

**California Attorney General Edmund Brown Jr.  
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Rhode Island Attorney General Patrick C. Lynch  
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December 10, 2007

**VIA FACSIMILE & U.S. MAIL**

FAX (512) 239-3311

Texas Commission on Environmental Quality  
Office of the Chief Clerk  
LaDonna Castañuela  
MC-105  
P.O. Box 13087  
Austin, Texas 78711-3087

**RE: Limestone III Draft Permit**

Dear Ms. Castañuela:

The Attorneys General of the States of California, Delaware, Rhode Island, and Vermont jointly submit these comments to the Texas Commission on Environmental Quality (TCEQ) to voice concerns regarding the proposed issuance of an air quality permit to NRG Texas Power, L.L.C. (NRG) for the construction of a coal-fired power plant unit, Limestone III, in Limestone County. As explained below, we urge TCEQ not to issue a permit for the proposed plant if energy conservation measures and renewable sources of electricity can meet increased demand. If the proposed plant is nevertheless needed, TCEQ should not issue a permit unless NRG designs and sites the plant in a way that minimizes the generation of carbon dioxide (CO<sub>2</sub>) emissions and/or allows for the capture and secure sequestration of such emissions.

Climate change is the single greatest environmental challenge facing the world today. 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. Scientists overwhelmingly agree that the global community must reduce emission of greenhouse gases, including CO<sub>2</sub>, to well below 1990 levels within a few decades, if we are to stabilize the climate at an acceptable level. And, according to the experts, taking action to reduce greenhouse gas emissions is needed immediately. As the chairman of the United Nations Intergovernmental Panel on Climate Change recently declared: "If there's no action before 2012, that's too late. What we do in the next two to three years will determine our future."

To that end, many states have made the reduction of CO<sub>2</sub> emissions a priority. For example, ten northeastern states (Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Rhode Island, and Vermont) participate in the Regional Greenhouse Gas Initiative (RGGI), a mandatory cap-and-trade program to reduce CO<sub>2</sub> emissions from power plants, which collectively represent a major contributor to global warming. By 2019, the RGGI states will achieve a 10% reduction in CO<sub>2</sub> emissions, with a cumulative reduction below baseline of roughly 50 million tons. Similarly, California passed the Global Warming Solutions Act, AB 32, in 2006, which requires the state's utilities, oil refiners, cement makers, and other large industrial greenhouse gas emitters to reduce their CO<sub>2</sub> emissions to 1990 levels by 2020. California also enacted in 2006 California Public Utilities Code, section 8340 et seq., which precludes California utilities from entering contracts for electricity from high-emitting sources of CO<sub>2</sub>, both inside and outside of California. Other states are considering or have adopted similar power plant performance standards.

Arizona, Montana, New Mexico, Oregon, Utah, and Washington have joined California as members in the Western Climate Initiative. Under this agreement, member states will reduce emissions by 15% below 2005 levels by 2020. Further, as you are no doubt aware, six Midwestern states just signed the Midwestern Regional Greenhouse Gas Reduction Accord committing to a regional cap-and-trade program for CO<sub>2</sub>. Along with the states participating in RGGI and the Western Climate Initiative, this new Midwestern accord brings the number of states committed to regional trading systems to 23.

In contrast to these efforts, the proposed NRG plant would substantially increase CO<sub>2</sub> emissions from Texas sources. As proposed, the new 800 MW coal-fired plant would utilize conventional coal-burning technology, which emits massive amounts of CO<sub>2</sub>. The proposed plant is projected to emit more than 6 million tons of CO<sub>2</sub> per year, thereby seriously undermining the concerted efforts being undertaken by multiple states to address global warming. For instance, over the RGGI time frame, cumulative emissions from this plant would be more than 60 million tons CO<sub>2</sub>, more than canceling the reductions relative to the baseline resulting from RGGI. With a lifetime of more than 50 years, this plant, if built as proposed, might well emit more than 300 million tons of CO<sub>2</sub> in total, thus significantly contributing to the public health and environmental damage associated with global warming.

We encourage you to explore alternatives that will allow Texas to satisfy its need for energy without exacerbating global warming. As an initial matter, implementation of energy conservation measures and construction of non-polluting renewable energy sources could reduce, or even obviate, the need for new coal-fired power in Texas. A recent report by McKinsey & Co. concluded that improved energy efficiency in buildings, appliances and industrial plants could offset about 85% of projected increase in demand for U.S. electricity in 2030, obviating the need to build 150 or so new coal

plants - such as the Limestone III plant - now on the drawing boards in response to projected demand. McKinsey & Co., *Reducing U.S. Greenhouse Gas Emissions: How Much at What Cost?*, at xv and 30; Exh.18 (Dec. 2007). If a new power plant is still needed, we urge the state to consider fueling such plant with biomass or natural gas, or both, and to consider siting so as to allow for full-scale carbon capture and sequestration (CCS). Biomass and natural gas not only emit a fraction of the CO<sub>2</sub> compared to coal, and eliminate emissions of pollutants such as mercury, sulfur dioxide, and other heavy metals, they also improve the efficiency of the production process, further reducing CO<sub>2</sub> emissions. Finally, we urge you to consider Integrated Gasification Combined Cycle (IGCC) technology, an established and available production process with lower emissions than pulverized coal. In general, retrofitting an IGCC plant to capture CO<sub>2</sub> emissions likely will be less expensive than retrofitting a pulverized coal plant.

Further, state and federal laws require issuance of a Prevention of Significant Deterioration (PSD) air quality permit by TCEQ to NRG prior to construction of the plant in Limestone County. To obtain a PSD permit, NRG must demonstrate that the proposed Limestone III project complies with the best available control technology (BACT). The BACT standard requires PSD applicants to consider other “production processes or available methods, systems, and techniques” including “innovative fuel combustion techniques” to achieve the “maximum degree of reduction for each pollutant subject to regulation” under the Clean Air Act (CAA). The BACT standard in the CAA also requires consideration of “clean fuels.” This plain language and the legislative history of the CAA make clear that Congress intended that the full range of cleaner fuels, including biomass and natural gas, and production methodologies, including coal gasification, would be considered in a BACT analysis. See e.g., 123 Cong. Rec. 18472 (1977) (Senator Walter Huddleston of Kentucky explaining that the term “innovative fuel combustion techniques” was added to the definition of BACT to clarify that BACT was “intended to include such technologies as low BTU gasification”). Thus, a BACT analysis for the Limestone III project must consider biomass and natural gas, as well as IGCC technology, a form of coal gasification.

The PSD permit for the Limestone III plant must include a BACT emission limit for CO<sub>2</sub> because CO<sub>2</sub> is a pollutant subject to regulation under the CAA. A BACT emission limit is required “for each pollutant subject to regulation under [the Act].” 42 U.S.C. § 7475(a)(4); *see also* 40 C.F.R. § 52.21(b)(50)(iv). As the U.S. Supreme Court held in *Massachusetts v. EPA*, 127 S.Ct. 1438, 1460 (2007), CO<sub>2</sub> and other greenhouse gases are “pollutants” under the CAA. Given that the Limestone III plant will be a major emitter of CO<sub>2</sub>, NRG must demonstrate that the proposed technology for the plant is the best available control technology for CO<sub>2</sub> emissions. A full BACT analysis would inevitably lead to the conclusion that the Limestone III proposal includes inadequate controls on CO<sub>2</sub> emissions.

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Furthermore, TCEQ must consider the “energy, environmental, and economic impacts” of each unit as part of the BACT analysis. This analysis extends to the overall environmental impacts of the units. See, e.g., In re North Country Resource Recovery Associates, 2 E.A.D. 229, 230, 1986 EPA App. LEXIS 14 (Adm’r 1986). The detrimental environmental effects of the increased CO<sub>2</sub> emissions resulting from the proposed new plant must be considered under the “environmental impacts” prong of BACT, which in turn informs the selection of control technology.

We recognize the need for additional sources of energy, but urge TCEQ to fully consider whether efficiency improvements or non-polluting sources of electricity can meet increased demand for the next several years. If increased electricity-generating capacity beyond these options is nonetheless needed, we urge TCEQ to work with NRG to require that the plant be constructed so as to minimize CO<sub>2</sub> emissions and sited so as to allow for CCS.

We thank you for considering our view on this important matter.

Sincerely,

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