



Mary Fallin
Governor

April 14, 2016

Mr. Ron Curry
Regional Administrator
United States Environmental Protection Agency, Region 6
1445 Ross Avenue, Suite 1200
Dallas, Texas 75202-2733

Dear Administrator Curry:

This letter is in response to EPA's February 11, 2016, communication stating, *inter alia*, EPA's intention to designate a portion of Muskogee County as nonattainment for the 2010 Sulfur Dioxide ("SO₂") National Ambient Air Quality Standard ("NAAQS"). The State of Oklahoma respectfully requests EPA reconsider its intended designation of a portion of Muskogee County as being a nonattainment area. In particular, EPA is not required to designate said portion of Muskogee County at this time, due to Oklahoma Gas and Electric's ("OG&E") Muskogee Generating Station having satisfied criteria which exempts it from this round of designations pursuant to the Consent Decree ("CD") at issue¹ (i.e., having "announced for retirement" certain units). Instead, the Muskogee Generating Station should be included in a subsequent designation round under EPA's Data Requirements Rule ("DRR"),² and Muskogee County should be designated at a later date. The State of Oklahoma appreciates the opportunity to provide supplemental information to EPA, and respectfully requests EPA reconsider its intended designation of a portion of Muskogee County.

Background

On March 2, 2015, EPA and Sierra Club entered into the aforementioned CD which required EPA to designate certain areas by July 2, 2016 under the 2010 SO₂ NAAQS. Pursuant to paragraph 1(b) of the CD, areas must be designated which contain any stationary source that was not announced for retirement by the date of the CD and either (1) emitted more than 16,000 tons of SO₂ in 2012 or (2) emitted more than 2,600 tons of SO₂ and had an annual average emission rate of 0.45 lbs SO₂/Mmbtu or higher in 2012. Pursuant to paragraph 1(c) of the CD, "announced for retirement" means:

¹ Consent Decree, *Sierra Club v. McCarthy*, Case No.: 3-13-cv-3953-SI (N.D. Cal. 2015)

² 80 Fed. Reg. 51052 (Aug. 21, 2015).

[A]ny stationary source in the United States with a coal-fired unit that as of January 1, 2010, had a capacity of over five (5) megawatts (MW) and that has announced that it will cease burning coal at that unit through a company public announcement, public utilities commission filing, consent decree, public legal settlement, final state or federal permit filing, or other similar means of communication.

Further, paragraph 7 of the CD ensures there is no limitation on the discretion afforded EPA under the CD to reconsider its decision-making, “including the discretion to alter, amend or revise any response and/or final action contemplated by this [CD].”

On August 21, 2015, the final DRR was published in the Federal Register.³ It established a timeline for designating areas of the country which remain undesignated after EPA’s designations pursuant to the CD in July 2016. In particular, it sets forth criteria for determining which areas must be designated and a pathway for designating areas surrounding applicable sources based on either modeling or monitoring. For areas which are to be monitored for attainment demonstrations, air agencies must submit annual monitoring plans by July 1, 2016 and monitors must be operational by January 1, 2017.

On March 20, 2015, EPA issued a letter to the State of Oklahoma setting forth the facilities identified by EPA as meeting the criteria under the CD, which included the Muskogee Generating Station. At that time, the State of Oklahoma did not argue that the Muskogee Generating Station was exempt from the CD due to a misinterpretation of the definition of “announced for retirement,” which was based in part on various discussions among EPA and Oklahoma Department of Environmental Quality (“ODEQ”) staff. On August 17, 2015, the State of Oklahoma submitted its recommendations to EPA for designating areas surrounding those facilities identified by EPA to be affected by the CD. Oklahoma recommended a designation of unclassifiable for the area surrounding the Muskogee Generating Station, but pointed out OG&E’s announcement for retirement of Units 4 and 5. On February 11, 2016, EPA sent a letter to the State of Oklahoma stating it intends to designate a portion of Muskogee County as being in nonattainment due to emissions from the Muskogee Generating Station.

Muskogee Generating Station is Exempt from the CD

EPA is not required at this time to designate the area in Muskogee County surrounding the Muskogee Generating Station because said facility is exempt from the CD due to having announced for retirement two of the three units at the facility. OG&E announced for retirement Units 4 and 5 at the Muskogee Generating Station within the meaning and prior to the date of the CD. In particular, OG&E announced said units for retirement in its August 2014 10-Q filing with the Securities Exchange Commission, stating therein its “environmental compliance plan

³ *Id.*

includes . . . the conversion of Muskogee Units 4 and 5 to natural gas.”⁴ Additionally, OG&E announced in its Integrated Resource Plan filed with the Oklahoma Corporation Commission (“OCC”) in August 2014 that “OG&E has decided to convert two coal-fired units at the Muskogee Power Plant to natural gas.”⁵ Further, OG&E provided direct testimony to the OCC on August 6, 2014, stating “OG&E plans to convert Muskogee Units 4 and 5 to natural gas before the deadline of January 4, 2019 . . .”⁶ ODEQ informed EPA of these announcements by including them in its September 2015 submittal to EPA entitled Technical Analyses and Information Supporting the Designation Recommendations for Oklahoma.⁷

OG&E’s aforementioned announcements were made prior to the CD and constitute “a company public announcement, public utilities commission filing, consent decree, public legal settlement, final state or federal permit filing, or other similar means of communication,” as required by paragraph 1(c) of the CD. Thus, the State of Oklahoma respectfully requests that EPA recognize Muskogee Generating Station as being exempt from the current round of designations pursuant to the CD and refrain from designating any portion of Muskogee County at this time. Instead, the State of Oklahoma requests that the Muskogee Generating Station be designated at a later time pursuant to the DRR. In particular, ODEQ intends to relocate the existing ambient air SO₂ monitor and evaluate the area using monitoring data acquired pursuant to the DRR and the monitoring TAD.

The State of Oklahoma stands by its original recommendation, but wishes to emphasize the fact that the Muskogee Generating Station should not have been included in this round of designations in the first place. Facts and circumstances surrounding the Muskogee Generating Station have not changed since the State of Oklahoma’s submittal of its designation recommendation and technical support documents. However, it has become clear to the State that inclusion of the facility within the list of affected sources under the CD was erroneous and/or based on a misinterpretation of the CD.

Other Sources of SO₂ in the Area

In addition to the future significant reductions of SO₂ in the area due to retirements at OG&E, another major source of SO₂ near OG&E will be drastically reducing its emissions. Georgia Pacific, an SO₂ source within Muskogee County and contributing to emissions in the portion of the county at issue, has stated to ODEQ that it will replace one of its three existing

⁴ See Oklahoma Gas and Electric Quarterly Report (Form 10-Q) (Aug. 7, 2014). OG&E’s SEC filings are available at: <http://phx.corporate-ir.net/phoenix.zhtml?c=106374&p=irol-sec>

⁵ See Oklahoma Gas and Electric, Integrated Resource Plan – 2014 Update (Aug. 6, 2014). OG&E’s OCC filings are available at: <http://phx.corporate-ir.net/phoenix.zhtml?c=106374&p=irol-utilityreg>

⁶ See Direct Testimony of Usha-Maria Turner before the Oklahoma Corporation Commission (Aug. 6, 2014). Copy available at: <http://imaging.occeweb.com/AP/CaseFiles/occ5129575.pdf>

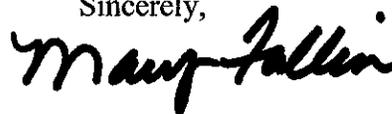
⁷ See Introduction and Summary, page 5 (Stating “OG&E Muskogee Generating Station is subject to a Federal Implementation Plan (FIP) (40 CFR § 52.1923), which requires Units 4 and 5 to meet a SO₂ emission limit of 0.06 lb/MMBTU by January 4, 2019. OG&E has committed to meet the federal BART limit by conversion of Unit 4 and Unit 5 to natural gas.”).

coal-fired boilers with a natural gas boiler before 2017. The facility is undertaking this retirement as part of its compliance strategy for the Boiler MACT (40 CFR Part 63, Subpart DDDDD) and represents that the retirement will result in a reduction of an estimated 400 tons of SO₂ annually. Thus, the retirement of Georgia Pacific's boiler will result in the co-benefit of a significant and direct reduction of SO₂ emissions in the portion of Muskogee County at issue within the current calendar year. This means there is a total of three coal-fired units which will be retired before EPA has even completed all designations under the DRR. In addition to the aforementioned rationale for excluding the Muskogee Generating Station from the CD, DEQ's monitor relocation will provide EPA the necessary monitored data to more appropriately evaluate the area under the DRR.

Conclusion

Because OG&E announced for retirement Units 4 and 5 at the Muskogee Generating Station within the meaning and timeframe established by the CD, and is therefore exempt from the CD, the State of Oklahoma respectfully requests that EPA reconsider its decision to designate a portion of Muskogee County at this time and instead designate the area later pursuant to the clearly applicable timeline in the DRR. Further, it is of note that the area's major sources of SO₂ are currently in the process of retiring a total of three coal-fired units, which will result in extremely significant reductions of SO₂ in the area.

Sincerely,

A handwritten signature in black ink that reads "Mary Fallin". The signature is written in a cursive, flowing style.

Mary Fallin
Governor