

1 BEFORE THE ARKANSAS POLLUTION CONTROL
 AND ECOLOGY COMMISSION
2
3 IN THE MATTER OF REGULATION NO. 18,
 ARKANSAS AIR POLLUTION CONTROL
4 CODE THIRD-PARTY RULEMAKING DOCKET NO. 08-005-R
5 and
6 IN THE MATTER OF REGULATION NO. 26,
 REGULATION OF THE ARKANSAS OPERATING
7 AIR PERMIT PROGRAM THIRD-PARTY
 RULEMAKING, DOCKET NO. 08-006-R

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PUBLIC HEARING

23 ***** THE ABOVE-STYLED MATTER was reported by
 Michelle R. Satterfield, CCR, LS Certificate No. 570,
24 at the Arkansas Department of Environmental Quality,
 located at 5301 Northshore Drive, Commission Room, North
25 Little Rock, Arkansas, commencing on the 27th day of June,
 2008, at 9:20 a.m. *****

1 A P P E A R A N C E S

2 COMMISSIONERS PRESENT:

3 THOMAS SCHUECK, CHAIRMAN

DR. JOHN SIMPSON

4 DARWIN HENDRIX

DANA SAMPLES

5 SCOTT HENDERSON

LYNN SICKEL

6 RANDY YOUNG

WILLIAM THOMPSON

7 JOHN SHANNON

CHARLES MCGREW

8 LAWRENCE BENGAL

9 ALSO PRESENT:

JUDGE MICHAEL C. O'MALLEY,

10 PATRICIA GOFF

11 ILAN LEVIN

Senior Attorney

12 Texas Program Director

Environmental Integrity Project

13 1002 West Avenue, Suite 300

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14

*** For Sierra Club, Audubon &

15 Environmental Integrity Project ***

16 KEN SMITH, Audubon of Arkansas

17 GLENN HOOKS, Sierra Club

18 TERESA MARKS, Director of ADEQ

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1 CHAIRMAN SCHUECK: All right. We've got 11
2 people that would like to make some comments.

3 JUDGE O'MALLEY: Mr. Chair?

4 CHAIRMAN SCHUECK: Yeah.

5 JUDGE O'MALLEY: I think what you might
6 want to start with, is the Petitioners and let them
7 present their Petition. Then call on the folks that have
8 comments about it.

9 CHAIRMAN SCHUECK: Why do I want to do
10 that?

11 JUDGE O'MALLEY: Well, because you don't
12 know what the Petition is all about until they present and
13 ask you to adopt it.

14 CHAIRMAN SCHUECK: Well, we've never done
15 that. We always hear public comments before, and I'd
16 rather hear the public comments before.

17 JUDGE O'MALLEY: Oh, I thought you were
18 doing the comments the same time as the presentation.

19 CHAIRMAN SCHUECK: We are.

20 JUDGE O'MALLEY: Okay.

21 CHAIRMAN SCHUECK: I mean, we're in that
22 area of the Agenda.

23 Are you going to let me run my meeting?

24 JUDGE O'MALLEY: Yes. I just thought maybe
25 you'd like a suggestion.

1 CHAIRMAN SCHUECK: Thank you.

2 Randy, what would you prefer?

3 MR. YOUNG: Well, I think it would be
4 appropriate, Mr. Chairman, to give the Third-Party
5 Petitioners an opportunity to lay their --

6 CHAIRMAN SCHUECK: Okay. So we're going to
7 let them lay the groundwork, and then we'll let the public
8 comments speak.

9 MR. YOUNG: I think that would be the --

10 CHAIRMAN SCHUECK: All right. I've been
11 overruled, so --

12 MR. YOUNG: Let me make it clear, I didn't
13 overrule the Chairman. I just made a suggestion.

14 CHAIRMAN SCHUECK: It doesn't make any
15 difference. You just do what you got to do. You can go
16 ahead and run it.

17 MR. YOUNG: All right. Well, let me ask
18 the Petitioners to confer about who is going to make the
19 presentation.

20 Ken, are you going to make it?

21 MR. SMITH: I would like to -- Mr. Young,
22 and, Mr. Chairman, I would like to speak for a moment or
23 two regarding the framework for the Petition, and then
24 turn the -- the description, discussion of the actual
25 change to Regulations 18 and 26 to Ilan Levin, our

1 Attorney, and then hopefully with time allowed for
2 Mr. Hooks, at the Sierra Club, to provide any concluding
3 remarks regarding our Petition.

4 Would that be appropriate, sir?

5 MR. YOUNG: Unless there's an objection,
6 that would be fine.

7 MR. SMITH: Is that satisfactory?

8 MR. LEVIN: Yes.

9 MR. SMITH: Thank you, Mr. Chairman, and
10 thank you Members of this Commission, and the Commission
11 Staff. I'd like to thank Judge O'Malley, Ms. Goff for
12 their guidance and patience as we prepared to submit a
13 Third-Party Rulemaking Petition.

14 I'd also like to thank the Department's
15 Public Affairs Officer, Doug Szehner for his assistance in
16 helping us schedule or propose a date for the hearing. We
17 wouldn't be able to do this if it wasn't for the help of
18 the Commission and the Staff.

19 I'd like to start off and say that it's a
20 little bit ironic to be before you today. This is
21 something totally out of our area of expertise,
22 presenting, from a conservation group, a Third-Part
23 Rulemaking Petition.

24 I checked with fellow conservation
25 directors of other agencies, if we had any history of

1 such, and -- and to the best of our collective knowledge,
2 we could think of no instance, so there is -- it is
3 somewhat ironic, and we wouldn't do this unless we felt
4 like this is very important to do to bring this issue to
5 your attention.

6 Our premise to you is that carbon dioxide
7 is not benign. It's not something we can just simply
8 ignore and treat like water vapor or oxygen or nitrogen or
9 any one of the other so-called exempt elements under the
10 definition of air contaminant. We know that these -- we
11 know what the signs of carbon dioxide in our atmosphere is
12 right now. We know that it is contributing at least one
13 degree Celsius to global temperature increase, and we know
14 that there's the likelihood that it will add additional
15 temperatures of heat to our atmosphere. We know that
16 pre-industrially carbon emissions were around 275 parts
17 per million. We know that, today, carbon emissions are
18 385 to 400 parts per million depending on which scientific
19 model you're reading at any particular time.

20 Now, to bring that home for just a moment,
21 what does it mean to, say, Arkansas? Now, for those of
22 you who -- who know me fairly well, know that I love
23 fishing, and I'm an avid fly fisherman, and I think the
24 premiere aquatic species in the State of Arkansas is the
25 small-mouth bass, and those of you who fly fish would

1 probably agree with me in that regard.

2 Arkansas is blessed in that we have the
3 southern most natural population of small-mouth bass in
4 Arkansas, in the Ouachita Mountains and the headwater
5 streams of the Caddo, Ouachita, Little Missouri, the
6 Saline River. All those wonderful streams that flow into
7 and south of the Ouachita Mountains. It is the southern
8 most population of small-mouth bass in the world, unless
9 some fishery biologist has stocked it in a pond somewhere
10 south in Mexico or somewhere, which I don't think is the
11 case. We also have this incredible population of
12 small-mouth bass in the Ozark Mountains.

13 Should temperature increases occur, should
14 carbon emissions go up, in all likelihood we will lose the
15 entire population of small-mouth bass in the Ouachita
16 Mountains. That entire population will be lost. We would
17 likely be left with a small remnant population in the very
18 extreme northern part of the State and that is just one
19 species.

20 We've seen patterns in migratory birds
21 change recently, already within our lifetime, from
22 increased carbon emissions. So my point today is to say
23 that carbon dioxide is not a benign element and we need to
24 update our regulations.

25 Now, let me say this about the conservation

1 groups. You're going to hear words that we're going to
2 bring every mom and pop in the State under regulation.
3 You know, that's not been our history. Actually, the
4 history of conservation organizations has been one of
5 collaboration with the Department and with the PC&E
6 Commission. Our history has been normally one of support.

7 Now, during the '80s, the Arkansas Wildlife
8 Federation brought some lawsuits against some bad actors
9 in the State of Arkansas, and won on those cases, but that
10 hasn't been our history for the most part. That -- that
11 is -- that's a footnote. That is not our history.

12 Our history is one of collaboration. We're
13 here today to work with the Department and the Staff of
14 the PC&E Commission to move forward in recognizing carbon
15 dioxide as a very important element for us to become
16 serious about and to learn its consequences and take the
17 first step forward -- the first step forward to shape our
18 own history, instead of having something else shape our
19 history and the future of our kids. That's what we're
20 here about.

21 That's all I have to say, Mr. Chairman.
22 I'd like to introduce Ilan Levin of the Environmental
23 Integrity Project to explain the details of our proposal.

24 Thank you very much.

25 CHAIRMAN SCHUECK: Judge, before we go to

1 the second speaker, are -- are we under time constraints
2 here?

3 JUDGE O'MALLEY: Usually with the
4 petitioners, when they're presenting it, they aren't under
5 a timeframe. It's when folks that want to get up and
6 speak that are not part of the petitioners, then we'll put
7 a timeframe on it. Five minutes, is that what you want?

8 CHAIRMAN SCHUECK: Three minutes.

9 JUDGE O'MALLEY: I'm sorry?

10 CHAIRMAN SCHUECK: We'll worry about that
11 when we get there.

12 JUDGE O'MALLEY: Okay.

13 CHAIRMAN SCHUECK: But these guys are free
14 to roam?

15 JUDGE O'MALLEY: Well, you know, I don't
16 think they'll take that long, but, yeah, we don't put any
17 time limit on the petitioners.

18 CHAIRMAN SCHUECK: Thank you.

19 MR. LEVIN: Good morning, Mr. Chairman,
20 Commission Members. My name is Ilan Levin. I'm here on
21 behalf of the Petitioners. I'm just going to take a few
22 minutes and -- and be available to answer any questions
23 that you all may have.

24 The two Petitions seek to make basically
25 the same change to the definition of the term air

1 contaminant in Reg. 18 and Reg. 26. I'm not going to read
2 the definitions. You have them before you in the
3 petitions, but they're substantially the same.

4 Air contaminant means any solid, liquid,
5 gas or combination thereof, other than water vapor, CO₂,
6 carbon dioxide and -- and a couple of others. And what we
7 seek to do is amend the definition by deleting those two
8 words carbon dioxide, and for the reasons I'll explain,
9 this change is really a clarification. And that's not to
10 say it's not important, or it's not -- that it won't
11 generate debate, because it will, but the change would do
12 nothing more than substantially codify existing state and
13 federal law.

14 And so the first point that I want to make,
15 is that the definition of air contaminant in the state law
16 today, does not specifically exclude carbon dioxide. The
17 statutory definition is -- we've passed out -- and this is
18 just a demonstrative piece of paper, and I'll hold it up
19 here. It's in Arkansas Code Section 8-4-303(2), and it
20 just says: "Air contaminant means any solid, liquid, gas
21 or vapor, or any combination thereof." And that's all --
22 that's all we would do with this update, this
23 clarification to the two definitions with respect to CO₂.

24 There's also a reason under federal law,
25 and that is that the United States Supreme Court ruled in

1 2007 that -- and I quote, "The Federal Clean Air Act's
2 sweeping definition of air pollutants includes any air
3 pollution agent, including carbon dioxide."

4 And the Supreme Court also said in the case
5 of Massachusetts versus EPA, that the scientific
6 understanding of climate change has progressed, and the
7 harms associated with climate change are serious and well
8 recognized."

9 So climate change is a serious concern and
10 CO2 is a pollutant according to the Supreme Court. And
11 the third point that I'd like to make, is that the State
12 of Arkansas has already recognized this fact. In 2007, as
13 you all know, the Arkansas General Assembly overwhelming
14 passed Bill 2460, creating a Governor's Commission on
15 Global Warming, and that body is charged with conducting
16 an in-depth evaluation of global warming's effect on
17 Arkansas' economy and natural resources.

18 And one of the things that the Governor's
19 Commission is charged with figuring out, is a global
20 warming pollutant reduction goal. And it's worth noting
21 that in that law, the term "global warming pollutant" is
22 specifically stated in there no less than five times,
23 including this clause: "The purpose of the global warming
24 pollutant reduction goal and comprehensive strategic plan
25 is to place Arkansas in a position to help stabilize the

1 global climate to allow Arkansas to lead the nation in
2 attracting clean, renewable energy, and to reduce consumer
3 energy dependence on current carbon-generating
4 technologies and expenditures."

5 So the regulatory definition in Reg. 18 and
6 26, not only goes beyond the scope of the statutory
7 definition. It -- it flies in the face of the most recent
8 legislative pronouncement on the subject of climate change
9 and CO2 as a pollutant.

10 Yes, sir?

11 MR. YOUNG: Mr. Levin, would you mind
12 taking a question in the middle of your presentation?

13 MR. LEVIN: Certainly.

14 MR. YOUNG: I know the Global Warming
15 Commission has been busy working on this for several
16 months, and several of the members of this Commission are
17 advisors to that Commission, and I know they're scheduled
18 to complete their work some time this fall.

19 Could you explain to the Commission why
20 you're suggesting that we ought to jump in front of what
21 they may or may not recommend?

22 MR. LEVIN: Yes, sir, because this proposal
23 that we're bringing to you today is not jumping ahead of
24 the Global Warming Commission. It simply is removing a
25 roadblock to whatever decisions or recommendations that

1 body makes to the legislature. If the legislature decides
2 to take some action or -- and this is -- I think everybody
3 in the room acknowledged that there's probably going to be
4 some federal action on this topic, and all we're doing is
5 removing a roadblock. It's really just a small first step
6 of paving the way to whatever it is that this body, ADEQ,
7 the legislature, and the Global Warming Commission decides
8 is in the best interest of the State of Arkansas.

9 MR. YOUNG: Thank you.

10 CHAIRMAN SCHUECK: Along those same lines,
11 why -- why do you feel as though we shouldn't attack this
12 problem after the EPA and the -- and the Governor's
13 Commission on Global Warming basically make their cases
14 and come down with the rules or the regulations that they
15 they'd like to see enacted for our State? Why do you feel
16 as though we should go before those two items?

17 MR. LEVIN: Well, because the definition in
18 the regulations, in Reg. 18 and 26, are just flat wrong
19 with respect to CO2. Not to sound coy, but if there was
20 regulation that says the earth is flat, we'd be up here
21 saying, please, strike that, it just doesn't make sense.

22 So, again, whether, you know, you're for or
23 against CO2 regulation, is not what this Petition is
24 about. And that debate is happening in Congress. It's
25 happening in this State. And if given a chance to go to

1 public hearing on -- on these Petitions, we certainly
2 welcome that debate.

3 But on the question presented by this
4 narrow Petition, again, requesting only to strike those
5 two words to bring the regulatory definition in line with
6 state law. You know, state and federal authorities have
7 already acknowledged that global warming is a concern, it
8 poses a threat, and CO2 is a pollutant, and so we're
9 not -- nothing that we would do with this amendment would
10 trigger any permitting of any source and the Commission
11 and ADEQ would have to decide these difficult questions
12 about what is insignificant in terms of CO2 emissions,
13 what kind of regulation, maybe it's just registration
14 reporting in order for the Global Warming Commission to do
15 its job and to just to take an inventory of CO2, the
16 emissions in the State.

17 There's some basic information that that
18 Commission needs to know, and so, again, we just want to
19 remove a roadblock, an impediment that at best causes
20 confusion, at worse -- at its worse, sets up some real
21 problems with potential federal regulation or whatever it
22 is that the commissioners or legislature decides to do,
23 and so we're getting out ahead of it and making a
24 regulatory definition silent on CO2.

25 Again, we're not proposing any emission

1 standard, any limit, any new regulation. We're just
2 asking that the regulatory definition be silent on CO2.

3 Thank you. I'll take any further
4 questions.

5 CHAIRMAN SCHUECK: Let me ask you this: If
6 this is taken out and if we become silent on the issue,
7 does that not open other avenues to come after emitters?

8 MR. LEVIN: Well, as -- as Ken Smith just
9 mentioned, we're not interested -- the conservation
10 environmental community is not interested in going after
11 any small emitters. If somebody out there was inclined
12 to, for some reason, try to take some enforcement action,
13 nuisance or whatever it is, a lawsuit against a small
14 emitter of CO2, I think they could go to court today under
15 state law definition and try to make their case.

16 If the Department chose to take some
17 enforcement action against an emitter of CO2, they could
18 do that today under Regulation 18-801, which essentially
19 is a catchall that says that the DEQ could, if it chooses,
20 to enforce against an entity that's causing air pollution,
21 notwithstanding the carveouts in the definition of air
22 contaminants, and that's in regulation today.

23 So DEQ could take action. Somebody out
24 there in the public could, I guess, try to do something.
25 That's not what this is about. There's -- there's ample

1 authority in the current regulations and in the law to --
2 for DEQ to decide, or this Commission to decide what is an
3 insignificant amount of CO2. Twenty-five tons, fifty
4 tons, a thousand tons? I don't know, but that's going to
5 be a DEQ and Commission decision to decide what is
6 significant.

7 When you talk about large sources of CO2,
8 power plants have had to report carbon dioxide emissions
9 since the 1990 Federal Clean Air Act Amendments. So this
10 is nothing new. We're not seeking to do anything that's
11 not in coordination with DEQ, and in coordination with
12 this Commission. I know that the conservation community
13 has been working with the Governor's Commission On Global
14 Warming, and -- and, again, this is just about making the
15 regulatory definition silent on CO2.

16 No emission limits, no regulations that
17 we're proposing. Just bring it in line with state law,
18 remove that roadblock and let the Commission, through the
19 Governor's Commission, go forward, let the legislature go
20 forward, and if any federal regulations -- any further
21 federal CO2 reductions are imposed, that just avoids
22 confusion.

23 CHAIRMAN SCHUECK: Well again, it's -- by
24 removing it from this regulation, what you're doing is
25 taking away the defense from somebody that may be attacked

1 either by the Department or another individual that claims
2 you're in violation. It's -- everything you read about
3 CO2 is confusing, except one thing, and that is that it's
4 supposedly bad for the human race because of the global
5 warming effect.

6 I -- I'm still at a -- perplexed why you're
7 pursuing this at this early stage, other than to remove a
8 roadblock, which is really not a roadblock at a future
9 date after a -- a regulation would be set forth by EPA
10 and/or the Governor's Commission on Global Warming.

11 I mean, they're basically going to tell us
12 what we -- we need to be aiming for, and I see no
13 roadblock with this definition at this time, and I guess
14 you and I are just kind of at opposite ends here because I
15 do think all kinds of attacks on various entities around
16 the State, various industries and various individuals as
17 to -- as to there's no protection for them for their CO2
18 emissions.

19 And we all know that these regulations are
20 coming, it's just a matter of when.

21 MR. LEVIN: And in response -- again, I
22 don't want to repeat what I've already said, but, you
23 know, the Department can take action. The regulations
24 right now in 18-801 says no person shall cause or permit
25 the emission of air contaminants, including odors or water

1 vapor, and including an air contaminant whose emission is
2 not otherwise prohibited by this code, if the emission
3 constitutes air pollution.

4 So the authority is already there and the
5 reason we're proposing this -- to make the regulatory
6 definition silent on CO₂, is because we know that CO₂ is
7 an air contaminant, and the scientific consensus, the
8 legal consensus, I would submit to you, is, today, that
9 CO₂ is an air contaminant that imposes a serious threat to
10 the natural resources and the economy and we know that
11 action is forthcoming. Whether it's going to be imposed
12 on Arkansas from the federal level, whether Arkansas, like
13 so many other states, is going to take some action on its
14 own, that's all happening. That -- that debate is
15 happening, and we're a part of that. We support that, but
16 that's not what these two Petitions are about today.

17 We've already also worked with Mr. Szehner
18 to set a public hearing, a proposed public hearing on this
19 for September 16th, and that's well far out enough to
20 where if -- if any change needs to be made to Reg. 18 to
21 make amply clear that nobody is looking to go after a
22 25-ton-a-year CO₂ emitter. Those amendments could -- that
23 could easily happen in -- in the regulation that was --
24 that was just set, was just initiated, Regulation 18,
25 which sets those thresholds higher. So -- so a specific

1 threshold for CO2 could be easily established in
2 Regulation 18.

3 Again, another option might be add it to
4 that long list of insignificant activities which is in
5 that appendix to Regulation 18. So the authority to do
6 the right thing and to take reasonable steps is right
7 there. We've got time to do that. It can happen in
8 amendments to our Petition, which we would welcome. It
9 can happen, perhaps, in public comments and -- and minor
10 amendments to DEQ's Regulation 18 amendments, which we
11 would welcome and support.

12 So that's all -- that's all open for
13 discussion and we expect that there would have to be some
14 other refinements that would have to take place to make
15 sure that those concerns that you and the regulated
16 community have are addressed, because we are not at all
17 interested in -- in creating any burdens for small
18 businesses or mom and pop 25-ton-a-year CO2 emitters.
19 That's insignificant.

20 CHAIRMAN SCHUECK: Anybody have any
21 questions?

22 MR. HENDRIX: Mr. Chairman, did I
23 understand you to say that the Governor's Report on Global
24 Warming would be out this fall?

25 CHAIRMAN SCHUECK: I didn't say that.

1 MR. YOUNG: That's correct.

2 CHAIRMAN SCHUECK: I believe Randy said
3 that.

4 Yeah, Judge?

5 JUDGE O'MALLEY: Mr. Levin, would you
6 explain to the Commission why this matter has not been
7 taken over to the Arkansas Economic Development
8 Commission?

9 MR. LEVIN: Yes, Judge.

10 The compliance with Act 143 of 2007, or the
11 Executive Order 0504 is not applicable to rules that
12 substantially codify existing state or federal law. By
13 striking the word CO2 in the regulatory definition, it not
14 just substantially codifies, but it basically does what
15 the law of -- Arkansas law does, which is that one
16 sentence definition, and -- and it's silent on CO2, so we
17 are -- with this Petition, with this narrow Petition,
18 we're substantially codifying existing state law. We
19 would submit that we're also substantially codifying a
20 regulation of federal law, at least by the Supreme Court's
21 most recent decision.

22 In addition, there is no emission
23 limitation, no -- no regulation that we are proposing with
24 this, and so there is no requirement that we're adding to
25 small business or large business, and that's why Act 143

1 is not applicable to this -- to this Petition.

2 Thank you.

3 CHAIRMAN SCHUECK: Anybody else?

4 MR. BENGAL: You referred to another
5 statute. What was that other statute you referred to that
6 ADEQ would use?

7 MR. LEVIN: I was referring to Regulation
8 18-801, which -- which is -- is -- looks to be a catchall
9 that -- that says if you're causing -- I'm going to
10 paraphrase here, but I think if -- if somebody is causing
11 air pollution or a nuisance, like odor is also mentioned
12 in that 18-801, that that's prohibited.

13 So if -- if somebody were to -- if DEQ were
14 to want to prove up that some emitter of CO2 is causing
15 air pollution, then I believe it could take action.

16 MR. BENGAL: Under that provision, is there
17 a definition of what pollution is, or what the standard
18 they would have to use to determine if emission of
19 something were, in fact, a pollutant?

20 MR. LEVIN: Yes, sir, and that's really the
21 beauty of, I think, the statute and -- and the regulatory
22 definitions, is that there's not just the definition of
23 air contaminant, but there's a definition of air
24 contamination, and there is a definition of air pollution.

25 I'm reading the statutory definition. It

1 says: "The presence in the outdoor atmosphere of one or
2 more air contaminants, the quantities, characteristics or
3 duration that are materially injurious, or can be expected
4 to become injurious to human plant and life or property,
5 and unusually interfere with enjoyment of life, use of
6 property."

7 So what -- so the fact that something is
8 defined as an air contaminant is not the be-all, end-all.
9 There's a definition of air pollution in the statute and
10 in the regulations as well.

11 MR. BENGAL: Has the U.S. EPA made a ruling
12 specifically on whether CO2 is a contaminant or air
13 pollutant?

14 MR. LEVIN: I'm sorry, sir?

15 MR. BENGAL: Has the U.S. EPA made a ruling
16 on whether CO2 is a pollutant or air contaminant?

17 MR. LEVIN: Well, the U.S. Supreme Court
18 has, and right now the U.S. EPA's Environmental Appeals
19 Board, the E.A.B, which is sort of the federal analog,
20 almost to this body, that takes appeals of EPA issue
21 permits, is considering a power plant permit case. The
22 Deseret Plant is taking a briefing on the issue of whether
23 CO2 is a regulated pollutant.

24 The argument being that under the Federal
25 Clean Air Act's acid rain -- what we call the acid rain

1 provisions in part of the 1990 Clean Act Amendments, power
2 plants, specifically, have been required to report CO2
3 for -- for -- you know, ever since then.

4 MR. BENGAL: But the EPA has not yet passed
5 any regulation that defines CO2 as a air pollutant or air
6 contaminant?

7 MR. LEVIN: That's correct.

8 MR. BENGAL: How many states have gone to
9 the steps of defining CO2 as a air contaminant or
10 pollutant?

11 MR. LEVIN: Well, I don't have the answer
12 to that question. I can certainly get it for you.

13 MR. BENGAL: What state has?

14 MR. LEVIN: Well, again, we're not --
15 again, we're just asking, with this Petition, that the
16 regulation be silent on CO2. We're not adding it to any
17 list. We're not defining, for thresholds, significant
18 activities, any of that stuff. So we're just asking the
19 regulation be silent on CO2 and I -- I don't have -- I
20 don't have the numbers for you, but I imagine that
21 there's --

22 MR. BENGAL: Would Arkansas be the first
23 state to do this?

24 MR. LEVIN: I'm going to venture to say yes
25 and no, and I'm going to flip -- try to flip really

1 quickly to -- there's this great web site that the
2 Governor's Commission On Global Warming has, and there's
3 some information in there about what -- I believe, about
4 what other states have done.

5 If I'm mistaken, I think there might be a
6 list of states that have taken action, but I can't tell
7 you for sure that -- that other states have been in the
8 same position, where a regulatory definition sets up a
9 roadblock.

10 MR. BENGAL: I know many states are looking
11 at regulating emissions, but they've not termed CO2
12 specifically as a contaminant or set up a situation
13 whereby not mentioning it in a sense defaults it to
14 becoming a contaminant.

15 MR. LEVIN: Yeah. I would imagine that if
16 a state is taking action on regulating emissions, then
17 they -- then they have accepted the scientific consensus
18 that CO2 is -- is -- is a contaminant in significant
19 quantities.

20 MR. BENGAL: That's the only questions I
21 have.

22 CHAIRMAN SCHUECK: Anybody else have any
23 questions?

24 All right. If there's no other questions,
25 I would like the Department to -- I -- I assume you're

1 done?

2 MR. LEVIN: Yes, sir, if -- I think I went
3 over my time with questions, and if I can ask your
4 indulgence, Glenn Hooks of Sierra Club would just like to
5 make a couple of minutes of a closing.

6 CHAIRMAN SCHUECK: He's not just going to
7 repeat what you just said?

8 MR. LEVIN: You're not going to repeat what
9 I just said?

10 MR. HOOKS: I'm not going to repeat what
11 you just said.

12 CHAIRMAN SCHUECK: All right. If you do,
13 I'm going to stop you.

14 MR. LEVIN: Thank you.

15 MR. HOOKS: Thank you.

16 Good morning, Mr. Chairman, and Commission.

17 My name is Glenn Hooks. I represent one of the
18 Petitioners here, the Sierra Club, and our 3,000 members
19 here in the State of Arkansas. Obviously, I'm here to ask
20 you to vote yes on our Third-Party Rulemaking Petition.

21 I've been working with Sierra Club for a
22 little bit more than five years now, and when I started
23 back in 2003, I guess it was, and I talked to people about
24 global warming, you'd get a lot of rolled eyes, a lot of
25 people thinking that you're from the French and way out

1 there. Well, obviously a lot of things have changed in
2 the last five years, not only just in the nation, but here
3 in Arkansas.

4 I think global warming is a post-partisan
5 issue. It's not a Democratic issue, it's not a Republican
6 issue. You've got a Republican presidential candidate,
7 John McCain, and the Democratic presidential candidate,
8 Barack Obama, talking about it. You have our Governor
9 talking about it and forming this Global Warming
10 Commission. You have our previous Governor talking about
11 it when he was running for President. You have --
12 President Bush has come around and said global warming is
13 real.

14 So the question is really not anymore about
15 is it real, but it's about what do we do about it, what do
16 individuals do about it, and what does government --
17 government entities do about it. And we can always, as
18 individuals, do our part, and I think it really takes
19 government entities to do the major difficulties on this,
20 to do the kind of regulatory work that is going to have
21 the greatest impact on fighting global warming, and this
22 Commission is one of those entities.

23 I mean, this is the Pollution Control and
24 Ecology Commission. I think you have a -- a
25 responsibility to do the right thing, and I know you're

1 going to do the right thing to control pollution in this
2 State. This is something that's going to involve a lot of
3 different state agencies, not just this body, but -- but
4 quite a few others.

5 So what I'm asking this Commission to do,
6 is to begin a process today, to update these regulations,
7 as Ilan said, so that they're in align with current
8 statutes and recent views in Supreme Court decisions.

9 I really think that the current regulations
10 reflect a world when we didn't really know the dangers of
11 carbon dioxide. We all know now that CO2 is a pollutant.
12 We may not have known it as much 30 or 40 years ago. It's
13 the main culprit in global warming, but we're still
14 operating under a rule that specifically exempts CO2 from
15 regulation. It treats CO2 the same way it treats water
16 vapor and steam and oxygen. Those are different types of
17 situations. It's different and the regs should really
18 reflect that, I think, in 2008.

19 I think you're going to hear some things
20 today, some arguments from opponents that may be a little
21 overstated when we're talking about prophecies of doom
22 and -- and danger to -- to small businesses. Changing
23 these two words and bringing our state's regulations in
24 line with the statute and with state and federal law, will
25 not instantly mean that carbon is regulated in Arkansas --

1 carbon dioxide is regulated.

2 I really want to emphasize this, that I want
3 to enter into a process here with this Commission, with
4 the Department, with members of the public who want to
5 become involved. This is the beginning of a process by
6 which we craft some reasonable regulations, and we start
7 with rulemaking as something that everybody can be
8 involved in.

9 Now, if you hear folks saying that this is
10 going to be a doom and gloom for the entire State of
11 Arkansas and mom and pops are going to be put out of
12 business, I think what that means is, if you really
13 believe that, you have to believe that this Commission is
14 made up of unreasonable people. I don't believe that.

15 You have to believe that the Department is
16 made up of unreasonable people, and that the legislature
17 is made up of unreasonable people. I don't believe that
18 either.

19 I think what we're going to find if we
20 initiate this rulemaking process, is we're going to find a
21 group of people sitting together working out reasonable
22 ways to regulate carbon dioxide in ways that benefit the
23 environment in Arkansas and protect industry in Arkansas.

24 Everybody here is going to do good and
25 thorough work. You always do. I know that, and I think

1 the people in the room know that. So if we're going to
2 have some regulation of carbon dioxide down the road, as a
3 result of this Rulemaking Petition, it's going to be after
4 a lot of input, it's going to be after a lot of careful
5 study, after a lot of really good work from the folks in
6 this room with industry and environmentalists and
7 everybody else at the table.

8 But the fact is that CO2 is an air
9 contaminant. We're going have to take some steps to
10 regulate it. Whether we're talking about the Federal
11 Government or we're talking about state government, or the
12 Global Warming Commission or anybody else, I think this is
13 one of those all hands on deck kind of moments, and a
14 Commission that is charged with the type of duties that
15 your Commission is, definitely has a place at the table,
16 and that's why we're here today to start this -- this
17 rulemaking process.

18 Again, we want to start a process that is
19 reasonable. I think this process is reasonable, and I
20 want to be part of the team that does that, so I really
21 hope that you will vote yes on our Rulemaking Petition
22 today and initiate this process.

23 If you have any questions?

24 CHAIRMAN SCHUECK: I have -- I have a
25 question. We have a regulation that allows protection of

1 emitters of CO2. We're going to take that and then we're
2 going to remove the protection, the protection will be
3 removed. But there are no regulations over here to tell
4 you what is good and what's bad about -- about the amount
5 of emissions of CO2.

6 So if you get the cart before the horse,
7 and you remove it over here, and you don't have these
8 regulations over here, would not anarchy rein? Would --
9 would people not know what to do?

10 I mean, you, for example, you emit CO2
11 every day.

12 MR. HOOKS: Absolutely.

13 CHAIRMAN SCHUECK: You -- I'll tell you
14 just how knowledgeable I am. You emit 2.2 pounds of CO2
15 every day.

16 Now -- so you're an emitter. Now, we're
17 going to take you away from the protection, and I'm going
18 to say that I don't like that you're emitting, I think you
19 ought to die.

20 MR. HOOKS: You wouldn't be the first one
21 to say that, Mr. Chairman.

22 CHAIRMAN SCHUECK: But you have no
23 protection. There's no regulation that says, yes, I have
24 a right to live and I have a right to emit.

25 MR. HOOKS: Well, I would respectfully

1 disagree with that.

2 CHAIRMAN SCHUECK: Well, explain to me how
3 you -- how your logic works here.

4 MR. HOOKS: I would be happy to. I emit --
5 I'm going to use your figure of 2.2. Hopefully, I don't
6 emit 25 tons a year.

7 CHAIRMAN SCHUECK: It's correct. I
8 measured mine yesterday.

9 MR. HOOKS: We'll talk about that later.
10 But the reality is I think the protection in -- for -- for
11 smaller emitters, whether it be me or a small company, is
12 the reasonableness factor. I mean, as Mr. Levin talked
13 about, if somebody wanted to sue an emitter today under
14 this statute, I think they could do it. We've seen that
15 that hasn't happened a lot. I don't think it's
16 necessarily because of this reg. I think it's because
17 we're generally reasonable people.

18 We set a hearing date, or a proposed
19 hearing date of September 16th, and, again, I want to --
20 in danger of repeating what Mr. Levin said, is we have a
21 period of time here where we are willing and -- and want
22 to work with folks on crafting reasonable regulations.

23 Your situation about somebody suing me
24 because I emit CO₂, I think would be unreasonable and I
25 think we probably all agree on that.

1 CHAIRMAN SCHUECK: Well, that was -- I used
2 that as an example.

3 MR. HOOKS: I understand. I understand,
4 but it illustrates what I'm talking about, about the
5 reasonableness test to it. I think the folks in this
6 room, the Pollution Control and Ecology Commission can
7 work with the Department and the public to work on
8 reasonable regulations to control pollution, if we agree
9 that CO2 is a pollutant, as the vast scientific consensus
10 agrees, and the State of Arkansas, and the Federal
11 Government, everybody is working on this, then I think we
12 ought to craft regulations. I think it's something we
13 ought to sit down at a table together over the next
14 several months and say what is reasonable.

15 I mean, my view of what is a reasonable
16 emission may be different from what Sammy Cox's view is,
17 or somebody else in this room.

18 CHAIRMAN SCHUECK: I'm going to stop you
19 there. We already have a Commission that's trying to
20 determine that for the State of Arkansas, and the EPA is
21 going to determine it for the United States.

22 MR. HOOKS: Well --

23 CHAIRMAN SCHUECK: You know, you've had
24 your moment. So why should we embark on a -- any type of
25 regulation that -- that's going to be usurped by the other

1 two Commissions, the EPA and the -- the legislation passed
2 by the Global Warming Commission?

3 MR. HOOKS: Well, if I could answer that --

4 CHAIRMAN SCHUECK: I -- I think it's --
5 we'd just -- it's pretty hard to argue against clean air
6 and clean water.

7 MR. HOOKS: I agree.

8 CHAIRMAN SCHUECK: But I think it's silly
9 for us to do a lot of regulations and a lot of work when
10 we're going to be usurped by the Federal Government and/or
11 the legislation passed by the State of Arkansas.

12 MR. HOOKS: If I -- may I answer that
13 question?

14 CHAIRMAN SCHUECK: Yeah, answer that.

15 MR. HOOKS: First of all, I think it's
16 really important to realize that this Global Warming
17 Commission that we've been working closely with, is an
18 advisory commission. It's going to make recommendations.
19 It doesn't have authority to pass law, and so they're
20 going to make recommendations that the legislature is
21 going to consider.

22 This Commission has a role to play as well,
23 and I think that -- that doing the small stuff, updating
24 the regulations that are in place right now, really is an
25 important first step in making sure that we regulate CO2

1 or have the ability to regulate CO2 in this State.

2 I think this makes -- and I don't want to
3 overstate the obvious point, but the Commission is just
4 simply a recommending body. They don't have the authority
5 to pass law. And so the body that has the ability to pass
6 important regulations that have the force of law, is this
7 body. That's why we came to you guys.

8 CHAIRMAN SCHUECK: Well, I beg to differ
9 with you there. I think the legislature is the ones that
10 makes the law, and we make the regulations, some of the
11 regulations.

12 MR. HOOKS: That's my only point. I
13 appreciate your -- are there any more questions?

14 CHAIRMAN SCHUECK: Randy -- Randy had a
15 question.

16 MR. YOUNG: Both you and Mr. Levin
17 mentioned water vapor and I think that -- the inference
18 was CO2 is -- is not water vapor, yet water vapor is, as I
19 understand it, is one of the significant gases that
20 contribute to the greenhouse effect.

21 Would you elaborate why -- what you meant
22 by the relationship between CO2 and water vapor?

23 MR. SMITH: Well, Mr. Young, I'm going to
24 bring our comments to a conclusion here in just a moment,
25 but the majority of greenhouse gases that are recognized

1 by the scientific community, are methane, carbon dioxide,
2 sulfur dioxide, and nitrogen dioxide. NO_x, SO_x, carbon
3 dioxide and methane are the principal gases. There are
4 certainly other elements, gases out there that are
5 contributing to probably the ozone to some degree as well.

6 We all responded to the Ozone Challenge,
7 right? We all issued regulations there at one time. You
8 know, it depends on -- where do you find ozone? If ozone
9 is in the atmosphere, it's good. If ozone is down in the
10 middle of Little Rock and in our neighbors, it's not.

11 So there are a lot of components to
12 greenhouse gases, but I think we have to be -- this test
13 of reasonableness, what are the ones we can really go
14 after and do something about? And carbon dioxide is the
15 principal contributor to greenhouse gases, and that's what
16 we really have to stay focused on.

17 Now, I'd like to address for just a
18 moment --

19 MR. YOUNG: Is it -- does it contribute
20 more than water vapor? Because it seems to me that I've
21 read contrary to that?

22 MR. SMITH: Well, if you have, then I'd
23 love to see the publication. I haven't seen that, and
24 it's certainly not in any testimony that I've read before
25 Congress at this point. But if you have something

1 different than what I'm seeing, than from what I've read,
2 then I would appreciate that.

3 Finally, I'd like to just say, as far as
4 your comments about what why do we have to do anything
5 now, truthfully, I'm a little surprised to hear that, but
6 I'm just going to accept that there's some reason behind
7 your thinking on that.

8 CHAIRMAN SCHUECK: I gave you the reason.

9 MR. SMITH: It doesn't quite make sense to
10 me. The legislature needs to know, and the State of
11 Arkansas needs to know, as soon as possible, what our
12 carbon emissions are, and what the primary sources of
13 those are. This gives us a chance to be able to determine
14 what those sources are, so that at some point we can
15 determine reasonable regulations, reasonable requirements,
16 reasonable registration.

17 Basically, we walk -- we're walking into a
18 dark room without a light when it comes to how do we go
19 about reducing carbon emissions. We have some ideas, but
20 we really don't know what the extent of carbon emissions
21 are in Arkansas. We need that information now.

22 The way the regulations of this agency are
23 now written, we have a roadblock that we have to overcome.
24 We're asking to bring this in compliance with Arkansas
25 statute and move forward on this in a reasonable way.

1 And thank you, Members of the Commission,
2 for this opportunity to speak to you today on the -- on
3 this rulemaking proposal.

4 CHAIRMAN SCHUECK: Does anybody else have
5 any comments that they'd like to make? Go ahead.

6 MR. YOUNG: I had a question or two that I
7 would like to ask the Department, if you're agreeable.

8 CHAIRMAN SCHUECK: Yeah, ask the
9 Department.

10 MR. YOUNG: Teresa, one of the comments
11 that Mr. Levin or Levine made, was that our current --
12 currently 18 and 26 that they're seeking to amend, is in
13 conflict with existing state law.

14 Have y'all looked at that? Do you believe
15 that's so?

16 MS. MARKS: We don't believe that's so. We
17 think those -- of course, those regulations have been in
18 effect for some time. I don't believe they conflict with
19 state law.

20 MR. YOUNG: And I think he also suggested
21 one of the benefits by us making this change, is it would
22 put us in a position to have an inventory of CO2
23 emissions.

24 I would think we already have some kind of
25 inventory, do we not?

1 MS. MARKS: No, sir, we do not. And I have
2 to say I agree that -- that we are going to need to move
3 forward with some type of inventory of CO2 emissions.

4 And I have a statement. If you all will
5 indulge me, I can read that and then I think it will fit
6 into some of these questions.

7 CHAIRMAN SCHUECK: That fits into my
8 argument, and that is: How do you know who to make an
9 inventory of if you don't have a regulation to follow?

10 MS. MARKS: Well, the inventory would be
11 just about -- it would be a reporting requirement. It
12 would not be a regulation requirement.

13 CHAIRMAN SCHUECK: I understand that, but
14 do you inventory every single individual in this room or
15 do you -- who do you inventory and where does it --

16 MS. MARKS: We -- we --

17 CHAIRMAN SCHUECK: You have to have some
18 type of rule and regulation to operate by.

19 MS. MARKS: That's correct.

20 CHAIRMAN SCHUECK: And we don't -- and we
21 don't have them.

22 MS. MARKS: We don't have them. Those
23 would have to be developed.

24 CHAIRMAN SCHUECK: That's right, and that
25 would come from where; the EPA and/or the legislators? Is

1 that not correct?

2 MS. MARKS: Generally that's -- that's
3 going to be correct. I think other states have joined and
4 done -- have joined what's called The Climate Registry,
5 and they've done different types of reporting of their
6 emissions levels.

7 Now, we have -- of course, we do have our
8 permitting entities that report to us certain emissions.
9 They don't report to us carbon dioxide emissions, but they
10 do others. That would be a simpler thing to accomplish if
11 we had them reporting carbon dioxide emissions.

12 If -- when you talk about your regulation
13 issue, right now under Reg. 8, if they emit more than
14 25 tons per year of -- of a contaminant, a air
15 contaminant, then we are obligated to regulate them.
16 We're obligated to address those emissions in their
17 permit, unless they can prove that they're not causing air
18 pollution. That's where the regulation would kick in, in
19 our opinion.

20 CHAIRMAN SCHUECK: The CO2 would?

21 MS. MARKS: Yes, sir, if -- if the
22 exclusion was removed, the opinion of the Department --

23 CHAIRMAN SCHUECK: Yeah, if it's removed.

24 MS. MARKS: Yes, sir.

25 CHAIRMAN SCHUECK: That's correct?

1 MS. MARKS: Yes, sir.

2 CHAIRMAN SCHUECK: All right.

3 MR. YOUNG: So you're saying we would
4 automatically start regulating CO2 emitters above that
5 threshold?

6 MS. MARKS: It is our opinion in the
7 Department, that at this point with the way -- we don't --
8 let me kind of go back to what I really want to say about
9 this whole thing. We're not opposed to the removal of
10 this exemption, per se. We're not opposed to that. We
11 realize that -- that global warming is a real problem, we
12 realize that greenhouse emissions are contributing to that
13 problem, and we agree that there is a move on the federal
14 government that will be regulating greenhouse gas
15 emissions.

16 We don't have a problem with removal of the
17 exemption, per se. Our concern is that there are going to
18 be some unintended consequences, and the practicalities of
19 what we would do if that exemption was removed
20 immediately, because you have a number of facilities out
21 there that would all of a sudden be subject to a
22 regulation, that were not subject to regulation before.

23 Now, I have spoken with -- with Mr. Hooks
24 and -- and Ken Smith, and all these folks about this, and
25 so we -- I have no -- I am not questioning their statement

1 to me that they don't want to move forward with regulation
2 immediately. I believe them. I don't have any reason not
3 to do that. We have always been very open with each other
4 and they have never misled me on anything they've told me.

5 My concern is that they're not the
6 universe, and I guess having a legal background, I have to
7 look at this the way it appears to us the law reads. And
8 in the Department, it appears to us that if this exemption
9 is removed with the way it is written now, which is just
10 the removal of the exemption, it would kick in our
11 regulation if they're emitting more than 25 tons per year.
12 That's our concern.

13 So what -- what we would hope, is if the --
14 if the Commission does intend to go ahead and initiate
15 this rulemaking, it would have to be done with the
16 understanding the Department is going to need time, and
17 we're going to need direction, we're going to need --
18 right now the scientific data is not there, nor is the
19 technology to accomplish numerical emissions, regulation
20 at the stack. It's just not there.

21 And there are only about -- in our
22 research, there are about four states in the nation that
23 actually have some type of numerical regulation at the
24 stack level, and that's -- that's generally just for
25 electric-generating units, which are huge units, Title IV

1 units, as you know. We have emitters -- we have probably
2 1,000 emitters that are either small -- that have a small
3 permit or they're Title V. We have about 220 in the Title
4 IV Permit.

5 CHAIRMAN SCHUECK: And for me, you just
6 said that your fear is that if this is removed, that if
7 you get over 25 tons, you'll kick in the regulation. This
8 obviously would be an economic impact, right?

9 MS. MARKS: It would be for the facilities
10 who are being regulated, I'm assuming.

11 CHAIRMAN SCHUECK: Well, I mean, there
12 would be an economic impact to somebody, or some
13 corporation?

14 MS. MARKS: I would assume, yes.

15 CHAIRMAN SCHUECK: Which -- which goes
16 against what they said earlier, that -- that there was
17 none required because it didn't really affect anybody.

18 MS. MARKS: And they -- they are going
19 under the assumption that there isn't going to be any
20 regulation immediately, and I understand the way
21 they're --

22 CHAIRMAN SCHUECK: I realize that, but --
23 but there will be regulation?

24 MS. MARKS: We differ with the way they're
25 reading the law, yes, sir.

1 CHAIRMAN SCHUECK: Okay. Thank you.

2 Anybody else? I guess you're done.

3 I think we'll go to public comment now,
4 and, Judge, while we're doing this, you know we've had a
5 lot of papers thrown on our desks here this morning.

6 JUDGE O'MALLEY: Yes, sir.

7 CHAIRMAN SCHUECK: And quite honestly, I'm
8 lost as to how many Minute Orders we've got. So if you
9 would be going through that, and tell me how -- where we
10 can go after we get done with this, I would appreciate it.

11 I mean, people need to realize that -- that
12 when you throw stuff on this desk early in the morning,
13 where we haven't had time to read it, there's two bad
14 things that can happen, and that is, one, we don't have a
15 chance to read it, so we don't know what's in it.

16 JUDGE O'MALLEY: What I have told the folks
17 that have talked to me, is to make you aware that they
18 have presented a Minute Order that's either -- that's in
19 front of you, and I think Mr. Smith presented one. There
20 should be one up there in front of you, and his is not --
21 the only thing that's in his now, that was not in their
22 original package, is they put in at least one date, maybe
23 more, the one date for the public hearing to be held here
24 on September the 21st.

25 CHAIRMAN SCHUECK: The point that I'm

1 trying to make, is that stuff appears up here. We've got
2 some order in our life up here, and that totally makes
3 everything go astray. And the same thing with new minute
4 orders and documents that -- we need to have a cutoff
5 period, you know. That's -- that's -- that's all I'm
6 saying. It's only fair to -- to the people that are
7 presenting them, and it's only fair to us. Somehow we
8 need to talk about that.

9 JUDGE O'MALLEY: We'll work on that,
10 Mr. Chairman.

11 CHAIRMAN SCHUECK: Okay. But I'm trusting
12 you to guide us on, you got this minute order, this minute
13 order, as we go through them?

14 JUDGE O'MALLEY: Yes, sir.

15 MR. THOMPSON: Could we -- could we
16 possibly just take a 10-minute break?

17 CHAIRMAN SCHUECK: Do you have a problem?

18 MR. THOMPSON: Yes, sir.

19 CHAIRMAN SCHUECK: Okay. We'll take a
20 break.

21 (Brief recess was taken.)

22 CHAIRMAN SCHUECK: Okay. We're going to go
23 into the public comment here. We have one here that is
24 out of synch with the world, so we'll hear him first.

25 Bill Saunders?

1 MR. SAUNDERS: Good morning, Commissioners,
2 and thank you, Mr. Chairman. I'm here just briefly to
3 remind you that this year, again, the conservation
4 community will be offering a nice picnic and canoe and
5 rubber raft float on the Ouachita River, and I have
6 detailed information.

7 Two Commissioners, Commissioners Sickel and
8 Ephrain Valdez brought his family, and have been before,
9 and the Directors of the Department, so it's not a new
10 issue to you all, but I welcome any questions.

11 Our chairperson, Debbie Doss, from Conway
12 is here, and her contact information is on the sheet. And
13 I just want a show of hands, so I will be able to hand
14 these out, so that everybody has this information, and we
15 welcome you, and hope to see you there on August the 9th,
16 I believe the date is here. And this will be for
17 government officials, and especially for PC&E
18 Commissioners.

19 CHAIRMAN SCHUECK: Thank you, Bill. It's
20 real nice of you to do that. We've already got those,
21 Bill. Thank you.

22 MR. THOMPSON: Mr. Schueck was discussing
23 whether he could have his own raft or not.

24 CHAIRMAN SCHUECK: I'm a great canoeist. I
25 am. I got a merit badge in canoeing.

1 MR. SAUNDERS: Right. There will be a
2 choice of canoes and rafts, but how -- how many passengers
3 per boat will be the purview of your captain, who will be
4 a certified safety-type person from the Arkansas Canoe
5 Club, so I'll just have to defer the answers to any
6 questions.

7 CHAIRMAN SCHUECK: Thank you, Bill, and
8 thank you for the invite.

9 All right. The first public speaker after
10 Bill, is Alice Andrews, and she's going to speak on CO2.

11 MS. ANDREWS: There are some disadvantages
12 to being A, I guess, in the alphabet.

13 CHAIRMAN SCHUECK: Alice, we're going to
14 be -- before you get started, we're going to go with a max
15 of three minutes for each speaker, so, Judge, if you'll --

16 JUDGE O'MALLEY: And if they'll state their
17 name for the record.

18 CHAIRMAN SCHUECK: Yeah, and state your
19 name when you -- when you come to the microphone, please.

20 MS. ANDREWS: Thank you. I'm Alice Andrews
21 with the Ozark Society.

22 Good morning to all the Commissioners.
23 It's good to see you. It's been a while. I haven't seen
24 most of you since the River Valley Third-Party Rulemaking
25 issues.

1 We're back. It's from water now to clean
2 air, and I hope that everyone understands how important --
3 how critical and how challenging your task is becoming,
4 that in keeping the air in Arkansas clean, the air that
5 you and I, your children, and your grandchildren breathe
6 24 hours a day.

7 My comments are going to be directed more
8 toward public health. It's a significant public health
9 issue. Little Rock has one of the highest rates in the
10 country of childhood asthma. Arkansas also has a very
11 large community of retirees who are increasingly
12 vulnerable to respiratory illness. Many of them already
13 have COPD or what's known as Chronic Obstructive Pulmonary
14 Disease.

15 I believe, for one, that CO2 should be a
16 regulated gas, and I'd like for you to consider the
17 accumulative effect of growing CO2 emissions to our air.
18 They come from innumerable sources, both within Arkansas
19 and outside the state.

20 Our prevailing winds -- I'm not a
21 meteorologist, but our prevailing winds are consistently
22 from southwest to northeast. The significance of that, is
23 that Louisiana, Oklahoma, and Texas immediately have
24 impact on Arkansas. There are a number of new coal plants
25 popping up all over the landscape, including Hugo,

1 Oklahoma, directly across our western border, that are
2 heavy CO2 emitters.

3 There is scientific consensus globally that
4 CO2 is one of the largest contributors to greenhouse gases
5 and global warming. There's little doubt that regulating
6 CO2 and other air pollutants has an economic impact, but
7 that's not different from any other state in the union.
8 Every state is going to have to deal with the cost of --
9 deal with this issue as a cost of doing business.

10 How long is it going to take for all of us
11 to realize that there's a reason for a warning on a
12 plastic bag you might get at the grocery or any place you
13 shop. It says something about don't put your head in the
14 bag, and particularly don't tie it closed and breathe.
15 Breathing concentrated CO2 has a poor outcome. It's
16 usually not favorable to life.

17 I think we have to weigh health against
18 economic impacts. We support Audubon Arkansas, the Sierra
19 Club and the Environmental Integrity Project's Petition
20 for third-party rulemaking. Let's get ahead of the cart.

21 Thank you.

22 CHAIRMAN SCHUECK: Thank you, Alice.

23 All right. The next in line is Stacie

24 Hazel.

25 MS. HAZEL: Good morning. I'm Stacie Hazel

1 and I represent Arkansas gas consumers. I'd like to tell
2 you about our organization. We are a trade association
3 organized and existing under the laws of -- of Arkansas.
4 We represent industrial and agriculture companies of --
5 operating throughout the State of Arkansas.

6 I know you mentioned about your papers
7 earlier. I'm one of the culprits that put a document for
8 you to read.

9 Basically, we are asking that you look
10 seriously at this proposal by the Petitioners. We find
11 serious defects in the Petitioners' request, especially in
12 their claim that they're not seeking any proposed
13 regulation. We've already heard from the Department's
14 Attorney saying that if this occurs, the regulation occurs
15 as proposed, it will automatically establish and trigger
16 limits and permitting requirements, which are in far
17 excess of requirements proposed by federal law.

18 Also, we've addressed in our document that
19 the company did an impact study, economic impact or
20 benefit study associated with proposed regulations in
21 their petitions. There's also not been any kind of
22 proposed findings on -- as required by Arkansas law on
23 small businesses. And, further, we'd just like to make
24 sure that you're aware that it would not only affect
25 Arkansas residents, but also Arkansas businesses.

1 Especially in the State since 1998, according to the
2 Department of Workforce Services that indicates Arkansas
3 has lost more than 52,000 manufacturing jobs since 1998.
4 If this gets -- gets proposed in effect as ruling, it
5 would just only exacerbate those job losses for this State
6 in the future, as well as inhibit future industrial
7 development in the State.

8 And I'd like to close that we'd just like
9 for you to look at this proposal and look at our comments
10 that we presented to you today and ask you that you deny
11 the Petition.

12 CHAIRMAN SCHUECK: Okay. Thank you,
13 Stacie.

14 MS. HAZEL: Thank you.

15 CHAIRMAN SCHUECK: Brian Donahue.

16 MR. DONAHUE: Good morning, Mr. Chairman
17 and Members of the Commission. My name is Brian Donahue.
18 I'm here today on behalf of Arkansas Electric Energy
19 consumers. Arkansas Electric Energy consumers is a group
20 of industrial consumers of electricity in this State, and
21 they need large amounts of electricity and this gives them
22 a great concern for whatever happens with the carbon
23 dioxide regulation in the State, and we appreciate the
24 opportunity to present our members' thoughts on carbon
25 dioxide rule change.

1 Ultimately, the Petitioners are asking the
2 Commission to conclude, based on no specific evidence in
3 any record, that carbon dioxide released by human activity
4 is an air contaminant that causes serious health welfare
5 and economic problems and to impose a regulatory solution.

6 The keystone of their arguments is this
7 case, Massachusetts versus EPA. The Massachusetts court
8 reviewed EPA's denial of a petition asking for regulation
9 of greenhouse gas emissions from new motor vehicles and
10 engines under the Clean Air Act.

11 The Court, despite the petitioner's
12 suggestion, denied telling the EPA that it had to regulate
13 carbon dioxide emissions without further consideration,
14 and it did not set a deadline for EPA action. When I
15 looked last, there was no federal law regulation on carbon
16 dioxide. So Petitioners' suggestions to the contrary must
17 be looked at very carefully.

18 In the end, neither the Massachusetts case,
19 nor some international consensus about climate change
20 creates any real pressure for Arkansas to regulate carbon
21 dioxide, or any other greenhouse act, and it certainly
22 don't justify the Petitioners' rush to regulate here in
23 Arkansas.

24 There are no -- a number of other serious
25 legal obstacles to state action on carbon dioxide issues.

1 First, we understand this Commission's authority is
2 limited to the State's borders. Carbon dioxide and
3 emissions and climate change, if you believe the
4 Petitioners, are a worldwide phenomenon, which has
5 worldwide, not localized effects. The Petitioners have
6 not shown that there is any specific, quantifiable, local,
7 adverse impact to the State's climate resulting from
8 instate carbon dioxide emissions.

9 And, in fact, I recall Mr. Levin referring
10 to the state law that deals with -- with what is a -- a
11 pollutant. He failed to read the portion of the pollution
12 definition which requires that if a -- a potential
13 pollutant interferes with life and loss of property in
14 this State. Now they have shown no such interference.

15 If the Commission approves the Petitioner's
16 Petition, this very act could also result in a federal
17 preemptory challenge under the Clean Air Act because the
18 Clean Air Act regulates emissions from new automobiles,
19 and this State's statute would affect any emitter of
20 carbon dioxide.

21 Third, it appears that if this Commission
22 approves the Petition, it's going to have to decide how to
23 regulate CO₂. Is the State going to get to the point of
24 stopping cars at the border, and trucks and trains and
25 measuring CO₂ emissions from those vehicles and then

1 deciding whether the car can come in or not, or tax the
2 car as it -- as it proceeds?

3 Fourth, any attempt by this Commission to
4 regulate carbon dioxide will impose unreasonable burdens
5 on Arkansas business, and on the State's residents
6 generally. There aren't any specific figures available,
7 but the Heritage Foundation recently published an analysis
8 of likely financial impacts of some federal carbon
9 emission limitations, and that was the Lieberman-Warner
10 Act, which was thrown out of Congress a couple of weeks
11 ago.

12 The Heritage Foundation study found that if
13 that Act had passed between now and 2030, the State of
14 Arkansas, itself and alone, would lose over 24,000
15 manufacturing jobs, in addition to the 50,000 jobs you
16 just heard Ms. Hazel refer to, and individual Arkansans
17 would lose more than \$900 million in personal income.
18 That's not corporate income, that's personal income.

19 Can we afford that kind of impact?

20 JUDGE O'MALLEY: Time.

21 MR. DONAHUE: Thank you. I appreciate the
22 opportunity to visit with the Commission about this matter
23 and look forward to -- if there are any questions, I'd be
24 happy to answer them.

25 CHAIRMAN SCHUECK: Thank you, Brian.

1 Anybody got any questions of Brian?

2 I had one. You kind of --

3 MR. DONAHUE: Yes, sir.

4 CHAIRMAN SCHUECK: -- picked my brain there

5 a little bit.

6 If -- if cars are the emitter, how -- how

7 are you going to ever control the regulation, any

8 regulation?

9 MR. DONAHUE: I don't believe that would be

10 possible for this State. We cannot, here in this State,

11 tell Detroit how to build their cars, what the emissions

12 levels are. There would be all sorts of difficulties

13 imposed by such an effort. A commerce clause might become

14 involved. You could have all sorts of problem.

15 CHAIRMAN SCHUECK: Thank you.

16 MR. DONAHUE: Yes, sir?

17 MR. YOUNG: Doesn't -- doesn't California

18 have some kind of special emissions?

19 MR. DONAHUE: And I believe that causes all

20 sorts of problems, and, in fact, has, on a couple of

21 occasions, required automobile manufacturers to -- to

22 manufacture and develop and deliver cars to California

23 that they don't deliver anywhere else.

24 In fact, I think that happened here just in

25 the last couple of months. Honda, I believe, is reported

1 to have delivered fuel cell vehicles to California. I
2 wouldn't mind having one, but I can't get one because I
3 don't live in California.

4 CHAIRMAN SCHUECK: Thank you.

5 MR. DONAHUE: Thank you.

6 CHAIRMAN SCHUECK: All right. Steven Cain.

7 MR. CAIN: Good morning. My name is Steven
8 Cain. I'm here to submit comments on behalf of the
9 American Coalition for Clean Coal Electricity. We're here
10 to ask the Commission to deny these -- the Petitions.
11 Contrary to the assertions made in the Petition, the
12 regulatory changes sought would have very real and
13 immediate effects, the effect of beginning full-scale
14 regulation of carbon dioxide in Arkansas well ahead of any
15 federal requirement to do so. This will lead to huge
16 costs for Arkansas consumers and businesses and to an
17 unprecedented expansion of this Commission's regulatory
18 authority. Thus the rulemakings they seek would likely be
19 lengthy, costly and controversial, and require a great
20 deal of study and analysis.

21 This would include scientific analysis of
22 greenhouse gas impacts, since a substance can only be an
23 air contaminant under the Commission's regulations if it
24 endangers public health or the environment. The
25 Commission should not undertake this extensive effort at

1 this time. Instead, it should wait for the Federal
2 Government to take action on climate change, action which
3 increasingly appears inevitable.

4 The Petition asked the Commission to
5 include CO2 in the definition of air contaminant, and
6 claimed that such revision will not impose new
7 requirements, however, Arkansas Rule 18 requires a permit
8 for any source that emits 25 tons per year or more of any
9 air contaminant, therefore, if air contaminant includes
10 CO2, all sources that emit more than 25 tons of CO2 will
11 be required to obtain a air permit. Because any 10,000
12 square foot building that relies on natural gas or oil for
13 heating likely emits around 25 tons of CO2 per year,
14 schools, churches, hotels, hospitals, assisted-living
15 facilities, retail stores, restaurants, sports arenas,
16 office buildings and many others will be regulated if the
17 Petitions are implemented.

18 The Petition is disingenuous in arguing
19 that the Supreme Court Massachusetts decision requires the
20 requested revision. That decision simply held that CO2 is
21 an air pollutant which EPA may regulate if EPA finds that
22 CO2 endangers the public. EPA has not yet made an
23 endangerment finding, and so at this point does not yet
24 regulate CO2.

25 In contrast, if the Arkansas definition of

1 air contaminant is changed to include CO2, as is requested
2 here, regulation of CO2 by this Commission will become
3 mandatory immediately. Thus, the requested change is not
4 required by federal law, but Reg. 18 forces CO2 regulation
5 under Arkansas law before they are subject to CO2
6 regulation under federal law.

7 EPA and Congress, however, are moving on
8 perspective CO2 regulation. The program that Congress
9 and/or EPA ultimately adopts can make a separate Arkansas
10 program administered by this Commission unnecessary,
11 duplicative or in conflict with new federal requirements
12 when they are adopted. For these reasons, the Commission
13 should not initiate rulemaking proceedings as requested.
14 Arkansas, on its own, cannot impact global climate change.

15 The significant investment in public --

16 JUDGE O'MALLEY: Time.

17 MR. CAIN: Thank you.

18 CHAIRMAN SCHUECK: I've got a question.

19 You're the American Coalition of Clean Coal; is that
20 right?

21 MR. CAIN: Yes, sir.

22 CHAIRMAN SCHUECK: Will they ever come up
23 with a process to clean the coal, so we can burn it for
24 energy?

25 MR. CAIN: Well, we have several different

1 processes. We have processes which are -- you know, you
2 can utilize processes at the coal mine to clean coal.
3 There's other -- other technologies, combustion
4 technologies such as IGCC or Integrated Gasification
5 Combined Cycle. We have many different post-combustion
6 technologies that are out there.

7 You know, one of the arguments that we hear
8 from a lot of people, are that, you know, why use the same
9 technology that you're using in the '60s? Well, it isn't
10 the same technology. It may be labeled as the same
11 technology, such as pulverized coal, but back then, you
12 know, you might not have had post-combustion technology
13 that you do today.

14 The emissions on the plants today are, you
15 know, a 10th or a 20th of what they were 30 years ago.
16 You look at a Model A you built in 1910, and look at a car
17 that's built today and compare the emissions of the two,
18 and the fuel efficiency, for that matter. Same effect.

19 CHAIRMAN SCHUECK: Thank you.

20 MR. CAIN: Thank you.

21 CHAIRMAN SCHUECK: Eddie Moore.

22 MR. MOORE: Thank you, Mr. Chairman.

23 I feel like having watched this
24 proceeding -- I'm not going to read a written statement --
25 that maybe we're getting ahead of ourselves a little bit,

1 in a sense with some of the comments, because this is not
2 a proceeding to implement a regulation or to adopt a
3 regulation. This is a proceeding to initiate rulemaking
4 so that the kind of discussion that is happening in here
5 today will occur, gathering input from the public, so that
6 a regulation that's proposed would come back to this
7 Commission, and this Commission could then act upon it, or
8 the Commission could say it looks like there's still
9 problems with this and send it back. So this is really
10 trying to open the discussion and I think it should be a
11 public discussion. Not something where you wait until you
12 think you've got a final rule made and then try to send it
13 through without having public discussion. So, again, it's
14 a proceeding to initiate rulemaking.

15 And when you look at what has happened in
16 the past, and I think of the comments that were just made
17 about coal plants and the cars, when we say that those
18 emissions are 90, sometimes 99 percent less than they used
19 to be, that is because of the regulations that eliminated
20 those emissions, but not the other emissions that weren't
21 foreseen in the regulation.

22 With this particular -- in each of those
23 cases, we didn't wait until we had a regulation and put it
24 in place. First, the purview was set that that was a
25 pollutant available to be regulated, then we went through

1 a process. So it really stands in on its head to say we
2 want to begin to look at this as a contaminant, until we
3 write the regulation for it.

4 Finally, with respect to the Global Warming
5 Commission -- maybe not finally. The Global Warming
6 Commission is making a lot of recommendations. It's not
7 really looking at -- it's not a regulatory recommendation
8 body. It's recommending programs and incentives. It's
9 not really telling the State EPA to regulate. So it's
10 really two different tracks attacking the same problem and
11 I think the Commission is maybe fooling itself if it
12 thinks that that Commission is going to do its work.

13 We're going to be required to implement
14 federal regs, and it seems to me like the question before
15 the Commission, is will you empower yourself to give
16 yourself flexibility to shape your own fate some, or will
17 you just robotically implement what the Federal Government
18 tells you to do?

19 And I think it's in the interest of
20 Arkansans, even maybe some of those arguing against this
21 step today, that the Arkansas State Government be
22 empowered to take comments and to begin in advance, a year
23 or two in advance, or three or four in advance, to try to
24 lay the groundwork so that it is the best thing for our
25 economy the way those regulations are implemented.

1 So I really think it would be a responsible
2 action empowering yourself to begin that discussion and
3 initiate rulemaking, where you have complete power to not
4 pull the trigger until you gather information --

5 JUDGE O'MALLEY: Time.

6 MR. MOORE: Thank you.

7 CHAIRMAN SCHUECK: Eddie, I have a
8 question. How do you feel about the statement that if
9 this -- if this passes today, if the CO₂ is removed, that
10 it will allow -- it will fall under another regulation
11 that -- for all gases that exceed 25 tons?

12 MR. MOORE: Mr. Chairman, if you all were
13 voting on adopting a proposed rule, that might be true,
14 but you're voting on initiating a rulemaking process.
15 We're opening the door to rationally consider this, as
16 opposed to retaining a reg that -- I think if you look
17 historically at what happened, it was very clear in the
18 adoption of the Clean Air Act and the state law, that CO₂
19 was a pollutant. We knew that. You can go back to 1965,
20 before the Clean Air Act was adopted, and look at what the
21 scientific advice they had to Congress.

22 So they purposefully wrote a very broad
23 definition encompassing CO₂, and with knowledge that that
24 would lead to global warming probably, and with
25 specificity that we needed to follow that, but as a signal

1 to the regulated community that we're not tackling that
2 now. The regs were drawn more narrowly than the statute,
3 and I think at this point to continue sending that signal
4 to the regulated community, that we know it's a pollutant
5 but we aren't going to regulate it, that's sending the
6 wrong signal, and it's dis-empowering yourself to make --
7 to address that problem in a way that accommodates
8 Arkansas interests.

9 CHAIRMAN SCHUECK: Anybody got any answers
10 to that? Any questions?

11 All right. James Burke.

12 MR. BURKE: Thank you for having me come
13 and have an opportunity to speak today. At first I wasn't
14 really intending on speaking, but two reasons made me get
15 up here today. One is, unfortunately, there are not many
16 young people here today. I want to represent many of the
17 young people who are concerned about global warming and
18 CO₂, and who also support this Petition.

19 And then the second reason I'm here today,
20 is because I see a lot of special interest groups who come
21 here and do what I'm doing right now. I'm a grassroots
22 organizer working with an environmental group called Eco,
23 and I travel the State -- well, country sometimes, but
24 mostly the State talking to people about these types of
25 issues.

1 And as Glenn Hooks mentioned, this is not a
2 partisan issue. This is not a Democrat, Republican --
3 everyone that I talk to is pretty much on the same page.
4 Global warming is a problem, cO2 is one of the main
5 culprits and we need to do something about it.

6 So I urge this Commission to support the
7 Petition, not only because it's the right thing to do,
8 because the public wants it, and the public is the only
9 special interest that counts.

10 So thank you guys very much. I'm not a
11 lawyer, so I can't answer any questions legally, but I can
12 answer questions about grassroots organizing.

13 CHAIRMAN SCHUECK: Thank you, Jim.

14 David Carruth.

15 MR. CARRUTH: Good morning Gentleman of the
16 Commission. Mostly, what I was going to say has been
17 said. One of the joys of this society that we live in, is
18 the ability of people to participate in a rulemaking
19 process, and that's what I'm hearing you're asked to do.
20 Not vote on whether or not to remove CO2 from the
21 exemption, but to open up a process to take comments much
22 like you've heard today, to have that considered by the
23 Department and perhaps -- perhaps pass one or more rules.
24 I would ask you to do that, to open up the process, open
25 up the debate.

1 A couple of points I do want to address.

2 There's a cost of doing nothing. Mr. Shannon, Mr. Sickel
3 are both well situated to tell you, in Mr. Shannon's area
4 of expertise, what is the cost to the timber industry of
5 pine bores and oak bores because we're not having cold
6 enough winters to freeze out those insects, or freeze out
7 a large number.

8 The same thing to agriculture. I don't
9 know how much Mr. Sickel may have sprayed in fungicides
10 this year, but I know on our farm, we had to spray
11 fungicides on the wheat crop because we had a wet and warm
12 spring, and we had more molds and pathogens come on the
13 plant than normal.

14 There's a cost to industries that's taking
15 place because of the impacts of global warming. Jobs are
16 one, the loss of jobs. I wondered did they factor in the
17 windmill blade manufacturer that's now located in Arkansas
18 that's bringing brand new whole cloth jobs, high tech,
19 well-paying jobs to Arkansas.

20 The bottom line here is, what I'm hearing
21 take place this morning, is you're being asked to say yes
22 or no to open the door for debate on this issue. I would
23 ask you to do that.

24 Now, whether I agree with Ken, I don't know
25 if I do yet or not. I know the Supreme Court said that

1 CO2 is a pollutant, but I would at least ask this
2 Commission to open the door for a structured, proper
3 debate on that issue.

4 I also have faith in Ms. Teresa and her
5 staff, that if you start to get into an area that looks
6 like the Federal Government is going to regulate, that
7 they'll say, just wait, hold on a minute, we don't know
8 what's coming there.

9 Those are my comments. I thank you for the
10 opportunity.

11 CHAIRMAN SCHUECK: Thank you, David.
12 Ken Smith.

13 MR. SMITH: That's me.

14 CHAIRMAN SCHUECK: You're Ken Smith?

15 MR. SMITH: Yes.

16 CHAIRMAN SCHUECK: Oh.

17 MR. SMITH: I've already said my piece.

18 CHAIRMAN SCHUECK: All right. Mr. Levin,
19 we have two cards here for you. Is there a reason, or is
20 there two Levins?

21 MR. LEVIN: I think somebody may have
22 filled it out, one of my colleagues must have filled it
23 out for me.

24 CHAIRMAN SCHUECK: All right. Glenn Hooks.

25 MR. HOOKS: I've already said my piece,

1 Mr. Chairman.

2 CHAIRMAN SCHUECK: All right. Curtis
3 Warner.

4 MR. WARNER: I'll turn the full comments to
5 the record. I have some brief comments here.

6 I'm Curtis Warner with Arkansas Electric
7 Cooperatives. We serve 62 percent of the geographic State
8 of Arkansas, about 20 percent of the population.

9 We urge the Commission to deny the
10 Petitions for five reasons -- for four reasons, the
11 detrimental effects to Arkansas ratepayers. It will cause
12 a bureaucratic costly burden to state government, it will
13 hinder economic growth, and basically the Commission
14 should just wait for federal and legislative action and
15 direction to policy issues.

16 To quote the gospel, which is the
17 regulations which we, as a regulated industry, operate in
18 the State, it says it is unlawful to construct, use or
19 operate any source capable of emitting a air contaminant
20 without first obtaining a permit to do so.

21 Reg 18, Section 18-3.01 states: "No person
22 shall cause or permit the operation, construction,
23 modification of a source which actually emits 25 tons per
24 year or more of any air contaminant without first
25 obtaining a permit."

1 That means the Department must issue a
2 permit for all sources in that category, and until
3 standards are set, they have no ability to do so. To
4 do -- to issue permits would otherwise subject every
5 permittee to challenge. Delays would result. We would
6 have to operate without air permits because of delay.

7 And you asked earlier about would anarchy
8 ensue. You're dealing with the regulated community and
9 you've got to operate without a permit, where every permit
10 you're going to issue is subject to challenge, that is the
11 definition of anarchy.

12 In brief, I think the Commission should
13 just wait until federal and state legislative actions that
14 state the policy decisions for us and rule accordingly at
15 that time.

16 That's my comments. Thank you.

17 CHAIRMAN SCHUECK: Thank you.

18 JUDGE O'MALLEY: Sir, would you give those
19 to Ms. Goff, please? No, that's Ms. Goff. She's over
20 there.

21 Thank you.

22 CHAIRMAN SCHUECK: All right. Debbie Doss.

23 Are you the canoe boss?

24 MS. DOSS: That's me.

25 Hi, Debbie Doss, Arkansas Canoe Club,

1 Conservation Chair.

2 Thank you very much for the opportunity to
3 talk to you about this. The Canoe Club's position are
4 usually -- we're usually interested in water issues, but
5 all of this is connected, so I want to be here to support
6 initiating this Petition for all the conservation
7 community.

8 Not that long ago we were here for changes
9 to Reg. 2, and I think we all remember how that went, and
10 the initiation for that petition by the River Valley
11 Regional Water District. When it was initiated, it raised
12 a lot of fear. Anything new, any -- any radical changes
13 always raises a lot of fear in opposing positions such as
14 these, and, you know, it -- sometimes fears to the -- to
15 the absurd. But I don't think any regulator is going to
16 enforce regulations without study and the opportunities
17 for that, is what we're looking for, for this to open up
18 to look at those things.

19 You remember that in Reg. 2, it generated a
20 tremendous amount of participation in the community, and a
21 lot of input from many sources we didn't expect to get
22 input from but did, and I see the same situation
23 developing here.

24 This is a critical situation with global
25 climate change, and the issues that need to be looked at

1 from a lot of different directions. This is initiating a
2 petition. It's a beginning, it's an opening up of
3 everyone discussing critical issues that we all need to
4 look at. We're not going to start regulating things
5 immediately. We're initiating a Petition the same way we
6 did with Reg. 2.

7 So I think it's time for us to all work
8 together and work out the best solutions. I don't think
9 if this Petition is initiated, that either side is going
10 to just say, well, that's it and drop this. I think we're
11 going to come together, we're going to work out
12 compromises, and things will get done like they should be
13 done. Let's work together for the best solution and let's
14 move forward and initiate the Petition.

15 Thank you.

16 CHAIRMAN SCHUECK: Thank you, Debbie.

17 Mr. Levin. Is he here?

18 MR. LEVIN: I said my piece.

19 CHAIRMAN SCHUECK: You've got two cards
20 here? Is there a reason or is there two of you?

21 MR. LEVIN: It was just a mistake, I'm
22 sorry.

23 CHAIRMAN SCHUECK: Oh, okay.

24 Randy Thurman.

25 MR. THURMAN: Thank you, Mr. Chair. I

1 think the second card is based on how you want to
2 pronounce that last name. He gave you several options
3 there.

4 CHAIRMAN SCHUECK: What is the correct
5 name? Levine?

6 MR. LEVIN: Levin.

7 CHAIRMAN SCHUECK: How do you say the first
8 name?

9 MR. LEVIN: Ilan.

10 CHAIRMAN SCHUECK: Ilan?

11 MR. LEVIN: Yes, sir.

12 CHAIRMAN SCHUECK: Thank you.

13 MR. THURMAN: Mr. Levin is from Texas. I
14 told him we -- we're kind of sore about Texans coming up
15 and raining on Arkansans' parades. We have been since
16 1969, anyway, when they stole the championship from us.

17 You have the Federation's written comments
18 before you. I will not read those to you. They have been
19 cosigned by some, I think, four dozen cosigners, people
20 and companies that have authorized me to sign on their
21 behalf.

22 I would ask that you include those in your
23 considerations today. We're not here to debate global
24 warming on the Federation's side. We're not here to
25 debate the role of CO2 in global warming. That debate has

1 been over with for years. We're not even here to debate
2 whether or not eventually carbon dioxide is going to be
3 regulated in the State. It will. We all know that.

4 What we are concerned about is the
5 unintended consequences, and I truly believe that the
6 Petitioners did not intend for facilities with 25 tons of
7 emissions to be permitted, but they have gone about this
8 approach in, I think, a failed manner, and the Petition is
9 flawed in several ways.

10 We've already heard testimony this morning
11 that from day one, when that rule change goes into effect,
12 25-ton facilities will be required to have a permit. The
13 Petitioners have not offered an option around that.

14 They want to open dialogue? We agree,
15 there is going to be ongoing dialogue a couple more years
16 before this thing has arrived to do anything with it. In
17 the meantime, a lot of facilities are going to be
18 regulated.

19 Mr. Chairman, you mentioned the 2.2 pounds.
20 I did my own calculations. It's a little under two pounds
21 per person, but maybe I'm not as windy as some people
22 around here. We -- I'll give you some other examples of
23 what 25 tons looks like, because I had a member say, God,
24 25 tons, that's an incredible amount. Each individual
25 breathes out 724 pounds each year. You breathe out

1 25 tons in a 72-year lifetime. Seventy-two people breathe
2 out 25 tons in one year. Your water heater at home, if
3 it's gas, puts out two tons a year. My hybrid SUV, the
4 very first one bought in the State, puts out four and a
5 quarter tons for every 12,000 miles I drive.

6 So it is a very ubiquitous substance and
7 when you start looking at how buildings are structured,
8 how they're heated, how your pizza is cooked and your beer
9 is brewed -- another good reason to give up pizza and
10 beer, is to save the planet. But those things add up
11 significantly. A dozen water heaters, that's 25 tons.

12 JUDGE O'MALLEY: Time.

13 MR. THURMAN: Thank you. I would just
14 encourage you to send this Petition back and let the
15 Petitioners come when they a Petition that is not default.

16 MR. YOUNG: Mr. Chairman?

17 CHAIRMAN SCHUECK: Yeah, go ahead.

18 MR. YOUNG: Before Mr. Thurman leaves, I
19 believe he's responsible for at least One Minute Order?

20 MR. THURMAN: Yes.

21 MR. YOUNG: Could you tell us the gist of
22 it?

23 MR. THURMAN: Mr. Young, I think that
24 Minute Order, which I don't have it front of me, just
25 basically asks you to reject the -- reject the Petition as

1 it is.

2 MR. YOUNG: For any particular reason?

3 MR. THURMAN: I'll have to call my legal
4 counsel for that.

5 CHAIRMAN SCHUECK: Does their time start
6 again?

7 JUDGE O'MALLEY: No, he -- she is answering
8 a question that Mr. Young asked, so there is no limit on
9 time.

10 CHAIRMAN SCHUECK: I thought maybe she gets
11 double time.

12 MS. MCQUEEN: Double time? That's all
13 right.

14 You have two proposed Minute Orders, one
15 for each docket that are attached to the comments of the
16 Petitions signed by AEF and all the other members that
17 signed on.

18 Primarily we -- AEF, et al, is asking that
19 the Petition be denied primarily because, one, we think
20 it's procedurally defective. Paragraph 1 outlined that.
21 It does not fail to include an analysis of impact on small
22 business. You've heard some about that, a review by the
23 Director of the Economic Development Commission and the
24 Economic Impact Statement as required by Arkansas Law.

25 We also think it's defective because it

1 does not have an Economic Impact Environmental Benefit
2 Analysis required by Arkansas Code Annotated 8-120-3,
3 which is one of your implemented statutes, as well as your
4 own reg, because it is a regulation proposed to be more
5 stringent than federal law, and that is, again, required
6 by your own regs and the statute for that to be done.
7 Given that the Feds have not regulated CO2 in this way, we
8 believe the regulation would be more stringent, and by
9 definition, then you need to include these procedural
10 aspects of the Petition.

11 The other matter is that we believe that
12 the Petition is just premature, and I think you heard some
13 of that as well. That is also outlined in this Minute
14 Order, given the ongoing activities at the Global Warming
15 Commission, as well as the -- at some point forthcoming,
16 responsive of EPA to the Massachusetts vs. EPA case. To
17 do anything now is simply premature and potentially
18 wasteful.

19 As Mr. Cain, I believe, mentioned that if
20 you -- or one of the commenters -- that you may -- you may
21 come up with something, they come up with something
22 different. It's just kind of a morass. Now is not the
23 time to do it.

24 Finally, we have some discussion about the
25 significant questions about the merits of the Petition,

1 and I think you've also heard quite a bit about that, and
2 then it just summarizes that you deny it.

3 There is, again, a Minute Order for each of
4 the regs outlined. Primarily the same reasons for each
5 one, each different regulation.

6 Does that answer your question?

7 CHAIRMAN SCHUECK: Thank you.

8 MR. YOUNG: Thank you.

9 CHAIRMAN SCHUECK: There's no more
10 comments.

11 Judge, give us a little guidance, will you?

12 JUDGE O'MALLEY: Yes, sir. At this time,
13 one of the Commissioners or more can move a particular
14 Minute Order. There -- there's a Minute Order on the desk
15 from Mr. Young that addresses the issue of not complying
16 with Act 143, which means that they did not go to the
17 Economic Development Commission for approval, or for
18 review of the proposed rules, and there's a Minute Order
19 on each one -- each docket for that.

20 And then as Ms. McQueen stated, there are
21 her two Minute Orders, one on 18, one on 26, that denies
22 it for the reasons that she gave. And then there is a
23 Minute Order on 18 and 26 produced by the Sierra Club,
24 Audubon and Environmental Impact Project that initiates
25 the rulemaking and sets a date of September 21, I think,

1 for a public hearing in this room.

2 Those are the three Minute Orders. You can
3 read just one of them, and that will apply to the other
4 one, as long as you have the three different ones there.
5 So at this time, you take a motion on one of them, you can
6 have discussion and then a vote.

7 CHAIRMAN SCHUECK: Well, I've got a
8 little -- I still have a problem.

9 JUDGE O'MALLEY: All right.

10 CHAIRMAN SCHUECK: I'm reading one of these
11 proposed Minute Orders, and it's in the matter of Reg.
12 No. 26. That's from AEF. Do they have one for 18 as
13 well?

14 JUDGE O'MALLEY: Yes, sir, it may not be in
15 front of you, but 26 is going to read the same as 18, and
16 18 is going to read the same as 26, except the numbers
17 changed.

18 CHAIRMAN SCHUECK: All right. And then my
19 next question is: Do we have to review these separately
20 or do we have to do them both?

21 JUDGE O'MALLEY: No, we're going to vote on
22 each one.

23 CHAIRMAN SCHUECK: So we do Reg. 18 first
24 and then go to Reg. 26?

25 JUDGE O'MALLEY: Yes, sir, because we have

1 two separate rules, we need a Minute Order in each one.

2 CHAIRMAN SCHUECK: Okay.

3 JUDGE O'MALLEY: And the only other thing I
4 might mention, if there's some confusion, at the bottom of
5 the Minute Orders, is submitted by. There's one by Randy
6 Young, one by Randy Thurman, and the other one -- oh, the
7 other one doesn't have a name, and that's one that the
8 Sierra Club presented to you, so that will distinguish the
9 three of them.

10 CHAIRMAN SCHUECK: And do we have the right
11 revisions? Do we have the right revisions?

12 JUDGE O'MALLEY: Yes.

13 CHAIRMAN SCHUECK: This morning, I had one
14 laid on my desk that was different than the one I had in
15 my packet.

16 JUDGE O'MALLEY: Yes, sir, you should have
17 all the correct revisions on your desk in front of you,
18 and Ms. Goff has the final version that would be passed
19 around.

20 CHAIRMAN SCHUECK: I'm specifically
21 concerned about the one this morning that was laid on my
22 desk was not marked revision. It wasn't marked anything.
23 It was just a replacement, and I want to make sure I've
24 got the right one.

25 JUDGE O'MALLEY: Yes, sir, I -- you do, you

1 do.

2 CHAIRMAN SCHUECK: I do?

3 JUDGE O'MALLEY: You do.

4 CHAIRMAN SCHUECK: Okay. Thank you.

5 JUDGE O'MALLEY: I mean, tell me what one
6 you're talking about.

7 CHAIRMAN SCHUECK: Well, I don't know.
8 That's my problem.

9 JUDGE O'MALLEY: Here's the only thing that
10 I know --

11 CHAIRMAN SCHUECK: There was one that had
12 dates on it and one with a blank date.

13 JUDGE O'MALLEY: That would be the one
14 that -- that would be the one that Mr. Smith and the
15 Sierra Club provided to you that is not dated.

16 What paragraph is that in, Mr. Smith? You
17 did put September 21 in there?

18 MR. SMITH: Well, in our -- on the -- on
19 the second -- if you look at -- if we look at the Minute
20 Order for Regulation 18, the draft here that we have, we
21 have a -- on the second page, a public hearing shall be
22 conducted the week of September 16th.

23 JUDGE O'MALLEY: And that's paragraph
24 number four?

25 MR. SMITH: That's paragraph number four,

1 yes, on page 2 of Regulation 18. That is the same as
2 on --

3 CHAIRMAN SCHUECK: That's the only
4 difference?

5 MR. SMITH: Yes, sir.

6 CHAIRMAN SCHUECK: Between the one we had
7 earlier and the one we have now?

8 MR. SMITH: Yes, sir, I believe so. And,
9 also, there's an up-to-date list of Commissioners in our
10 Minute Order. The original Minute Order that we submitted
11 did not have a current list of Commissioners, sir.

12 CHAIRMAN SCHUECK: All right. So there's a
13 revised one there.

14 Mr. Sickel?

15 MR. SICKEL: I'd like to move that we adopt
16 the Minute Order that -- I guess it's on Regulation 18 and
17 26 that is --

18 CHAIRMAN SCHUECK: We have to do them one
19 at a time.

20 MR. SICKEL: One at a time.

21 Okay. We'll do one on Regulation No. 18
22 first.

23 CHAIRMAN SCHUECK: That's correct.

24 MR. SICKEL: That is submitted by AEF, or
25 Randy Thurman.

1 MR. THOMPSON: Second it.

2 CHAIRMAN SCHUECK: Okay. We have a motion
3 and we have a second.

4 Do we have any discussion?

5 MR. SHANNON: I guess I have a question or
6 comment, I guess for the other Commissioners.

7 I understand the issue about the economic
8 impact analysis. That, to me, seems that it clearly needs
9 to happen.

10 When is the time ripe for us to initiate
11 action? Is it after the Global Warming Commission
12 finishes its job, or after EPA acts on the matter?
13 Anybody have any idea what we're talking about.

14 CHAIRMAN SCHUECK: I'd ask the Department.

15 MR. HENDERSON: I mean, I do have a
16 comment. I think that the Petitioners that come today did
17 a lot of talking about starting a discussion, starting the
18 process. It's pretty clear to me that you've been
19 successful at that already today, but, you know, I do kind
20 of think it's the cart before the horse.

21 I don't agree with a lot of the discussion
22 about waiting on the Feds to do it. I prefer us to kind
23 of take our own initiative a little bit. I do think the
24 Global Warming Commission needs to do its work.

25 Basically, I would agree that we may have

1 the cart before the horse a little, and I would invite the
2 Petitioners back after this legislative session, if
3 nothing is done to move this forward, to let -- let me
4 personally help you institute this stuff, but I do think
5 we're a little out of synch right now.

6 Thank you, Mr. Chairman.

7 CHAIRMAN SCHUECK: Any other discussion?

8 We have a motion before us. All those in
9 favor say aye.

10 BOARD MEMBERS: Aye.

11 CHAIRMAN SCHUECK: All those opposed?

12 The motion passes.

13 And that, of course, makes the other
14 motion -- do we have to go through the other motions?

15 JUDGE O'MALLEY: Yes, sir, do them -- 26,
16 you need the same type of a motion.

17 CHAIRMAN SCHUECK: Yeah, but do we -- now
18 that we have a -- the rest of the Minute Orders are moot?

19 JUDGE O'MALLEY: Yes, sir.

20 CHAIRMAN SCHUECK: Okay. Let's go to
21 Reg. 26. It's the same situation, we need a motion.

22 MR. SHANNON: I move adoption of the AEF
23 Minute Order.

24 MR. BENGAL: Second it.

25 CHAIRMAN SCHUECK: All right. We have a

1 motion and a second.

2 Is there any discussion on this issue?

3 If not, we'll take a vote. All those in

4 favor say aye?

5 BOARD MEMBERS: Aye.

6 CHAIRMAN SCHUECK: Opposed?

7 The motion passes. Thank you.

8 (WHEREUPON, at 11:25 a.m, the

9 above hearing concluded.)

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