Testimony before

The Pennsylvania House of Representative's

Republican Policy Committee

Of

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On Behalf of the Scrubgrass Generating Plant

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Good morning, Chairman Saylor, Representative Hutchinson, Representative Stevenson and members of the Republican Policy Committee. My name is Peter E. Rigney, and I am General Manager of the Scrubgrass Generating Plant which is located in Venango County in Representative Hutchinson's district. I am also a resident of Grove City, which is within Representative Stevenson's district.

As a resident and voter of this area, I am obviously concerned with the local economy. However, I am here today to briefly inform the panel of the impact of economic development policies, regulations and laws on our plant.

First I would like to give a little background on our power plant in Scrubgrass Township, southern Venango County. The power plant is fueled by bituminous waste coal, also known as gob which I will detail further in my testimony. The plant is relatively new; it started operating in June of 1993. The plant sells power to Penelec (FirstEnergy) pursuant to a long-term power purchase agreement which does not allow us to price of power to reflect cost increases associated with the regulatory changes discussed today. Currently we employ a total of 52 people. Additionally we contract with a trucking firm that employs approximately 50 additional people. These are family wage jobs with great benefits and hopefully long term security. Our waste coal comes from a variety of sites in Clearfield, Allegheny, Armstrong and Butler Counties. Our Clearfield site which is 93 miles from the plant can supply up to 40% of the waste coal the plant requires to produce electricity for sale to Penelec (First Energy).

In addition to the waste coal that we burn we also feed crushed limestone, produced in Butler County, into the two circulating fluidized bed (CFB) boilers at Scrubgrass to control the emission of sulfur dioxide. So we mix low quality waste coal which has a high (45%) ash content with crushed limestone. The result is we produce approximately 85 Megawatts of electricity and a lot of beneficial use ash. Beneficial use ash because it contains a significant amount of un-reacted limestone which is then used in coal mine reclamation and other beneficial uses where permitted by the PA Dept of Environmental Protection.

Second, a little bit of information about our industry. Facilities such as the one we run provide a unique environmental benefit in Pennsylvania by burning waste coal as fuel and utilizing CFB technology. We utilize coal refuse from both past and current mining activities, and thereby reclaim abandoned strip mines and abate acid mine drainage from waste coal piles at no cost to Pennsylvania taxpayers. By combusting waste coal piles, plants such as Scrubgrass are removing one of the principal sources of contamination to surface water and groundwater in Pennsylvania. This is due to the fact that in the past, coal that was very low in heat content (BTU's), and accordingly undesirable in the marketplace, was randomly discarded all across Pennsylvania's landscape. This "waste coal" accumulated and lay idle on thousands of acres of land, land that possessed a variety of aesthetic, useful, and beneficial qualities. Over time, wind, rain and other naturally occurring environmental conditions caused the piles of "waste coal" to alter and/or expand their "environmental fingerprint" on the Commonwealth's limited land resources.

A few decades ago with technological advancements and support from both government and investors a beneficial use was finally developed to utilize "waste coal" in quantity. This beneficial use today generates electricity to meet the energy needs of hundreds of thousands of Pennsylvania households. Utilizing waste coal from current and past mining activities, and returning thousands of acres of our land (formerly hidden under tons of an "idle waste") back to its natural beauty and usefulness makes electricity generated from waste coal truly unique. The CFB industry began in Pennsylvania in response to the oil and gasoline shortages during the 1970s, and the passing of the Public Utility Regulatory Policies Act (PURPA) in 1978. This act required that electric utilities buy the electricity produced by facilities that met certain qualifications, such as the use of nontraditional fuel. The piles of coal mine refuse (otherwise generically referred to as "waste" coal, culm in anthracitic fields, or gob in bituminous fields) in Pennsylvania met the criteria for nontraditional fuel under PURPA. At about the same time, the CFB technology was being developed which was capable of burning a low-heating-value carbonaceous material and had emission controls that met regulations mandated by the Clean Air Act of 1970. The first CFB plant in Pennsylvania became operational in 1987, and since that time, waste coal plants in Pennsylvania have collectively converted 195 million tons of [Pennsylvania] refuse into alternative electricity and produced over 98 million tons of CFB beneficial use ash for reclamation of abandoned mine lands. In 2004, it was estimated that the state's CFB plants burned approximately 10 million tons of waste coal annually (Dalberto and others, 2004) and produced approximately 7.9 million tons of alkaline-rich by-products per year. More than 90% of these by-products are used for mine reclamation projects, filling mine pits, and the reclamation of coal refuse areas. Another 5%–8% is used as a replacement for lime for acid mine drainage prevention or as a soil amendment/replacement at mining sites. The remaining 2%-5% is used for other beneficial uses such as antiskid applications for roadways, pipe bedding, and other uses (Joint Legislative Air and Water Pollution Control and Conservation Committee, 2004).

As mentioned, Government investment and PUC regulations helped start our industry. In fact, the state for the most part has been a great working partner over the years. They have recognized the benefit projects like Scrubgrass provide in cleaning up hazardous sites and in providing reliable electricity. The Venango Industrial Development Authority (VIDA) provided significant help to our plant with issuing Construction Bonds, making road improvements, and developing No-Cost Government Reclamation Contracts (Reclamation Permits – Benjamin 6, Leechburg). We continue to work with the Oil Region Alliance on developing various areas around our facility using the Keystone Opportunity Zone.

We look forward to working with the state to grow our industry. However, it seems some recent proposals and activities could have the reverse affect.

First, if Interstate 80 is tolled, given our class of truck, Class 7, and the number of trips, and distance we currently travel on I-80, we estimate that our transportation costs will increase a total of $300,000 per year as a result of such tolls. Also, as I understand the increases in tolls currently being considered, our transportation costs will escalate an additional 3% per year due to the increase in the tolls. Our Clearfield county waste coal site which is the furthest from our plant will become uneconomical as a result of such increased transportation costs, and we will either shift the route onto State Route 208 and

State Route 322 or we will close the Clearfield site completely, eliminating 5 good paying jobs associated with that site. (and the associated reclamation of major pollution source) If I-80 had been originally built and paid for as a turnpike that would have been factored into our business plans when we developed the Scrubgrass plant back in the late 1980s but to ask a business with 52 employees to pay almost $300,000 per year in additional taxes is unfair and ultimately counterproductive.

I agree that we need a solution for our mass transit and road maintenance problems which are on the face of it state wide problems that require state wide solutions through better management and leadership of agencies and shared burden of funding. Why not increase the per car registration fee or toll road closer to urban areas? If you want to get folks to use mass transit in the urban area then don't make automobile usage so convenient.

Second, recent actions suggest that the Pennsylvania Department of Environment Protection will not allow plants to return ash on a 1-for-1 basis with amount of waste coal removed. This can create a materials management problem and cost impact to the plant, again affecting jobs we provide. This is because the addition of limestone for emissions control, combined with the lower quality of waste coal, produces about 80% ash on a mass basis. When it is water-conditioned for transport and placement, the result is a near 1 to 1 ratio.

Third, we have significant concerns about proposals to increase regulatory oversight and limitations over handling and use of coal and waste coal ash. Coal and waste coal ash should continue to be classified as Title D (non-hazardous) and utilized for approved commercial and beneficial use applications, reducing the use of other natural minerals, reducing other mining impacts and providing more cost effective and environmentally sound methods for abandoned mine reclamation. As mentioned earlier, coal and waste coal ash is a byproduct of coal combustion. CCBs do not exhibit any characteristics of hazardous waste and do not warrant regulation under RCRA's Subtitle C hazardous waste regulations. Coal and waste coal ash is also utilized for reclamation of abandoned mines pursuant to detailed Federal and State regulations and highly regulated and monitored beneficial use applications.

Within PA plants should be regulated to approved Regulations and not be regulated to guidance documents. This has not been the case concerning conducting monitoring pursuant to PA Guidance Document 563-2112-224, which is not required by the approved regulations. Burdensome regulations definitely threaten existing jobs and hamper job creation.

Next, any legislation concerning Alternative Energy Portfolio Standards (AEPS) should ensure all alternative energy credits are given back to the industry that generates electricity utilizing waste coal as the law intended. This is not the case for the regulations that have been established to date. Specifically, the owner of the alternative energy system or a customer-generator, should own any and all alternative energy credits associated with or created by the production of electric energy by such facility or for such customer, and the owner or customer should be entitled to sell, transfer or take any other action with respect to such credits that any person would be ordinarily be entitled to take with

respect to such person's property. Allowing us to collect these credits will provide more resources for job creation and expansion of the Scrubgrass facility.

DEP has recently increased bonding rates of the waste coal sites we could potentially clean up substantially. In one case, the DEP required a bond of up to $7,000,000 for us to access coal at a Pennsylvania site that was being considered for reclamation. The basis for the bond requirement under law was to ensure the completion of the proposed reclamation project, and not to restore land back to its original state prior to deposit of the waste coal many years ago. Historically, required bonds would normally be in the $150,000 to $200,000 range for similar projects and reclamation. Instead of encouraging our reclamation activities and associated job creation, these increased bonding rates are limiting our ability to reclaim these waste coal sites and contribute to employment growth in Pennsylvania.

PENDOT is inadvertently costing business in PA significant dollars in a number of cases:

1. A case in put is the de-rate of bridges with no prior notice to those using the travel route In our case we along with other local industry were able to assist with temporary repair the met PENDOTs need and ours until a permanent repair could be effected.

2. A Second example has to do with temporary closures of roads on which we purchased heavy haul permits. In our case the two permits were issued for heavy hauling of fuel in the northbound direction and ash in the southbound directions. Instead of just suspending the permits for the period of maintenance; PENDOT revoked the permits in both directions even though the work was only being done on one side at a time. In this case it has cost my plant an extra $45,000 (over $2k per shipping day) in extra trucking cost in a little less than a month. Additionally since these permits were revoked and not just suspend the trucking company must reapply for the permits at $800 per truck. (approx. $20k for an annual permit with the potential for revocation at any time!)

The State has operated historically with reasonable regulation and direction in this area. However, recent governmental actions and threatened actions are counterproductive to cost effective waste coal utilization and reclamation of waste coal sites within the State. As the plants in our industry typically operate, like us, pursuant to long-term power purchase agreements that provide little or no ability for our price to reflect the cost increases associated with tax and regulatory changes, the adverse effect that any such increases in tax and compliance costs may have on the owners of these facilities, and the beneficial land reclamation services they provide to the State and its citizens must be considered before any such adverse tax or regulatory changes are adopted. We also would note that although the existing power purchase agreements may limit the ability of producers to pass through costs immediately, these adverse regulatory changes will significantly increase the cost for these facilities to generate power and may contribute to increased electricity costs to the State's residents as these contracts expire and are replaced.

The bottom line is that some of these actions are reasons to find someplace else to locate your business, some other way to transport your goods, and some other road to travel. In closing, I want to commend this committee for seeking input on this very important issue. Thank you