disorders in babies and increased risk of heart disease in men,” continued Carman.

“Mercury in the air rains down into our streams, lakes, and other waters where it poisons the fish and seafood that eventually make their way to our dinner tables,” Carman noted. It accumulates in fish and the animals and people who eat them, putting – for example – the unborn children of pregnant mothers and the infants of nursing mothers at risk.”

“Coal-fired power plants are the single largest man-made source of mercury pollution in the United States,” noted Ilan Levin, an attorney with the Environmental Integrity Project, which is representing Sierra Club in the contested case proceeding over the NRG coal plant permit. “The two existing units at the NRG Limestone plant already rank the plant among the nation’s top 10 worst power plant mercury emitters, and addition of a third unit would add significantly to the problems of mercury emissions.”

Permit Proceeding on Hold

The state administrative law judges cancelled all pending activities of the contested case proceeding on the NRG air permit, including the hearing (similar to a trial) that was supposed to start in late July. The ALJs agreed with the environmental and citizen groups contesting

the NRG permit that the permit was deficient under the federal Clean Air Act in controlling emissions of mercury and other hazardous air pollutants, based on a recent federal court decision striking down an earlier EPA ruling that “maximum available control technology” (MACT) requirements for such emissions from coal plants did not have to be developed.

The order by the state ALJs, issued late last Friday, will allow NRG to file a permit application with the Texas Commission on Environmental Quality (TCEQ) with the MACT analysis for mercury and other hazardous air pollutants. This analysis will be necessary before any permit could be approved. The ALJs have also ordered NRG to file a status report on the application before TCEQ by June 13 of this year.

NRG Response

Newspaper reports have quoted a spokesperson for NRG as saying that the company has already submitted the required MACT analysis to TCEQ and that he thinks a thorough MACT determination can be completed as early as two months from now. If that happens, then a serious question will arise as to the adequacy of the TCEQ’s review of this important part of the air pollution permit. Based on the federal court ruling, new power plants must reduce not only mercury emissions, but a host of other toxic air pollutants. And, the TCEQ is treating this process as a separate permit application. So, a two-month turnaround, even by TCEQ’s
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After Delay, Public Utility Commission Approves Rule on Metering for Solar Panels

No “Net-Metering” on Transmission, But Perhaps on Retail

The three-member state Public Utility Commission approved an initial rule last week that could allow for “net-metering” to occur for home and business owners wishing to install solar panels, but only on the retail side. The new rulemaking was required by the Texas Legislature’s enactment last year of HB 3693 by State Rep. Joe Straus (R-San Antonio).

Under the newly adopted rule a Transmission and Distribution Utility in the state’s competitive electric market would have to allow interconnection of solar panels to the electric power grid to take place if certain steps were taken by the generator. One such step would be including the purchase of meters which could separately measure outflow and inflow of electricity. However, the rule makes it clear that the on-site solar generator is responsible for paying for all the costs of transmitting the electricity. Those costs could not be “netted” out if the solar panels generated electricity back to the grid.

Changes Made after Objections

PUC approval of the rules came after both representatives of the solar industry and environmental organizations such as the Lone Star Chapter of the Sierra Club had objected to the initial language in the proposed rule. That

initial rule was published on the Friday before the Easter holiday, only days before a vote was scheduled.

Adding their voices to the fray were State Representative David Swinford (R-Dumas), Senator Eddie Lucio Jr. (D-Brownsville), and Representative Garnet Coleman (D-Houston), all of whom asked the PUC to consider the impacts on the development of an on-site solar industry in Texas. Among the chief objections to the original language in the proposed rule was the use of the term “surplus” electricity or generation without defining the term, the failure to allow for the possibility for both providing the meters free of charge – as the Legislature had suggested -- or for netting out the energy consumption from the transmission charge, and the failure to consider both consumption and generation when figuring out “settlement” charges.

Due to the objections the PUC delayed adoption of the rules for several days. Over the course of the delay, representatives of solar, environmental and renewable energy groups as well as public officials met with the PUC Commissioners to make their case for modifying the rule to be more flexible and beneficial to on-site renewable generation.

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Sierra Club Presents “12-Step Plan” to House Select Committee on Electric Generation

Calls for Greater Investments in Energy Efficiency and Renewables

Lone Star Chapter Conservation Director Cyrus Reed, in invited testimony last week to a meeting of the Texas House Select Committee on Electric Generation Capacity and Environmental Effects, unveiled a preliminary Sierra Club “12-Step plan” to meet the state’s electricity needs while reducing carbon dioxide emissions.

Reed noted that he was “a global warming gas emitter” and that the first step was either to create a Texas carbon emissions reporting system or to join what is know as The Climate Registry. The Registry is a system through which entities voluntarily report their greenhouse gas emissions. Thus far 39 states have signed on as charter members of the Registry and pledged to encourage entities in their states to report their greenhouse gas emissions through the Registry. By beginning to account for such emissions, Reed noted, Texas could look at the opportunities to reduce emissions, and business operations in Texas could gain carbon credits for taking action sooner rather than later.

The House Select Committee was named by Texas House Speaker Tom Craddick late last year to study how Texas could meet its electric power generation demands. The Committee was also given the task of looking at the environmental effects of energy choices,

including the impacts on global warming. The Sierra Club was invited by Committee Chairman Dennis Bonnen (R-Brazoria) to participate in a public hearing last week as part of an environmental panel discussion on the issues assigned to the Committee.

Panel Testimony

All three participants on the environmental panel – which included Tom “Smitty” Smith of Public Citizen and Ramón Álvarez of Environmental Defense – spoke about the need to consider energy efficiency and demand response first as the fastest, cheapest and cleanest way to meet our electricity needs.

Responding to a question by Committee member Norma Chavez (D-El Paso) on how consumers could be encouraged to be more efficient in existing residences, Reed highlighted two of the Sierra Club’s 12-Step Plan recommendations. These included:

- the need to increase the requirements of investor-owned utilities to obtain 100 percent of their growth in demand from energy efficiency and demand response programs by 2020 (up from the current requirement of 20 percent) – which would likely include home energy audits and improvements

– and

- the need to spend the money being collected under the Systems Benefit Fund on both consumer education and weatherization of the homes of low-income Texans.

Reed noted that if the hundreds of millions of dollars that have been collected for the System Benefit Fund but not allocated were to be targeted for weatherization of existing homes, that peak and total electric power demand could be reduced substantially in urban areas.

Other Sierra Club Recommendations

In addition to the recommendations noted above, the preliminary Sierra Club plan suggests:

- A “no-regrets” flexible action plan to reduce carbon emissions.
- Updating Texas’ air permitting process to require Best Available Control Technology (BACT) and begin to address carbon dioxide emissions.
- Increasing the Renewable Portfolio Standard (RPS) for utilities in Texas to 20 percent renewable energy by 2020 with a “carve-out” for solar energy (in other words a certain percentage requirement for solar power as part of the renewable energy requirements).
- Updating and establishing state energy efficiency standards for appliances.
- Adopting more energy efficient building standards, including an Advanced

Energy Building Program for public buildings.

- Expanding the Texas LoanSTAR Program and energy audits for public entities and create a state bond-backed loan program for renewables and efficiency projects in areas served by electric cooperatives and municipal utilities.
- Evaluating and expanding economic development tools and incentives for solar and other renewables.
- Increasing use of “Combined Heat and Power” in public and other buildings.
- Adopting “Green Fleet” requirements for public entities, including plug-in hybrids, and promoting incentives for use of plug-in hybrids so Texas can begin to develop a vehicle-to-grid market.

A copy of the preliminary 12-Step Plan – *Cool Texas: A 12-Step Plan for Meeting Our Electricity Needs that is Good for Texas... and the Climate* – is available for downloading at <http://texas.sierraclub.org/conservation/coolTexasreport.pdf>.

Other Testimony

The Select Committee heard from a variety of other presenters representing think-tanks and industries in addition to the panel from environmental groups. Although several presenters expressed doubts about the wisdom

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of addressing global warming emissions as a state, as well as doubts about the science, most did recognize that Texas – with its huge electricity generation and consumption – would be affected by federal proposals to cut carbon dioxide emissions.

While Committee member State Rep. Burt Solomons (R-Carrollton) noted he was concerned about the proposed federal carbon reduction legislation and its impacts, he urged presenters to offer solutions on how Texas could head in the right direction. He noted that with the right policies and incentives Texas might be able to generate jobs and attract new industry, a point that was echoed by Chairman Bonnen and supported by the Sierra Club.

The Lone Star Chapter of the Sierra Club will continue to do its part by refining and publicizing the preliminary proposals contained in the “12-Step Plan” to address energy, climate and air quality issues in Texas.



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standards, would result in a quick and dirty permit.

NRG has agreed to a “no net increase” in emissions of mercury and two other pollutants from the entire coal plant, once the proposed new unit No. 3 begins operation, over what has been released annually from the two existing units. But this promise is an easy one to make, because the mercury reductions are so easy to make and will come as a result of already-planned “fuel blending” (the plant will burn more out-of-state coal, and less of the high-mercury local lignite). The fact that the existing plant is such an incredibly heavy emitter of mercury – making it easy to bring down overall emissions without installing state-of-the-art pollution controls at the existing units – does not make that cause for celebration.

Fuel-blending hardly constitutes “maximum available control technology,” because there are new technologies that can dramatically reduce the emissions of mercury from burning coal. If NRG proposes to hold down mercury emissions through fuel blending, then the company will not really be proposing controls that could provide the maximum level of human health protection by actually reducing mercury emissions.

The Sierra Club will scrutinize the NRG proposal closely and provide an assessment later.



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By their subsequent adoption of modified rules, the PUC Commissioners agreed in part with these arguments of the objectors. For example, the Commissioners took out the word “surplus,” basing settlement charges on both consumption and generation and specifically adding language in the preamble which will not preclude net-metering on the retail side.

What’s Next?

The PUC will now consider a “second” rule on interconnection and metering for the retail electric providers. An initial “strawman” proposal – which also met with criticism from solar and environmental representatives – is likely to be revised and negotiated as utilities and solar advocates make their case.

At play is whether those generating electricity from solar panels will be able to make money if they generate more than they consume and/or if they could be paid incentives for generating electricity at certain times of day – such as mid-afternoon – when more electricity is needed for the grid. One likely scenario is that retail electric providers could choose to pay on-site generators different negotiated amounts by offering options or choices as retail electric providers competed for customer business. Still, there will likely be no guarantee that businesses and homeowners generating excess solar power will get paid if a retail electric provider does not see it as in the provider’s interest to do so.

The adopted and proposed rules do not impact current or future solar generators in areas that are served by municipal utilities and electric cooperatives, which instead are covered by separate rules that are more similar to traditional “net-metering.” That includes the use of meters that can spin backwards and forwards.

The Lone Star Chapter of the Sierra Club will continue to advocate for as strong a set of incentives as possible to achieve true net metering, given the limitations of the legislation enacted in 2007. The issue is likely to be back before the Legislature next year.

**MARK YOUR CALENDARS FOR...****Freshwater for a Healthy Matagorda Bay**

--A Free Public Forum--
Tuesday, May 20th, 2008
6:00 – 7:00 PM BBQ Dinner
7:00 – 9:00 PM Forum
Bay City Civic Center
201 Seventh Street, 77414

Freshwater for a Healthy San Antonio Bay

--A Free Public Forum--
Wednesday, May 21st, 2008
6:00 – 7:00 PM Food and Drink
7:00 – 9:00 PM Forum
Victoria Community Center Annex
605 East North Street, 77901

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