

Intervention Status Update: Sierra Club Challenge to the U.S. Environmental Protection Agency Approval of Arkansas Haze Plan

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The Sierra Club and National Parks Conservation Association (collectively “Sierra Club”) filed a Petition for Review (“Petition”) on November 25, 2019 in the United States Court of Appeals for the Eighth Circuit challenging the United States Environmental Protection Agency (“EPA”) approval of revisions to the State of Arkansas’s State Implementation Plan (“SIP”) for addressing regional haze.

The challenged SIP includes permanent and enforcement measures to reduce sulfur dioxide, oxides of nitrogen and particulate matter using best-available retrofit technology at seven electric-generating units.

The electric utility Entergy Arkansas, LLC, Entergy Mississippi, LLC, and Entergy Power, LLC (collectively “Entergy”) had previously been granted intervention status by the court on December 23, 2019.

The three additional interested parties who filed motions to intervene had their requests granted earlier this week. The Arkansas Department of Energy and Environment, Division of Environmental Quality (“DEQ”), and the Arkansas Affordable Energy Coalition (“AAEC”) both filed their motions on December 23, 2019. DEQ is represented by the Office of the Arkansas Attorney General.

The Court entered an Order granting DEQ’s request on January 7, 2020. It subsequently entered an Order granting AAEC’s request on January 8, 2020.

The Arkansas Electric Cooperative Corporation (“AECC”) also filed a motion to intervene. It lodged its request with the court on December 24, 2019. The court entered an order granting AECC’s request on January 8, 2020.

The federal regional haze program is driven by 169A of the Clean Air Act. Congress sought to address visibility in Mandatory Class I federal areas in which an impairment results from manmade air pollution.

Section 169A requires that certain sources contributing to visibility impairment install Best Available Retrofit Technology (“BART”). The states are responsible for determining the appropriate BART controls for certain stationary sources. EPA reviews the states’ State Implementation Plan (“SIP”) submissions for consistency with the relevant regulations.

In the event EPA determines that an SIP does not meet the Clean Air Act’s requirements, the federal agency may itself make certain choices and impose a Federal Implementation Plan (“FIP”). Section 169A gives states substantial responsibility to determine appropriate BART controls and EPA may not

disapprove reasonable state determinations that comply with the relevant statutory and regulatory requirements.

EPA had previously issued a Regional Haze FIP for Arkansas.

The December 13, 2019 article regarding Sierra Club's appeal of EPA's haze plan approval may be found [here](#).

The January 3, 2020 article regarding appeal updates may be found [here](#).