



November 19, 2021

VIA CERTIFIED MAIL and EMAIL

Honorable Michael S. Regan
Administrator
United States Environmental Protection Agency
Mail Code: 1101A
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460
Regan.Michael@epa.gov

Re: Notice of Intent to Sue for Failure to Take Nondiscretionary Action Related to the Wyoming SIP Revision Concerning the Jim Bridger Power Plant

Dear Administrator Regan:

With this letter, PacifiCorp provides notice of its intent to sue the United States Environmental Protection Agency ("EPA"), under 42 U.S.C. §7604(a)(2), based on EPA's failure to act by November 14, 2021, on the revision to the State of Wyoming's ("Wyoming") Regional Haze State Implementation Plan related to the regional haze requirements for the Jim Bridger Power Plant, which was submitted by Wyoming to EPA for review on May 14, 2020.

FACTUAL BACKGROUND

The Jim Bridger Power Plant

PacifiCorp is the owner,¹ along with Idaho Power, of the Jim Bridger Power Plant (the "Bridger Plant"), a 2,123 megawatt coal-fired power plant containing four different units and located near Point of Rocks, Wyoming. PacifiCorp is the sole operator of the Bridger Plant. The Bridger Plant, and the Bridger Coal Company and Black Butte Coal (which produce the coal used to power the Plant), employ hundreds of people. Power produced by the Bridger Plant supplies the western regional electrical grid, providing power to Utah, Idaho, Wyoming, Oregon, Washington, and California.

Wyoming's Regional Haze State Implementation Plan and EPA's Approval of NOx Emissions Limits Applicable to the Bridger Plant

The Clean Air Act, 42 U.S.C. § 7401, *et seq.* (the "CAA" or "Act"), requires each state to develop a State Implementation Plan ("SIP") addressing regional haze. As required under the

¹ PacifiCorp owns 67% of the Bridger Plant and Idaho Power owns 33% of the Bridger Plant.

Act, Wyoming developed its regional haze SIP for the first planning period (which included requirements for the Bridger Plant) and submitted the SIP to EPA for review. On January 30, 2014, EPA published its Final Rule Approving, Disapproving and Promulgating Implementation Plans for Regional Haze for the State of Wyoming.² EPA's Final Rule approved those portions of Wyoming's Regional Haze SIP establishing the control standards for nitrogen oxide (NO_x) at the Bridger Plant Units 1-4.³ Relevant here, the approved 2014 SIP established both best available retrofit technology ("BART") and Long-Term Strategy ("LTS") NO_x emissions limits for Units 1-4 at the Bridger Plant. Specifically, regarding LTS limits, EPA approved Wyoming's requirements that established a future 0.07 lb/MMBtu NO_x emissions limit on a 30-day rolling average (presumably met through the installation of selective catalytic reduction technology ("SCR")) for the four Bridger units. The compliance deadlines for the LTS 0.07 NO_x emissions limits were staggered well into the second planning period for regional haze, with a deadline of December 31, 2021, for Unit 2 and December 31, 2022, for Unit 1.⁴ SCR was installed in accordance with the deadlines for Units 3 (2015) and 4 (2016), and those Units are meeting the 0.07 LTS NO_x emissions limit.

The 0.07 lb/MMBtu NO_x emissions limit can only be met at Units 1 and 2 through the installation of SCRs, which are tremendously expensive to build (over \$100 million each) and operate (millions of dollars annually). Over the nearly eight years since the 2014 publication of the Wyoming Regional Haze Rule in the Federal Register, and establishment of the 2021 and 2022 deadlines for the 0.07 LTS NO_x emissions limit, circumstances have dramatically changed for coal-fired power plants like Bridger. Now, due to the substantial capital costs of SCR, the associated operational and maintenance ("O&M") costs, the parasitic load imposed by SCR, the transmission constraints within which Bridger operates, and the increasingly competitive energy markets and regulatory restrictions that govern PacifiCorp's operations in Wyoming, installing SCR on Bridger Units 1 and 2 would have such an onerous financial impact that PacifiCorp would be forced to retire the Units rather than install the SCRs.⁵

PacifiCorp's Regional Haze Reasonable Progress Reassessment Submission and Wyoming's Revision to its Regional Haze SIP

As a result of these circumstances, working with both Wyoming and EPA, PacifiCorp prepared a Regional Haze Reasonable Progress Reassessment ("RH Reassessment") in response to changes

² 79 Fed. Reg. 5032 (January 30, 2014).

³ *Id.* at 5046.

⁴ *Id.*

⁵ Across the country, it is not uncommon for a regional haze-related SCR requirement to result in retirement or repowering of a coal-fired generation unit. Numerous other utilities facing similar economic and regulatory pressures have retired or repowered the affected units rather than install SCR. *See, e.g.*: Arizona Cholla Plant, 81 Fed Reg 46852 (July 19, 2016) (required to install SCR but instead announced closure in 2020); Colorado Craig Unit 1, 83 Fed. Reg. 31332 (recently announced it will shut down by 2025 rather than install SCR); Oregon Boardman Plant, 76 Fed. Reg. 38997 (July 5, 2011) (elected to cease burning coal by 2020 rather than install SCR as originally required by the state submittal to EPA); and Wyoming Dave Johnston Plant, 79 Fed. Reg. 5032 (Jan. 30, 2014) (PacifiCorp has exercised option to retire unit 3 by 2027 rather than install SCR).

in both economic and regulatory circumstances arising between 2014 and 2019. The RH Reassessment was submitted to Wyoming on February 5, 2019, and presented an innovative approach to regional haze compliance, instituting seasonally variable plant-wide emission limits to achieve greater visibility improvements than installing SCR on Bridger Plant Units 1 and 2.

Following review of the RH Reassessment and the development of a related revision to the existing RH SIP, on May 5, 2020, Wyoming issued Permit P0025809 for the Bridger Plant, which approved the Regional Haze Reassessment's monthly and annual NO_x and SO₂ emission limits for Bridger Units 1 and 2, substituting those limits for the requirement that SCR be installed at Bridger Units 1 and 2. In order to allow for the implementation of Permit P0025809, Wyoming prepared a revision to its Regional Haze SIP and, on May 14, 2020, submitted the RH Reassessment SIP to EPA for review and approval. As previously explained, both PacifiCorp and Wyoming had worked with EPA (who responded favorably) on the development of the RH Reassessment SIP.

EPA Found Wyoming's RH Reassessment SIP Fulfilled Clean Air Act Requirements

Following its receipt and review of Wyoming's RH Reassessment SIP, on November 20, 2020, EPA Region 8 signed an approval of the SIP in accordance with the CAA requirement to approve a SIP "as a whole if it meets all of the applicable requirements" of the CAA. But the approval was never finalized through publication in the Federal Register due to the change in administrations.

Since that time, EPA has taken no formal action on the RH Reassessment SIP and verbally notified Wyoming and PacifiCorp in the summer of 2021 that EPA no longer intended to approve the RH Reassessment SIP.

EPA HAS A NON-DISCRETIONARY DUTY TO REVIEW AND ACT ON WYOMING'S RH REASSESSMENT SIP WITHIN 18 MONTHS, WHICH IT HAS FAILED TO DO

When a State submits a revision to a previously submitted SIP, EPA has a non-discretionary duty to make a "completeness" finding within six months, i.e., determine whether or not the submission contains sufficient information for EPA to either approve or disapprove it. CAA Section 110(k)(1)(B); 42 U.S.C. § 7410(k)(1)(B). In the event EPA fails to make a "completeness" determination within six months from the date of submission, the SIP or revision is deemed complete by operation of law. *Id.* Wyoming submitted its RH Reassessment SIP to EPA on May 14, 2020; based on EPA's failure to act on that submission, it was deemed "complete" by operation of law on November 14, 2020.

Upon either a finding of completeness by EPA or, as has occurred here, a determination of completeness through operation of law, EPA has a non-discretionary duty to, within 12 months, either approve the SIP revision "as a whole," or "approve the plan revision in part and

disapprove the plan revision in part.” See CAA Section 110(k)(3); 42 U.S.C. § 7410(k)(3). “In the case of any submittal on which the Administrator is required to act ... the Administrator *shall* approve such submittal as a whole if it meets all of the applicable requirements of this chapter.” See CAA Section 110(k)(3); 42 U.S.C. § 7410(k)(3) (emphasis added). In the event the Administrator finds the submitted SIP revision to be inadequate, “the Administrator *shall* require the State to revise the plan as necessary to correct such inadequacies.” See CAA Section 110(k)(5); 42 U.S.C. § 7410(k)(5) (emphasis added). The CAA’s requirement that EPA either approve, disapprove or partially approve a revised SIP within 12 months is clearly non-discretionary.

The language of the Act makes clear that, whether it approves a revised SIP or requires further revisions, what EPA may *not* do is avoid acting on the submitted SIP revision. Yet this is precisely what EPA has done – since Wyoming submitted its RH Reassessment SIP in May 2020, EPA has taken no formal action. Based on this failure to act, EPA has not complied with its non-discretionary duty to approve, partially approve, or disapprove Wyoming’s RH Reassessment SIP.

THE CONSEQUENCES OF EPA’S FAILURE TO ACT ON WYOMING’S RH REASSESSMENT SIP

As a result of:

- (1) EPA’s indication that Wyoming and PacifiCorp were developing an appropriate RH Reassessment;
- (2) Confirmation by Region 8, after full agency analysis, that Wyoming’s RH Reassessment SIP met the requirements of the Clean Air Act and should be approved; and
- (3) EPA’s subsequent failure to act according to its own analysis on the state’s RH Reassessment SIP;

Bridger Unit 2 is still subject to the impossible compliance deadline of December 31, 2021, requiring the installation of SCR, from the 2014 Regional Haze SIP. And given the long lead time necessary to construct an SCR (several years), Unit 1 is also subject to an impossible compliance deadline of December 31, 2022.

Based on EPA’s failure to fulfil the mandatory duty to take action on Wyoming’s RH Reassessment SIP, PacifiCorp must now either shut down Unit 2 or operate Bridger Unit 2 out of compliance with the current impossible Regional Haze SIP deadlines. Operating Unit 2 out of compliance with the existing Regional Haze SIP raises the prospect of PacifiCorp and its ratepayers facing federal enforcement actions and potential penalties, despite Wyoming permits and regulations allowing PacifiCorp to operate in accordance with the RH Reassessment. Shutting down portions of the Bridger Plant will result in the loss of jobs and displacement of

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workers at the Plant, and likely also at the coal mines supporting the plant—Bridger Coal Company and Black Butte Coal. In addition, forced shutdown of Units 1 and 2 will also impact the stability of the regional power grid, which relies on the ongoing operation of the Bridger Plant as a critical component of maintaining continuous and reliable power.

CONCLUSION

Based on EPA's failure to take non-discretionary action either approving or disapproving Wyoming's RH Reassessment SIP by November 14, 2021, in the event EPA has still failed to act on the Reassessment SIP as required by law within 60 days of this Notice, PacifiCorp reserves its right to sue for relief as allowed under 42 U.S.C. § 7605(b)(2), seeking an order compelling EPA to take appropriate action and any other equitable relief as allowed under 5 U.S.C. § 706(1), other applicable statutes, and the court's equitable powers.

Any questions concerning this notice should be directed to Marie Bradshaw Durrant at 801-220-4707 or marie.durrant@gmail.com.

Very truly yours,



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