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* PLEASE INCLUDE THE TWO ATTACHED DOCUMENTS IN THE RECORD RE: ODEQ PROPOSED REVISED REGIONAL HAZE SIP.

# OFFICE OF THE ATTORNEY GENERAL
## FACSIMILE TRANSMITTAL COVER SHEET

DATE: MAY 20, 2013

TO: CHERYL E. BRADLEY

OF: ODEQ - AIR QUALITY DIVISION

FAX #: (405) 702-4101

FROM: OK ATTORNEY Generals office

RE: - COMMENTS OF ATTORNEY General
- Letter FROM AG PRUITT TO Steve Thompson

ATTENTION: transmission consists of 7 page(s), NOT including cover

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OFFICE OF ATTORNEY GENERAL
STATE OF OKLAHOMA

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Department of Environmental Quality
Air Quality Division
ATTN: Cheryl E. Bradley
P.O. Box 1677
Oklahoma City, OK 73101

**Sent via email: Cheryl.Bradley@deq.ok.gov**
**and Fax: (405) 702-4101**

RE: Comments of Oklahoma Attorney General on the Oklahoma Department of Environmental Quality's ("DEQ") March 20, 2013 Proposed Revision to Regional Haze State Implementation Plan ("Revised SIP")

On March 19, 2013, the Air Quality Division of the Oklahoma Department of Environmental Quality ('DEQ") submitted its Revised BART Determination concerning AEP-Public Service Company of Oklahoma's Northeastern Power Plant. As noted in that document, the Northeastern Power Plant is located in Rogers County and consists of two 490 MW coal-fired steam electric generating units. As further noted in the document, after partial approval and partial disapproval of the Oklahoma Regional Haze (RH) State Implementation Plan (SIP) by the Environmental Protection Agency (EPA), a settlement plan was agreed upon between certain parties to address necessary visibility improvements. The stated purpose of DEQ's review regarding the Northeastern Plant "is to document that the agreed-upon control scheme meets the


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requirements of the BART review and will serve to replace the disapproved portions of the corresponding BART submittal Analysis in Oklahoma's RH SIP."

In general, the settlement agreement requires that PSO shut down one of the coal-fired units by April 16, 2016, and the second unit by December 26, 2026. While the second unit would remain operational, certain emissions controls would be installed and PSO would gradually restrict capacity utilization of that unit beginning in 2021. The Attorney General would note that inherent in the settlement plan is the retirement of two coal-fired electric generating units and the obvious need to replace either a portion or all of the capacity/energy associated with those plants. The Attorney General would further note that the first of five factors considered by DEQ in its BART determination is "the costs of compliance" (*see* Revised BART Determination, p.10).

A review of DEQ's Revised BART Determination reveals a fundamental omission– while DEQ considered the cost of emissions control equipment over the life of the operating coal unit, it did not consider the cost of replacement capacity/energy for both units that is, of necessity, part of the plan. The need to replace capacity/energy resulting from the retirement of a unit by 2016 is evinced by PSO's agreement with Calpine to provide approximately 250 MWs of purchased-power by that date. The costs of that contract range from $29 million to $31 million per year for the fifteen (15)-year term of the contract. Additional costs associated with that replacement power arise from the difference in costs between the use of coal and the use of natural gas as a fuel source. The additional costs associated with the decreased utilization and eventual retirement of the second unit in 2026 are, at this time, un-quantified as PSO has not established a plan for replacement power for that unit.

Another factor complicates and makes questionable the cost of compliance analysis. PSO has recently notified the Oklahoma Corporation Commission (Commission) that it intends to submit an amended Integrated Resource Plan (IRP). The stated purpose for the amendment is PSO's updated need to serve approximately 250 MWs of load in the 2016 timeframe. PSO's 2012 IRP, finalized on September 26, 2012, provided for replacement of only roughly one-half of the capacity/energy of the 490 MW coal-fired plant to be retired in 2016. It is now evident that replacement for the entire capacity/energy output of that plant is necessary. As such, the costs associated with the settlement plan must now be re-examined as it is obvious that additional cost, although currently un-quantified, results from the retirement of that plant.

DEQ has concluded that the Proposal is cost effective based on an analysis that does not include replacement capacity and energy costs which PSO would be required to incur due to the mandated early retirement of the Units. According to the record, DEQ's analysis omitted the following compliance costs: The cost of replacement capacity that will be incurred because of the retirement of one of the units in 2016; The costs of replacement energy which will occur when the restrictions on capacity for the second unit go into effect in 2021-2026; and the cost of replacement capacity which will occur when the second unit is retired in 2026. The omission of these costs of compliance in the analysis means that DEQ's cost effectiveness determination is based on incomplete information and clearly underestimates the true costs of the proposal, and by extension, the cost effectiveness of the revised SIP.

In addition, the early retirement of the units arguably makes the settlement proposal and the resulting revised SIP much more costly and stringent than the EPA Federal Implementation Plan.

Pursuant to Title 27A O.S. Section 1-1-206 - Economic Impact - Environmental Benefit Statement:

A. Each state environmental agency in promulgation of permanent rules within its areas of environmental jurisdiction, prior to the submittal to public comment and review of any rule that is more stringent than corresponding federal requirements, unless such stringency is specifically authorized by state statute, shall duly determine the economic impact and the environmental benefit of such rule on the people of the State of Oklahoma including those entities that will be subject to the rule. Such determination shall be in written form.
B. Such economic impact and environmental benefit statement of a proposed permanent rule shall be issued prior to or within fifteen (15) days after the date of publication of the notice of the proposed permanent rule adoption. The statement may be modified after any hearing or comment period afforded pursuant to Article I of the Administrative Procedures Act.
C. The economic impact and environmental benefit statement shall be submitted to the Governor pursuant to Section 303.1 of Title 75 of the Oklahoma Statutes and to the Legislature pursuant to Section 308 of Title 75 of the Oklahoma Statutes. Such reports submitted to the Governor and to the Legislature shall include a brief summary of any public comments made concerning the statement and any response by the agency to the public comments demonstrating a reasoned evaluation of the relative impacts and benefits of the more stringent regulation.

It does not appear that the DEQ has conducted or submitted this statutorily required Economic Impact – Environmental Benefit Statement. The Revised SIP, once approved through notice and comment rulemaking, will be submitted to the EPA for promulgation, again, after notice and comment, as a final rule. Here, where the ODEQ BART determination includes the retirement of one unit in 2016, and additional controls and then the subsequent retirement of a second unit in 2026, a determination more stringent than the EPA FIP, the DEQ should determine the economic impact of the rule (the Revised State SIP) and the environmental benefit of the rule, on the people of the State of Oklahoma, which includes rate payers that will be affected by the rule.

In summary, it does not appear that DEQ considered the total costs of compliance in its Revised BART Determination, as the cost of replacement capacity and energy was omitted from the analysis. That replacement cost data should be considered in any determination regarding the cost of compliance inherent in the PSO/EPA settlement plan and will not be available until a thorough examination of PSO's amended IRP is accomplished. PSO has stated its intention to submit its amended IRP in early June of this year and hold a technical conference regarding same

on June 18th. The Attorney General submits that it is necessary that a thorough vetting process occur regarding the revised SIP so that accurate cost information can be obtained. For the above-stated reasons, the Attorney General respectfully requests that DEQ delay any decision regarding approval of the revised SIP. This requested delay will allow the DEQ an opportunity to fully consider all relevant cost information before approving the revised SIP.

E. SCOTT PRUITT
ATTORNEY GENERAL

May 15, 2013

Steven A. Thompson, Executive Director
Oklahoma Department of Environmental Quality
707 N. Robinson
P.O. Box 1677
Oklahoma City, OK 73101-1677

Re: PSO/EPA Settlement Agreement- Revised State Implementation Plan

Dear Mr. Thompson:

As you are aware, the PSO/EPA settlement plan, upon which the revised State Implementation Plan ("SIP") is based, required that Public Service Corporation of Oklahoma ("PSO") decommission one of its coal-fired generation facilities by 2016. The 2012 PSO Integrated Resource Plan ("IRP") provided for the replacement of only 260 MWs of the 500 MW coal-fired generation plant that is scheduled for closure. As such, the cost estimates for the SIP settlement plan are premised upon replacement of roughly only one-half of that plant's capacity and energy. Recently, PSO announced its intention to submit a revised IRP at the Oklahoma Corporation Commission to amend its 2012 IRP. The stated purpose of this amended IRP is to include approximately 250 MWs of electric load that will be served by PSO in the 2016 time frame.

Because PSO has added additional load which now requires a revision to the 2012 IRP, the cost information concerning the PSO/EPA settlement plan and, hence, the revised SIP, may be inaccurate to a degree that cannot be determined at this time. As such, cost assessments that have been conducted in the PSO proceeding at the Corporation Commission and by the Oklahoma Department of Environmental Quality ("DEQ") in association with the SIP are based on incomplete and inaccurate data (see revised paragraph 12 in First Amended Regional Haze Agreement). More accurate cost information will be developed after PSO submits its amended IRP in June of this year and includes the entire 500 MWs of needed capacity/energy as opposed to only 260MWs.

In addition, Title 27A O.S. §1-1-206 "Economic Impact – Environmental Benefit Statement" requires a state environmental agency to duly determine the economic impact and environmental benefit of a permanent rule that is more stringent than corresponding federal requirements, unless such stringency is specifically authorized by state statute. It is certainly arguable that the proposed revised SIP for PSO is more stringent than the previously issued EPA FIP. Without accurate updated

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cost information from PSO's revised IRP, it seems unlikely that any economic impact – environmental benefit statement compiled by DEQ would be accurate.

Based on the above, I respectfully request that DEQ delay the public meeting scheduled for May 20, 2013, and delay a final decision regarding the SIP, until PSO's amended IRP can be fully vetted in proceedings at the Corporation Commission. The 2013 IRP process will yield additional information that will provide the opportunity to ascertain the true cost of the SIP that is required in proceedings at both the Corporation Commission and the DEQ.

Sincerely,

E. Scott Pruitt
Attorney General