Clean Air Act (CAA) §110(a)(2)(D)(i) requires that each state implementation plan (SIP) submitted to EPA must address emissions from within the state that affect other states through interstate transport. Section 110(a)(2)(D)(i) contains four elements related to the impacts of interstate transport. As explained by EPA, the “SIP must prevent sources in the state from emitting pollutants in amounts which will: (1) Contribute significantly to nonattainment of the NAAQS in other states; (2) interfere with maintenance of the NAAQS in other states; (3) interfere with provisions to prevent significant deterioration of air quality in other states; or (4) interfere with efforts to protect visibility in other states.” 75 Fed. Reg. 72688, 72689-90, Nov. 26, 2010.

On September 17, 2007, New Mexico submitted a SIP to EPA addressing each of the four elements. EPA approved this SIP with respect to element (1) on June 11, 2010 (75 Fed. Reg. 33174), and approved it with respect to elements (2) and (3) on November 26, 2010 (75 Fed. Reg. 72688). With respect to the fourth and final element, regarding visibility, the September 17, 2007 SIP stated that New Mexico would submit an approvable SIP under for regional haze by December, 2007. This commitment was in accordance with EPA guidance applicable at the time, which provided that “a state could meet the visibility prong of the


In accordance with a Consent Decree with WildEarth Guardians setting a schedule for EPA action on CAA 110(a)(2)(D) SIPs, on December 20, 2010, EPA proposed disapproval of New Mexico’s September 17, 2007 110(a)(2)(D) SIP with respect to the visibility prong, and proposed a FIP consisting of a determination of Best Available Retrofit Technology (BART) for the San Juan Generating Station (SJGS). EPA’s rationale for this FIP was that installation of BART controls at the SJGS was necessary to ensure that New Mexico achieved the emission reductions relied upon by neighboring states in setting their reasonable progress goals for visibility improvement.

On February 28, 2011 the New Mexico Environment Department filed a petition for adoption of a Regional Haze SIP. That SIP contains a proposed BART determination for the SJGS. Although NMED’s proposed BART determination differs from that proposed by EPA, as explained below it achieves the reductions relied upon by other states in setting their visibility goal.

**Emissions Reductions Necessary to Satisfy § 110(A)(2)(D)**

In the proposed FIP, EPA explains that as a product of interstate collaboration in developing SIPs through the West Regional Air Partnership, “the common understanding was that each State would take action to achieve the emission reductions relied upon in their reasonable progress demonstrations under the [Regional Haze Rule]”. 76 Fed. Red. At 496. Therefore,
EPA found that “an implementation plan that provides for emission reductions consistent with
the assumptions used in the WRAP [photochemical grid] modeling will ensure that emissions
from New Mexico do not interfere with measures designed to protect visibility in other states.”
Id.

Therefore, EPA used the emission rates assumed in the WRAP’s modeling for NOx and
SO2 from the SJGS as the criteria for avoiding interference with other states visibility measures.
Finding that the existing federally enforceable emission limits were higher than those rates, the
EPA determined that further reductions were required.

Specifically, EPA noted that the WRAP modeling assumed NOx emission rates of 0.27
lbs./mmBtu for SJGS units 1 & 2, and 0.28 lbs./mmBtu for units 3 & 4. For SO2 from SJGS, the
modeling assumed an emission rate of 0.15 lbs/mmBtu for all four units. Id. at 497. EPA
compared these WRAP modeling assumptions to the federally enforceable limits applicable to
SJGS through a consent decree entered into by the operator of SJGS, Public Service Company of
New Mexico (PNM), NMED, and environmental groups, which are: 0.30 lbs/mmBtu for NOx
and 0.15 lbs/mmBtu for SO2. Id. Noting the discrepancy between the federally enforceable
limits and the WRAP assumptions, EPA concluded that “it is appropriate to establish federally
enforceable limits for pollutants that impact visibility projections within the WRAP
photochemical modeling.” Id. EPA then went on to cite its authority to issue a regional haze
FIP for New Mexico, including BART for the SJGS, as a mechanism to achieve the needed
reductions. Id. For all other sources in New Mexico, EPA proposed finding that they are
sufficiently controlled to prevent interference with visibility programs of other states. Id.
In summary, EPA adopted the WRAP assumptions for SJGS of 0.27 – 0.28 lbs/mmBtu for NOx and 0.15 lbs/mmBtu for SO2 as the criteria for approvability of a § 110(a)(2)(D) implementation plan.

Satisfaction of the § 110(a)(2)(D) Requirements

NOx

On February 28, 2011, the Department proposed a complete regional haze SIP, including a BART determination for NOx for the SJGS. The BART determination calls for installation of Selective Non-Catalytic Reduction (SNCR) on all four SJGS units, and an emission rate of 0.23 lbs/mmBtu. This emission rate is well under the 0.27 – 0.28 lbs/mmBtu rate relied upon by other states in setting their reasonable progress goals. Therefore, if the board adopts this BART determination, New Mexico will also have satisfied the visibility requirements of CAA § 110(a)(2)(D)(i)(II) with respect to NOx.

SO2

The proposed FIP noted that SJGS appears to meeting the 0.15 lbs/mmBtu emission rate assumed by the WRAP even though there was no enforceable requirement that it do so. EPA proposed to impose that rate as a federally enforceable limit in the FIP. EPA also noted that it was not proposing to find that the limit satisfies the BART requirement for SO2, as that requirement would be satisfied by New Mexico’s participation in the SO2 backstop trading program. 76 Fed. Reg. at 498.

Consistent with EPA’s statement, the regional haze SIP submitted to the Board on February 28, 2011 addressed the BART requirement for SO2 through participation in the SO2 backstop trading program. In order to address the separate requirement to satisfy § 110(a)(2)(D) for SO2, SJGS has submitted a permit modification to limit emissions of SO2 to 0.15
lbs/mmBtu. The application is included as Exhibit 3 in this Notice of Intent. Upon the
Department’s approval of that permit modification and the Board’s approval of this SIP, New
Mexico will have satisfied the visibility requirements of CAA § 110(a)(2)(D)(i)(II) with respect
to SO2.