

**STATE OF NEW MEXICO
BEFORE THE ENVIRONMENTAL IMPROVEMENT BOARD**

**IN THE MATTER OF PROPOSED REVISIONS
TO THE STATE IMPLEMENTATION PLAN
FOR THE SAN JUAN GENERATING STATION
BEST AVAILABLE RETROFIT TECHNOLOGY
DETERMINATION**

No. EIB 13- 02(R)

**ORDER AND STATEMENT OF REASONS
FOR ADOPTION OF SIP REVISIONS**

This matter comes before the New Mexico Environmental Improvement Board (“Board”) upon a petition filed by the New Mexico Environment Department (“NMED” or “Department”), proposing amendments to New Mexico’s State Implementation Plan (“SIP”) for regional haze, in order to adopt a determination of the Best Available Retrofit Technology (“BART”) and associated emission limits for the San Juan Generating Station (“SJGS”), operated by Public Service Company of New Mexico (“PNM”). A public hearing was held in Farmington, New Mexico on September 5, 2013, with a quorum of the Board present during the hearing. The Board heard technical testimony from the Department and other parties and admitted exhibits into the record. On September 5, 2013, the Board deliberated and voted to adopt the proposed amendments for the reasons that follow:

I. STATEMENT OF REASONS

1. The federal Clean Air Act (“CAA”) requires states to submit State Implementation Plans (“SIPs”) to address visibility impairment caused by regional haze at certain National Parks and Wilderness Areas (“mandatory federal Class I areas”), in accordance with

- regulations promulgated by the U.S. Environmental Protection Agency (“EPA”). CAA §§ 169A & 169B (42 U.S.C. §§ 7491 & 7492).
2. The EPA regulations governing SIP submittals under CAA Sections 169A and 169B are codified at 40 C.F.R. §§ 51.308 – 51.309 (“Regional Haze Rule Sections 308 and 309”).
 3. In December 2003 the Board approved a SIP developed by NMED to comply with the Requirements of Regional Haze Rule Section 309 with respect to mandatory federal Class I areas located on the Colorado Plateau. The Department has implemented this “Section 309 SIP” continuously since that time.
 4. In June 2011 the Board approved certain revisions to the 2003 regional haze SIP and adopted additional SIP provisions pursuant to 40 C.F.R. § 51.309(g), which extended the scope of the regional haze SIP to all mandatory federal Class I areas within the State.
 5. The 2011 SIP contained source-specific BART determinations pursuant to 40 C.F.R. § 51.308(e) for the SJGS for particulate matter (“PM”) and nitrogen oxides (“NOx”), and determined that no other sources in New Mexico were subject to BART requirements. The BART provisions of the SIP were contained in Chapter 10 and the documentation of the SJGS BART determination was contained in Appendix D of the SIP.
 6. The Board continues to believe that the SIP adopted by the Board in 2011 was adequate and sufficient to comply with the CAA.
 7. In August, 2011, the EPA promulgated a federal implementation plan (“FIP”) containing a different NOx BART determination for the SJGS. 76 Fed. Reg. 52,388 (Aug. 22, 2011).

8. Petitions filed by New Mexico, PNM, and WildEarth Guardians challenging different aspects of the FIP are currently pending in the United States Court of Appeals for the Tenth Circuit.
9. In November, 2012, the EPA approved all elements of New Mexico's 2011 regional haze SIP, except for the NOx BART determination for the SJGS, on which EPA took no action. 77 Fed. Reg. 70,693 (Nov. 27, 2012).
10. Pursuant to 20.1.300.A NMAC, any person may petition the Board for amendment of regulations within the jurisdiction of the Board.
11. On May 21, 2013 NMED filed a petition with the Board for a public hearing in this matter. The petition proposed revised versions Chapter 10 and Appendix D of the regional haze SIP. The purpose of the revisions is to make a new BART determination for the SJGS based on a scenario referred to as the "State Alternative," which is contained in a tentative agreement between NMED, EPA, and PNM known as the "Term Sheet" (attached hereto). The Term Sheet is intended to address pollution control requirements for the SJGS with respect to regional haze and interstate transport for visibility.
12. On June 15, 2013, at a meeting conducted in compliance with the Open Meetings Act and other applicable requirements, the Board granted the Department's request for a hearing and scheduled the hearing for September 5, 2013. The Board appointed member John Volkerding as the Hearing Officer.
13. On June 28, 2013, public notice of the hearing was published in the New Mexico Register, in the Farmington Daily Times (in English and Spanish), and in the Albuquerque Journal (in English and Spanish). The notice stated that the Board may

make a decision on the proposed SIP revisions at the conclusion of the hearing, or may convene at a later date to consider action on the proposal.

14. NMED filed a Notice of Intent to Present Technical Testimony (NOI) on August 16, 2013, in accordance with the 20.1.1 NMAC. The following parties also filed entries of appearance: Public Service Company of New Mexico; and New Mexico Industrial Energy Consumers (NMIEC).
15. The Board also considered public comment, including letters from the Bureau of Land Management and National Park Service and NMED's and PNM's response to those comments, as well as letters, electronic submissions and in-person comments during the hearing from individuals and organizations, members of the local community, legislators, employees and former employees of the San Juan Generating Station, the county commission and ratepayers. The public comment was almost unanimous in its support for the SIP proposed by NMED.
16. A hearing was in this matter was held in Farmington, New Mexico on September 5, 2013, at which a reasonable opportunity for all persons to be heard was provided.
17. The Board has the authority to adopt the proposed SIP revisions pursuant to N.M.S.A. 1978, §§ 74-2-5.B & C.
18. Implementation of the State Alternative will abate air pollution.
19. CAA § 169A(g)(2) requires that BART determinations shall take into consideration “[1] the costs of compliance, [2] the energy and nonair quality environmental impacts of compliance, [3] any existing pollution control technology in use at the source, [4] the remaining useful life of the source, and [5] the degree of improvement which may reasonably be anticipated to result from the use of such technology.” The Board

determined that there was ample oral and written testimony that the SIP proposed by NMED meets these requirements.

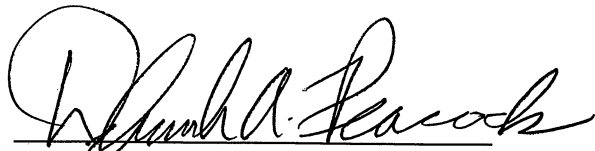
20. In considering the proposed SIP revisions, the Board is required by the Air Quality Control Act, NMSA 1978, Section 74-2-5.E. to give weight it deems appropriate to all facts and circumstances, including but not limited to (1) character and degree of injury to or interference with health, welfare, visibility and property; (2) the public interest, including the social and economic value of the sources and subjects of air contaminants; and (3) technical practicability and economic reasonableness of reducing or eliminating air contaminants from the sources involved and previous experience with equipment and methods available to control the air contaminants involved. The Board heard ample oral and written testimony and considered all these facts and circumstances regarding the NMED-proposed SIP in making its decision.
21. EPA has promulgated guidelines for States to use in making BART determinations, which are codified at 40 C.F.R. Part 51, Appendix Y. Pursuant to CAA § 169A(b)(2), use of the guidelines is mandatory for BART determinations for fossil fuel fired power plants with total generating capacity in excess of 750 megawatts.
22. NMED's determination that the State Alternative constitutes BART for NO_x for the SJGS complies with the guidelines at 40 CFR Part 51 Appendix Y and properly weighs the statutory factors of CAA § 169A(g)(2).
23. The Board concludes that the BART guidelines at Appendix Y provide an appropriate methodology to consider to the factors specified by NMSA 1978, Section 74-2-5.E. The Department's application of Appendix Y to the BART determination for the State Alternative appropriately weighs the Section 74-2-5.E factors.

24. In addition, in accordance with N.M.S.A, Section 74-2-5.E (2), the Board concludes that the public interest will be served by implementation of the State Alternative. Specifically, in addition to satisfying the NOx BART requirements of the CAA, implementation of the State Alternative will result in significant reductions in sulfur dioxide, particulate matter, carbon dioxide, and mercury; significant reductions in coal ash generated and water consumed.
25. In accordance with NMSA 1978 Section 74-2-5(C)(1)(a), the proposed SIP revisions and regulations are no more stringent than but at least as stringent as required by the federal act and federal regulations pertaining to visibility protection in mandatory class I areas.
26. The notice and hearing requirements of NMSA 1978 Section 74-2-6 and 20.1.1 NMAC were satisfied in this rulemaking process.
27. The proposed amendments are adopted for any or all of the reasons stated above.

II. ORDER

By unanimous vote of a quorum of the Board members, the proposed revisions to New Mexico's regional haze SIP at Chapter 10 and Appendix D, as contained in NMED's June 27, 2013 public review drafts of those documents, were approved by the Board on September 5, 2013. The Department shall submit these SIP revisions, with any corrections necessary to address the errors identified in NMED Exhibit 16, as expeditiously as possible to the EPA for approval. To the extent that any provision within Chapter 10, Section 10.5 (Implementation of the State Alternative) is not self-executing, the Department shall take appropriate actions to implement that provision using its applicable powers and authorities, including but not limited to

enforcement authority under N.M.S.A. 1978, 74-2-12 and permitting authority under N.M.S.A.
1978, § 74-2-7, and implementing regulations.

A handwritten signature in black ink, appearing to read "Deborah A. Peacock". The signature is written in a cursive style with a large initial "D".

Deborah A. Peacock, Chair
On Behalf of the Board

Dated: September 5, 2013