



August 24, 2023

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 Utah's Regional Haze State Implementation Plan for Second Planning Period

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) and 40 C.F.R. § 54.3(a), based on EPA's failure to act by August 23, 2023 on the State of Utah's ("Utah") Regional Haze State Implementation Plan ("SIP") for the Second Planning Period ("RH Round 2 SIP"), which was submitted by Utah to EPA for review on August 2, 2022. On August 23, 2022, EPA found Utah's RH Round 2 SIP met the completeness criteria outlined in 40 CFR part 51, Appendix V.¹

I. EPA HAS A NON-DISCRETIONARY DUTY TO REVIEW AND ACT ON UTAH'S RH ROUND 2 SIP WITHIN 12 MONTHS, WHICH IT HAS FAILED TO DO

When a state submits a SIP, EPA has a non-discretionary duty to make a "completeness" finding within six months, i.e., to determine whether the submission contains sufficient information for EPA to either approve or disapprove the plan. *See* CAA Section 110(k)(1)(B); 42 U.S.C. § 7410(k)(1)(B). If EPA fails to make a "completeness" determination within six months from the date of submission, the SIP is deemed complete by operation of law. *Id.* Utah submitted its RH Round 2 SIP to EPA on August 2, 2022. EPA issued a completeness determination on August 23, 2022.

Upon a finding of completeness by EPA, the agency then has a non-discretionary duty to either approve or disapprove the SIP within 12 months. *See* CAA Section 110(k)(2); 42 U.S.C. § 7410(k)(2). EPA is obligated to approve SIPs that comply with the legal requirements. *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

¹ EPA's completeness determination letter (Ref: 8ORA-IO)

meets all of the applicable requirements of this chapter”) (emphasis added). If the Administrator finds the submitted SIP 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 Act’s requirement that EPA either approve or disapprove Utah’s RH Round 2 SIP within 12 months is clearly non-discretionary.

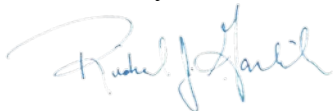
The language of the Act makes clear that, whether it approves a SIP or requires further revisions, EPA may *not* avoid acting on the submitted SIP. Because EPA determined completeness on August 23, 2022, EPA must take final action no later than August 23, 2023. As of August 23, 2023, EPA has taken no formal action on Utah’s RH Round 2 SIP. Based on this failure to act, EPA has not complied with its non-discretionary duty to take final action on Utah’s RH Round 2 SIP. Accordingly, pursuant to 42 U.S.C. § 7604(a)(2), this letter provides EPA with notice of “failure of the Administrator to perform any act or duty under this chapter which is not discretionary with the Administrator.”

II. CONCLUSION

Based on EPA’s failure to take non-discretionary action to either approve or disapprove Utah’s RH Round 2 SIP by August 23, 2023, and in the event EPA has still failed to act on Utah’s RH Round 2 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. § 7604(a)(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 Durrant at 801-220-4707 or marie.durrant@pacificorp.com.

Sincerely,



Richard J. Garlish
VP, Government Affairs & General Counsel
PacifiCorp/Rocky Mountain Power
1407 West North Temple, Suite 320
Salt Lake City, UT 84116
richard.garlish@pacificorp.com

cc: Kathleen Becker, EPA Regional Administrator



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region8

Ref: 8ORA-IO

Honorable Spencer J. Cox
Office of the Governor
Utah State Capital, Suite 200
P.O. Box 14220
Salt Lake City, Utah 84114-2220
gordonlarsen@utah.gov

Dear Governor Cox:

On August 2, 2022, the Environmental Protection Agency (EPA) received revisions to Utah's Regional Haze State Implementation Plan (SIP). The SIP revision was submitted to meet the Clean Air Act and Regional Haze Rule requirements for the regional haze program's second planning period.

EPA finds that Utah's SIP revision meets the completeness criteria outlined in 40 CFR part 51, Appendix V. While EPA has determined that the SIP revision is complete, we are currently reviewing the SIP revision to determine its approvability. Please note that a completeness determination does not constitute a finding on the merits of the submission or whether it meets the relevant criteria for SIP approval.

If you or your staff have any questions regarding this letter, please feel free to contact me at (303) 312-6170 Becker.KC@epa.gov or your staff may contact Clayton Bean at (303) 312-6143 or at Bean.Clayton@epa.gov.

Sincerely,
**KATHLEEN
BECKER**

KC Becker
Regional Administrator

Digitally signed by
KATHLEEN BECKER
Date: 2022.08.23
13:26:49 -06'00'

cc: Bryce Bird, Director, Utah Division of Air Quality
Becky Close, Environmental Program Manager, Utah Division of Air Quality
Chelsea Cancino, Utah Division of Air Quality