BEFORE THE UTAH AIR QUALITY BOARD

STATEMENT OF STANDING AND

PETITION TO INTERVENE

&

REQUEST FOR AGENCY ACTION

UTAH DEPARTMENT OF
ENVIRONMENTAL QUALITY
JUN 22 2007
DIVISION OF AIR QUALITY

BY MEMBERS OF "SAVE OUR AIR & RESOURCES", an association of concerned citizens, and James O. Kennon, President, and Dick Cumiskey, Director, as officers of the association and as individuals.

James O. Kennon, Pro Se
Dick Cumiskey, Pro Se
Representing themselves and the
members of Save Our Air And Resources
146 North Main Street, Suite 27
P.O. Box 182
Richfield, Utah 84701
Tele: (435) 896-2822
Email: sccaw@yahoo.com

BEFORE THE UTAH AIR QUALITY BOARD

In Re: Approval of Order dated May 4, 2007, and action taken as described in Executive Secretary's letter, of June 6, 2007, to Fred W. Finlinson. In the Matter of Sevier Power Company's 270 MW Coal-fired Power Plant DAQE-AN2529001-04 Project Code: N2529-001	* * * * * * * * *	STATEMENT OF STANDING AND PETITION TO INTERVENE

Pursuant to Utah Administrative Code R307-103-3(1)(a) and R307-103-6(2), the members of Save Our Air & Resources (SOAR) represented by James O. Kennon and Dick Cumiskey, also representing themselves, hereby demonstrate sufficient facts to establish standing to bring a Request for Agency Action contesting approval of an Order, dated May 4, 2007 and the action taken as described in a letter dated, June 6, 2007. The approved order requested the Executive Secretary to formalize in writing the decision on an extension of time to construct a 270 MW coal-fired power plant(DAQE-AN2529001-04) as requested by the Sevier Power Company(SPC). The above named plaintiff's hereby petition to intervene in the adjudication of the decision to "hold in abeyance the running of the 18 month period for construction", of

the Sevier Power Company permit to construct a 270 MW coal-fired power plant near Sigurd, Utah. This request is made as required by Utah Administrative Rulemaking Act 63-46a-2(b).

INTRODUCTION

On February 27, 2004, through Rusty Ruby, Manager, New Source Review issued an 'INTENT TO APPROVE NUMBER , DAQE-2529001-04". The Executive Secretary, Richard W. Sprott, issued an Approval Order to allow SPC to construct and operate a 270 MW coal-fired power plant near Sigurd in Sevier County, Utah. Administrative Code R307-103-14(4)(a) states,"An individual who is a participant to a proceeding, or an officer designated by a partnership, corporation, association, or government entity which is a participant to a proceeding, may represent his, her, or its interest in the proceeding".

Under Utah Case Law, a plaintiff may establish standing by meeting one of three general rules. Plaintiffs will demonstrate a personal stake by establishing one or more of the following: (1) the existence of an adverse impact on the plaintiffs rights, (2) a casual relationship between the governmental action that is challenged and the adverse impact on the plaintiffs rights, and (3) the likelihood that the relief requested will redress the injury claimed. The plaintiffs, (SOAR) , James O. Kennon, and Dick Cumiskey, will demonstrate that they have met the requirements for standing as stated by Utah Law. The plaintiffs submits a Request for Agency Action as stated in

Utah Code R307-103-6(2)(c), "A person seeking to intervene in a proceeding for which has not been initiated under 63-46b-3 may file a Request for Agency Action at the same time he files a Petition for Intervention."

The plaintiff's in this case have suffered "distinct and palpable injury " to it's interest and been denied "due process" by actions taken by the Executive Secretary and Utah Air Quality Board. Several of the plaintiffs in this case have been involved in the permit process of SPC for over six years and have submitted comments on the process during that time period. The Utah Supreme Court concluded in Sierra Club v. Sevier Power Co., No. 200050455,Filed November 21,2006, 2006 UT 74, "Because the Executive Secretary is responsible for denying or granting permits for the construction and operation of the plant, his decision to grant the order is directly connected to the construction and operation of the plant and to any resulting harm". The plaintiff's in this case, live, work, farm, and recreate in the immediate area of the proposed power plant. They will suffer loss of property values, increased health problems, crop damage, diminished visibility, and reduced quality of life. The plaintiff's in this case expect the provisions of the Intent to Approve (February 27,2004) and the following Approval Order by the Executive Secretary to be adhered to fully. The NOI under the section General Conditions, #9, states that "the Executive Secretary shall require documentation of continuous construction and/or installation of the operation and may revoke the AO in accordance with R307-401-

11". The actions taken by the Air Quality Board and SPC to oppose the rights of the Sierra Club and Grand Canyon Trust to have standing during the appeal by Sevier Citizens For Clean Air And Water, lead to the delay and that was their sole decision to make. The decision by the Executive Secretary "to hold in abeyance" was arbitrary, capricious, and illegal without proper notice to the public and with out taking comments . In a letter of inquiry by James O. Kennon on the subject of extension of time for SPC, dated, April 5, 2007, to Rick Sprott, no reply was received. On April 25, 2007, a"REQUEST FOR INFORMATION" was hand carried to the office of Air Quality. In a letter dated, May 8, 2007, a response from the Executive Secretary was received.

ARGUMENT

1. SAVE OUR AIR & RESOURCES, JAMES O. KENNON AND DICK CUMISKEY HAVE STANDING TO REQUEST AGENCY ACTION.

The Save Our Air & Resources Association, James O. Kennon, and Dick Cumiskey, will suffer "distinct and palpable injur[ies] to their interest due to actions taken by UDAQ in regards to the terms of the agreement to build a 270 MW coal-fired power plant by SPC. The decision by the Executive Secretary "to hold in abeyance the Approval Order" for SPC as described in a letter dated, June 6, 2007 is without merit. Recent Utah Supreme Court and U.S. Supreme Court rulings have struck down a number of interruptions in regards to the Clean Air Act and the Utah

Air Conservation Act by UDAQ. The action taken by the Executive Secretary has been characterized as having "discretion" in not revoking the Approval Order for SPC. The truth in the matter is on May 10, 2006, at a hearing in Richfield, Utah on an Appeal of SPC the total opposite was stated by Mr. Stevens,(Stephens) Counsel for the Executive Secretary. And I quote from that transcript, "And it is that adherence to the rules as they are written that binds the Executive Secretary, and by extension, this Board from reinterpreting the rules according to personal whim". Another quote by Mr. Stevens(Stephens) from the same hearing, "The question that's really at issue here is what were the regulations at the time that the permit was issued, not whether they have changed since then". We could not agree more with Mr. Stevens (Stephens) and that is at the root cause of this Agency Action. The plaintiff's in this action have a personal stake in the outcome of this dispute. There is "the likelihood that the relief requested will redress the injury claimed". Society of Professional Journalists v. Bullock , 743 P.2d 1166, 1172-73 (Utah 1987). Granting this Request for Agency Action will redress the injuries claimed by the Plaintiff's in this case.

The letter submitted by Fred W. Finlinson, Counsel for SPC, dated November 17, 2005, does not even mention progress toward construction. Nor was this request for abeyance disclosed to the parties involved in the May 10, 2006, hearing. For one thing, the Sevier Power Company to this very day does not have approval to construct from the local jurisdiction. The local process will take many more months to complete

and hearings are yet to take place after they current studies are complete.

ASSOCIATE STANDING

Utah law allows for association standing where individual members of the association have standing to sue and the nature of their claim and/or relief does not require the individual participation of each individual member. The members of "Save Our Air & Resources" have standing to bring this Request For agency Action before the Air Quality Board contesting the action taken on this issue. The action taken on the request to "hold in abeyance" brings forth great public issues to the members of SOAR. The plaintiff's request the Air Quality Board to grant this Request for Agency Action and proceed with the formal adjudication of this dispute.

CONCLUSION

In the interest of justice, it is necessary to have a formal adjudication before the Utah Air Quality Board on the actions taken by the Executive Secretary as described in a letter dated, June 6, 2007, and addressed to Fred W. Finlinson. Mr. Fred W. Finlinson is the attorney representing SPC in this case. This request for standing and intervention by the members of Save Our Air & Resources will not prejudice any party involved, but will serve to clarify the issues in this dispute. The plaintiff's in this case have the right to intervention and standing to bring this Request For Agency Action to the Utah Air Quality Board in accordance with Utah laws.

Dated: June 21, 2007

By James O. Kennon
James O. Kennon
Dick Cumiskey
Members of Save Our Air & Resources
Represented by James O. Kennon and
Dick Cumiskey

By James O. Kennon
James O. Kennon, President, SOAR
Dick Cumiskey, Director, SOAR