

**TESTIMONY OF  
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BEFORE THE  
COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM  
UNITED STATES HOUSE OF REPRESENTATIVES**

**November 8, 2007**

Good morning, Chairman Waxman and members of the House Committee on Oversight and Government Reform. I appreciate the opportunity to come before this Committee to discuss EPA's response to the recent Supreme Court decision on greenhouse gases and the decision to permit an additional electric generating unit for the Deseret Power Electric Cooperative in Utah.

**I. Administration Climate Strategy**

Addressing the challenge of global climate change is not new for the Administration. Importantly, the efforts EPA and the rest of the Administration are undertaking to address the challenge of global climate change are broader than responding to the Supreme Court's *Massachusetts v. EPA* decision regarding EPA's authority to regulate greenhouse gas emissions from new motor vehicles under the Clean Air Act. First, we are constantly looking to improve our knowledge of the science of climate change, as reflected by the numerous reports of the Climate Change Science Program (CCSP) that have recently been completed, or are scheduled for completion over the next year or so. As we develop near- and long-term plans to address global climate change, we must continue to improve our knowledge of the science.

Second, the President recently convened a meeting of the world's major economies with the goal of establishing a new international approach on energy security and climate change in 2008. In turn, that international approach would contribute to a global agreement by 2009 under the UN Framework Convention on Climate Change. Under the President's approach, the U.S. and each nation would design its own strategy for making progress toward achieving the long-term goal of reducing greenhouse gas emissions. These strategies must be environmentally effective and measurable and reflect each country's different energy resources, different stages of development, and different economic needs. Like other countries, the United States relies on a mix of mandatory, voluntary, and market-based policy tools. Importantly, no country has all the answers because challenge of global climate change is exactly that: global. And the goal we are working towards is stabilization of greenhouse gas concentrations to prevent dangerous interference with the climate system.

Third, following the Supreme Court decision, EPA has been looking at the authority provided by the Clean Act Air as part of its efforts to achieve this global goal of reduced greenhouse gas emissions. Thus, while EPA has been implementing voluntary programs aimed at reducing greenhouse gases for years, in the past several months we have been exploring the additional tools provided by the Clean Air Act to help us expand on the solid foundation we have built.

Finally, EPA is actively evaluating how best to regulate technologies that may curb or otherwise address greenhouse gas emissions. For example, recent EPA analysis suggests that geologic sequestration, a process of injecting captured CO<sub>2</sub>, a greenhouse gas, in deep rock formations for long-term storage is one of the key enabling technologies for making this transition. Geologic sequestration technology could allow continued use of domestic coal, for example, and still cut the amount of greenhouse gases emitted into the atmosphere. This technology, which is covered by EPA's Underground Injection Control Program, is part of a portfolio of technical approaches under consideration to reduce greenhouse gas emissions. The Safe Drinking Water Act established the Underground Injection Control (UIC) program to allow the safe injection of fluids into the subsurface in a manner that does not endanger current or future underground sources of drinking water. Recently EPA announced plans to develop regulations to ensure that injection of CO<sub>2</sub> does not contaminate underground sources of drinking water. EPA will invite the public and stakeholders including other federal agencies such as the Department of Energy and US Geological Survey to provide input throughout the rule development process. Once completed, the regulations will ensure a consistent, equitable and effective permit system under the Safe Drinking Water Act for commercial-scale geologic storage programs to help reduce greenhouse gases from a variety of sources including coal-fired power plants.

#### **A. Progress toward the President's Goal**

In 2002, President Bush committed to cut U.S. greenhouse gas intensity (the ratio of greenhouse gas emissions to economic output) by 18 percent through the year 2012, a

goal that we are on target to meet. This commitment was estimated to achieve about 100 million additional metric tons of reduced carbon-equivalent (MMTCE) emissions in 2012, with more than 500 MMTCE emissions in cumulative savings over the decade.

According to EPA data reported to the United Nations Framework Convention on Climate Change (UNFCCC), U.S. greenhouse gas intensity declined by 1.9 percent in 2003, by 2.4 percent in 2004, and by 2.4 percent in 2005. Put another way, from 2004 to 2005, the U.S. economy increased by 3.2 percent while greenhouse gas emissions increased by only 0.8 percent. According to the Energy Information Administration, U.S. energy-related CO<sub>2</sub> emissions declined in absolute terms –from 5,955 million metric tons (MMTCO<sub>2</sub>) in 2005 to 5,877 MMTCO<sub>2</sub> in 2006, a 1.3 percent decrease. Also according to EIA, from 2005 to 2006 energy intensity (energy consumed per \$ real GDP) fell by over 4.0 percent, as total energy demand declined 0.9 percent while the economy grew by 3.3 percent.

## **B. President's Executive Order**

On May 14, 2007, President Bush directed EPA and the Departments of Energy, Transportation, and Agriculture to take steps toward regulations that would cut gasoline consumption and reduce greenhouse gas emissions from motor vehicles, and through Executive Order 13432, he outlined a cooperative means of doing so. The President asked that, in undertaking this regulatory effort, we use as a starting point the “Twenty in Ten” plan announced in his State of the Union address to reduce U.S. gasoline consumption by 20 percent over the next ten years. The President’s May 14

announcement represents the Administration's continued commitment to address climate change and energy security in a comprehensive and thoughtful manner. It both responds to the Supreme Court's *Massachusetts* ruling and provides a path forward for improving our energy security by reducing U.S dependence on oil.

Earlier this year, the Administration sent Congress legislative proposals to achieve the "Twenty in Ten" plan. The plan would increase the supply of renewable and other alternative fuels by setting a mandatory fuels standard to require the equivalent of 35 billion gallons of renewable and other alternative fuels in 2017, nearly five times the 2012 Renewable Fuels Standard (RFS) mandate established by the Energy Policy Act of 2005. The plan also would reform and modernize Corporate Average Fuel Economy (CAFE) standards for cars, and further increase the CAFE standards for light trucks.

While the President continues to believe that effective legislation is the best approach to implementing his "Twenty In Ten" plan, as directed by him on May 14, EPA and our federal partners are now working toward these goals via regulation. The President has directed us to complete this regulatory process by the end of 2008. This is a very aggressive timeframe, but one that I am confident that my staff, working with our federal partners, can achieve.

EPA meets regularly with the Departments of Transportation, Energy, and Agriculture to ensure coordination of our work efforts. In addition, we have ensured major stakeholder group involvement in the process from the very beginning. We also have begun the

analytical work necessary to establish standards that carefully consider science, available technologies, lead time, and vehicle safety while evaluating benefits and costs.

In addition, EPA continues to consider any implications of the Supreme Court decision on various sections of the Clean Air Act, while moving forward with a proposed mobile source rule later this year. We believe it is critically important to conduct this effort in a thoughtful fashion, so that any resulting policies would achieve genuine environmental results in a cost-effective fashion, while sustaining the country's economic health.

## **II. Background on the Proposed Deseret Power Plant**

On August 30, 2007, EPA Region 8 in Denver issued a final federal Prevention of Significant Deterioration (PSD) air permit to Deseret Power Electric Cooperative to authorize the addition of a 110-megawatt waste-coal-fired generating unit to its existing Bonanza power plant, on the Uintah & Ouray Indian Reservation in northeastern Utah. Deseret Power will use the additional generation capacity to supply electricity to several municipalities in Utah, seven of which submitted letters to EPA expressing their need for additional electrical power and stating that they plan to participate in the project. Included among the municipalities to be served by Deseret Power's new capacity is St. George, Utah, one of the top five fastest-growing cities in the nation, and a city committed to including renewable resources and efficiency improvements in meeting its energy needs. Importantly, Deseret Power's new generating unit will utilize an existing waste coal stockpile at the company's nearby coal mine, estimated to be in excess of

eight million tons. Absent use as a fuel as proposed by Deseret Power, the waste coal stockpile would otherwise be a wasted energy resource.

Deseret Power applied for its preconstruction PSD permit on April 13, 2004. Over the next two years, EPA's Region 8 Office conducted independent research to identify and evaluate available emissions control technology options and discussed with the company the technical aspects of applying these controls. The Region proposed a permit that would require the company to meet stringent emission limitations to satisfy the PSD requirements of the Clean Air Act. EPA published public notices in five newspapers in the vicinity of the project at the start of public comment period on the proposed permit and submitted Public Service Announcements about the proposed permit action to several local radio stations in Utah. During the public comment period, a group of eight environmental organizations, including the Sierra Club, submitted a comment letter raising issues on eleven major topics, with more than fifty sub-issues. Key issues raised by commenters included the control of greenhouse gas emissions; the scope of control technology review (including collateral impacts considerations); and whether Integrated Gasification Combined Cycle technology should be required for the facility. The only other adverse comments were submitted by a Utah citizen, on relatively minor permit clarity issues.

The Region reviewed and responded to the various interested stakeholders' comments received on the proposal and, on August 30, 2007, issued a final PSD permit to Deseret Power. Consistent with applicable regulations, EPA's permit requires the new unit to

meet the lowest emissions rates that can be achieved for this type of source under the circumstances. However, the permit did not impose emissions limitations on CO<sub>2</sub>; found that it was not necessary to address CO<sub>2</sub> emissions in application of the Best Available Control Technology to non-GHG pollutants; and found that requiring IGCC technology would amount, impermissibly, to redefining the source.

Sierra Club on October 1, 2007 filed a petition seeking review of the Region's permit decision by the Agency's Environmental Appeals Board. Pending this appeal, construction of the project cannot begin.

EPA is conducting the same level of careful analysis and review it applied to the Desert Power application to the Desert Rock, White Pine, and Carlson permit applications that are currently pending before the Agency.

### **III. Control of Greenhouse Gases Under the Clean Air Act**

As I stated earlier, EPA has not limited its consideration of greenhouse gas emissions simply to the remand of the Supreme Court's *Massachusetts v. EPA* decision. As an initial matter, I must note that the Supreme Court in *Massachusetts* only reached the question of whether greenhouse gases emitted from new motor vehicles are air pollutants under the Clean Air Act; according to the Court, they are. Importantly, the Court did not answer whether the Agency *must* regulate greenhouse gas emissions, and if it chooses to do so, how and when. The Supreme Court's decision did not automatically turn greenhouse gases into regulated pollutants. It is up to me, as EPA Administrator, to make

requisite findings, including an endangerment finding and issue regulations under the CAA before the greenhouse gas “air pollutants” are actually regulated pollutants. Later this year the Agency will address the question of an endangerment finding at the same time that it proposes regulatory action using the President’s “Twenty in Ten” plan as a starting point.

This distinction between unregulated air pollutants – which greenhouse gases currently are – and regulated air pollutants (such as NO<sub>x</sub>, lead, and other pollutants currently subject to EPA regulation) is important. Specifically, the Clean Air Act and EPA’s regulations require PSD permits to contain emissions limitations for “each pollutant subject to regulation” under the Act. For nearly 30 years, EPA has consistently interpreted the term “subject to regulation under the Act” to describe pollutants that are presently subject to a statutory or regulatory provision that requires actual control of emissions of that pollutant<sup>1</sup>.

In 2002, EPA codified this interpretation in regulations by defining the term “regulated NSR pollutant.” This definition references pollutants regulated in three principal program areas:

1. pollutants for which the Administrator has established National Ambient Air Quality Standards (NAAQS),
2. pollutants subject to New Source Performance Standards (NSPS), and
3. class I or II substances under title VI of the Act.

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<sup>1</sup> . See 67 Fed. Reg. 80186, 80240 (Dec. 21, 2002) (listing pollutants regulated under the Act); 61 Fed. Reg. 38250, 38309-10 (July 23, 1996) (listing pollutants subject to PSD review); 43 Fed. Reg. 26388, 26397 (June 19, 1978) (describing pollutants subject to BACT requirements).

It also covers any pollutant “that otherwise is subject to regulation under the Act.”

Because EPA has not established a NAAQS or NSPS for CO<sub>2</sub>, classified CO<sub>2</sub> as a title VI substance, or otherwise regulated CO<sub>2</sub> under any other provision of the Act, CO<sub>2</sub> is not currently a “regulated NSR pollutant” as defined by EPA regulations. We are aware that, if in response to the *Massachusetts* decision, the Agency ultimately regulates greenhouse gas emissions from mobile sources, such greenhouse gases will become “regulated pollutants.” However, today greenhouse gases are not “regulated pollutants . Accordingly, in the meantime, and under the Agency’s historic interpretation of the PSD permit program requirements, greenhouse gas emissions are not yet regulated pollutants and therefore are not subject to emissions limitations in PSD permits. EPA simply lacks the legal authority under the PSD program to impose emissions limitations for greenhouse gas emissions on power plants.

The Agency continues to evaluate the potential effects of the Supreme Court decision on the mobile and stationary source provisions of the Clean Air Act. This work includes an analysis of the implications of the interplay between a mobile source rule that regulates greenhouse gases and the PSD program. We are also looking more broadly at the various sections and titles of the Clean Air Act, and the interplay between them, as we develop a thoughtful approach to responding to *Massachusetts v. EPA*. Just as the challenge of global climate change requires a coordinated effort among many nations, it also requires that we avoid a piecemeal approach to regulation. Given the complexity of issues involved, it would be premature to attempt to address climate change in a single PSD permitting action, particularly when carbon dioxide is not yet a regulated pollutant.

#### **IV. Balancing the Issue of Climate Change with the Need for Environmentally-Resourceful Energy Generation**

Global climate change is an enormously complex issue that deserves thoughtful consideration and requires more than a one size fits all solution. Indeed, allow me to frame the challenge as follows: how do we stabilize global concentrations of greenhouse gases in the atmosphere, when annual emissions from energy demand are projected under some scenarios to double or triple by 2100? The answer is we must transform the way the world generates and uses energy. To do so, we need cost-effective advanced technologies and policies to incentivize those technologies. And this needs to be done on a massive scale.

Developing such technologies and policies is not something that can be accomplished overnight; rather it requires – and deserves – a deliberate process, one that involves a range of stakeholders. While we continue to grapple with how best to address the challenge of global climate change, the Agency also has a legal responsibility to continue processing PSD preconstruction permit applications, such as that submitted over three years ago by Deseret Power.

On a broad scale, I believe the environmental and energy security goals of the United States are best served by encouraging the development of all forms of clean coal technology and the development of alternative fuels, while also using existing energy supplies in an environmentally sound way. The Deseret Power project – by supplying a

new source of electricity and using a previously untapped reserve of waste coal as fuel in a plant with modern pollution controls – helps meet these goals. The August 30<sup>th</sup> PSD permit allows Deseret Power to move forward in providing a reliable and secure supply of electricity, while at the same time making use of a previously untapped reserve of waste coal.

#### **IV. Conclusion**

Today I have outlined EPA's response to the Supreme Court decision on *Massachusetts v. EPA*, and our recent decision to permit an additional electric generating unit for a power plant in Utah. I look forward to working with you and other members of the Committee on these issues, and would be pleased to answer any questions that you might have. Thank you for the opportunity to testify.