

EPA REGION 8'S RESPONSE TO PETITION FOR REVIEW

Attachment P

Administrative Record Document No. 18

Ute Indian Tribe of the Uintah and Ouray Reservation Comments on U.S. Environmental Protection Agency Response to Comments on the proposed Title V Operating Permit: Deseret Power Electric Cooperative - Bonanza Power Plant (EPA-R08-OAR-2019-0350-0019)



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Ute Indian Tribe of the Uintah and Ouray Reservation Comments on U.S. Environmental Protection Agency Response to Comments on the proposed Title V Operating Permit: Deseret Power Electric Cooperative - Bonanza Power Plant.

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The Ute Indian Tribe of the Uintah and Ouray Reservation submits these comments on the Environmental Protection Agency's ("EPA") September 11, 2023, Draft Response to Comments ("Draft RTC") on the Deseret Bonanza Power Plant Clean Air Act ("CAA") Title V Permit Renewal. The Draft RTC was prepared in response to the Tribe's comments on the proposed Title V Permit that were submitted in March of 2021. Despite taking two and a half years to respond to the Tribe's comments, EPA has failed to meaningfully address the Tribe's call for environmental justice. If our federal trustee remains unwilling to establish and enforce the protections necessary to protect the health and well-being of our membership, then the Bonanza Plant should no longer be operating on our Reservation.

I. The Bonanza Plant is Responsible for Air Quality Issues that Continue to Afflict the Uinta Basin

As EPA is aware, the Bonanza Plant operated on our Reservation lands for many years without the requisite Title V Operating Permit, spewing high levels of coal pollution into the air at the expense of the health, safety, and well-being of Tribal members and communities.

Despite flouting regulatory requirements, the Bonanza Plant underwent substantial modifications in 2000 as part of a project to increase the facility's capacity and extend its life. These 2000 modifications resulted in actual, significant increases in air pollution that not only exceeded regulatory limits but also posed a real and immediate threat to human health and the environment. Emissions of NO_x increased somewhere between 365 and 1124 tons per year. Similarly, emissions of SO_x increased by upwards of 1,171 tons per year, and the emissions of PM 10 increased upwards of 686 tons per year. These increases were significant and undoubtedly presented an increased risk of harm to human health, such as respiratory illnesses like asthma and lung disease, cardiovascular illness, and possibly even brain cancer.

Our federal trustee allowed the Bonanza Plant to emit toxic pollutants into our Tribal airspace with impunity. Ironically, it took the efforts of environmental advocacy groups who have

no beneficial interest in the land and no trust relationship with EPA to finally spur action, resulting in a settlement agreement between EPA Region 8, the Sierra Club, WildEarth Guardians, and Deseret Power, which resulted in a Title V Federal Operating Permit for the Bonanza Plant. Over the objections of the Tribe, EPA approved a settlement agreement that severely lacked the necessary measures to mitigate the adverse environmental impacts of the Bonanza Plant operations. The settlement agreement was too little and too late, and the Bonanza Plant continues to bear the majority of the blame for the air quality issues in the Uintah Basin. Our members continue to experience disproportionate adverse impacts of this pollution, which presents a particularly inhospitable environment for our children and elders.

The Tribe's concerns over the ongoing operations of the Bonanza Plant are well documented. On November 24, 2015, the Tribe submitted comments to the then-proposed settlement agreement among Deseret Power, EPA, and the environmental advocacy groups. In its comments, the Tribe sought a lifetime limit on coal consumption at the plant, citing the fact that the Bonanza Plant is the largest emitter of NO_x in the entire Uinta Basin. The Tribe also proposed establishing a trust fund through which future Clean Air Act violations could be channeled to promote air quality to benefit the Tribal membership. The Tribe's comments were largely disregarded in the final settlement agreement.

The Tribe reiterated the foregoing issues in its March 22, 2021, comments on the proposed Title V Operating Permit renewal, demanding that EPA follow through on these priorities for the Tribe pursuant to its trust responsibility and the federal policy of environmental justice. Yet, EPA's Draft RTC once again marginalizes the concerns of the Tribe and instead recites a methodology for quantifying environmental justice that was applied without government-to-government consultation with the Tribe. It is impossible to meaningfully uphold environmental justice without deferring to the priorities of the disproportionately impacted community. It appears EPA is proposing to do precisely that.

It is disconcertingly reminiscent of the past that this permit renewal process is being discussed on a parallel track with a proposed Minor New Source Review ("MNSR") permit authorizing Deseret Generation and Transmission Cooperative ("Deseret") to construct new facilities at the Bonanza Plant. While EPA should be pushing the Bonanza Plant into the twilight of its operations, EPA instead continues to promote the expansion of the Bonanza Plant and new emission sources.

II. The RTC Fails and Inadequately Addresses Potential Impacts to Air Quality, Groundwater, Vegetation, and Wildlife on our Reservation

Air Quality

In its Draft RTC, EPA's air quality analysis is based on the decade-old 2013 Uinta Basin Ozone Study. EPA notes that it considered using a photochemical grid model but ultimately determined that computer-based modeling is too unreliable. Instead, it chose to rely on "research in the Basin that uses instrumentation and analog studies." EPA provides very little in terms of emissions data. Instead, EPA places a strong emphasis on the relative height of the Bonanza Plant stacks (600 meters) to the wintertime inversion height (around 300 meters), reaching the following

conclusion:

Accordingly, while the contribution of ozone-forming emissions from Bonanza is not zero, considering the stack height of the NOX and VOC emissions releases, the inversion layer height, and the small percentage of total Uinta Basin VOC emissions that the plant produces, we do not believe that Bonanza emissions significantly contribute to the wintertime ozone issues in the Uinta Basin.”

EPA goes on to state that the “U&O FIP should reduce adverse health and environmental effects for the affected populations due to reduced exposure to elevated ground level ozone and air toxics resulting from the anticipated reduction of ozone-forming VOC emissions.”

Both of these conclusions are only valuable insofar as they are supported by data on the nature and extent of the emissions from the facility. Data of this nature is absent from the RTC, and EPA’s reliance on a decade-old ozone study to analyze air quality impacts with no accompanying emissions data specific to the Bonanza Plant is not adequate to support its sweeping conclusion that there will be no impact to wintertime ozone on the Reservation.

Groundwater

In assessing impacts to groundwater, EPA refers exclusively to Bonanza’s own data, found on Bonanza’s Coal Combustion Residuals (“CCR”) website. It does not appear EPA had any independent data source outside of the permit applicant. EPA found the following in Bonanza’s available data: “Over the course of spring 2018 through fall 2021 sampling events, several wells in Bonanza’s groundwater monitoring network reported concentrations of CCR constituents (fluoride, sulfate, chloride, total dissolved solids, and pH) that qualified as statistically significant increases over background thresholds” (emphasis added).

EPA notes that Bonanza purports to be a zero-discharge facility per its Title V permit, and states that “[w]ithout knowing the type or quality of the wastes being disposed of in the NEP, it is difficult to fully understand what impacts infiltration from this impoundment may have on groundwater.” However, rather than flagging this discrepancy, EPA goes on to conclude that it “does not anticipate any potential impacts to groundwater from the authorization to continue operations that emit air pollutants,” once again citing the high stacks relative to the low inversion height.

EPA has identified a discrepancy potentially nullifying the plant’s status as a zero-discharge facility. Rather than investigate this issue, EPA has put its head in the sand and concluded, essentially, that it doesn’t know what it doesn’t know. EPA must investigate this matter further to ascertain the nature and scope of any discharge that may impact groundwater on our Reservation.

Vegetation and Wildlife

In responding to concerns raised by the Tribe regarding potential adverse and disproportionate impacts to vegetation and wildlife on the Reservation, EPA lists the wildlife

referenced on the Ute Indian Tribe’s website. Without providing any supporting data, EPA once again concludes that it does expect the proposed action to affect wildlife or vegetation: “As indicated in the air quality section of this analysis, given Bonanza’s high stack height at 600 meters, the air pollutant emissions from this facility are not expected to impact air quality in the localized area and thus would not result in localized dispersion of pollutants to terrestrial resources.”

The vegetation and wildlife in the area of the facility – and the priorities of the Tribe in relation to the conservation and protection of its vegetation and wildlife – should be identified in consultation with the Tribal Business Committee, not through gleaning the Tribe’s website.

III. Conclusion

The Bonanza Plant has been a destructive force that continues to pollute our airspace, posing serious health risks to our membership. EPA’s actions to uphold and protect our health and wellbeing have been superficial at best. If EPA is unwilling to reorient its oversight of this facility and implement immediate and serious measures tailored to environmental justice, the Bonanza Plant is no longer welcome on our Reservation, and the Tribe is poised to take any and all action within its authority as a sovereign government to resolve this matter with or without the support of our federal trustee.