



RAILROAD COMMISSION OF TEXAS

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COMMISSIONER

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Remarks to the Committee on Science, Space and Technology

My name is Barry Smitherman, and I am a Commissioner with the Texas Railroad Commission. The Railroad Commission was founded in the Texas Constitution in 1891, and we regulate the oil, gas, and lignite coal mining industries in Texas. We are recognized worldwide for our expertise in fossil fuel regulation. Prior to my serving at the Railroad Commission, I was a member for the past seven years of the Public Utility Commission of Texas—for the last four years of that tenure, I was Chairman. The PUCT regulates the electric and land line telecommunications industries in Texas. In addition, the Chairman of the PUCT is a board member of ERCOT, the Electric Reliability Council of Texas, our electric grid operator or Independent System Operator (ISO).

My testimony today is that the Cross State Air Pollution Rule (CSAPR) was promulgated using a flawed procedural process, will jeopardize the reliability of the Texas electric grid, and will eliminate many high paying jobs nationwide. Let me address each of these in order.

The original version of CSAPR, then known as the Clean Air Transport Rule (CATR), was first published in the summer of 2010. In that version, the State of Texas, along with three other states—Oklahoma, Arkansas, and Mississippi, was included only for seasonal ozone, not for SO₂ or NO_x reductions. As a result, neither Texas regulators, nor the Texas electric grid operator, nor industry stakeholders were given notice that more stringent regulations might be passed relating to coal fired electric generation. In fact, in a report dated July 21, 2011, and prepared by ERCOT, the potential reliability implications of a number of impending EPA regulations, including the MACT HAP rule, the 316 (B) cooling water intake rule, the coal combustion residual ash rule, and potential future greenhouse gas regulations, were analyzed. In presenting the results of their analysis, the ERCOT technical personnel specifically stated that the CATR would not apply to Texas: “Based on the proposed rule, an ERCOT study completed on June 21, 2011, evaluating the expected impacts of the pending regulations, did not include any incremental impacts from the CATR on the ERCOT system.”

As the date for the final version, of what is now known as CSAPR, approached, stakeholders in Texas began to hear rumors that we would now be included for SO₂ and NO_x, rather just seasonal ozone, which is what we were initially led to believe. Texas Commission on Environmental Quality Chairman Dr. Brian Shaw and I wrote a letter to the EPA, dated June 9, 2011, outlining our concerns with what we were hearing about the final version of the

regulations (copy of that letter attached). With publication of the final version of the CSAPR on July 6, 2011, the stakeholder, regulatory, and grid operator communities' worst fears were confirmed. In fact, in a rare public press release on July 19, 2011, ERCOT leadership highlighted the surprise "gotcha" change the EPA made by singling Texas out for year-round SOx and both year-round and peak period NOx, after specifically stating Texas would not be included, and sounded the alarm about the fact that CSAPR could "cause a shortage of generation necessary to keep the lights on in Texas". Subsequently, on September 1, 2011, ERCOT completed a detailed technical analysis of CSAPR (copy attached) wherein the engineers at ERCOT clearly state that CSAPR will impact the reliability of the Texas Electric Market by requiring between 1,200 and 6,000MW of generation to not run during certain periods of the year. On several days in 2011, ERCOT experienced record demand for electricity and was forced to implement procedures that resulted in load voluntarily curtailing consumption to maintain grid reliability. If the plant closures that were announced Monday as a direct result of CSAPR would have been closed this summer, ERCOT would have been forced in to rolling blackouts on multiple days. Therefore, we have empirical evidence that CSAPR would force Texas in to blackouts on the hottest and coldest days of the year when Texas' most vulnerable citizens need electric heating and cooling in order to survive.

In addition to putting the lives of vulnerable citizens at risk, with the announcement that Luminant will have to idle 1300MW of electric generation and the mines to support that generation, the CSAPR rule has already killed 500 high-paying jobs and hurt the economy. According to Nobel Economics Prize nominee Ray Perryman, approximately 3,000 Texans work directly in the lignite mining industry, which is responsible for over \$1.3 billion in annual gross product, as well as almost 14,000 permanent jobs. Many of these jobs will be lost if CASPR, as presently written, is implemented within the currently anticipated timetable.

Texas has been recognized nationally for reducing SO2 emissions by 33% over the last 10 years. If allowed to go forward, CSAPR will require a 47% decrease from current SO2 levels *in less than six months*. Even the AFL-CIO said in comments to the EPA that "EPA's proposed 2012 annual SO2 and NOx emissions reduction deadline is unrealistic and unnecessary", and that "the 2012 interim deadline and the deep 2014 emissions reduction requirements could trigger shutdowns that will unnecessarily eliminate jobs". Even the AFL-CIO agrees that, while emissions reductions are a good goal, they must be done sensibly, and on a realistic timeline.

Texas was able to achieve much of our air quality improvement by increasing the amount of electricity coming from wind energy and gas fired generation. And while it is true that four new coal fired generation plants have commenced operation in ERCOT within the last several years, each of them will be compliant with CSAPR.

Finally, air quality in Texas will continue to improve in the future without the implementation of CASPR. We have over ten thousand MW of wind in Texas, and that number is likely to rise.

More significantly, however, new unconventional natural gas discoveries in Texas, using horizontal drilling and hydraulic fracturing techniques, make available vast quantities of cheap, clean burning natural gas. Natural gas has less SO2 and NOx than coal and no mercury or particulate matter. Natural gas also has about 40% of the CO2 of coal.

When used to make electricity, natural gas today results in extremely low electricity rates. In Texas for example, consumers can purchase electricity in Dallas for as low as 4.5 cents a kwh. I have no doubt that as Texas seeks to add new generation resources in order to meet the needs of our rapidly growing state, with its vibrant job creating economy, that clean burning natural gas fired generation will be the mainstay of our expanding generation fleet. In the short run, EPA must allow Texas enough time to refit our plants to comply with the new rule, and not focus on cramming through a punitive, job-killing rule that may almost immediately jeopardize the lives of our most medically fragile citizens, and which is opposed by a wide coalition of unions, nonprofits, scientists, engineers and regulators. In the long run, I hope this Committee and the rest of Congress looks at the bait-and-switch tactics and dubious science EPA used to pass this rule, and puts the brakes on at this agency. If these politically motivated, punitive regulations are allowed to stand in Texas today, they set the precedent for a runaway agency to do whatever they see fit tomorrow.

Thank you for the opportunity to testify.