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01-28-11
04:59 PM

May 5, 2010

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2394 E Camelback Rd.
Phoenix, AZ 85016

(See Additional Addressees on Attached Page)

RE: **NOTICE OF INTENT TO SUE FOUR CORNERS POWER PLANT FOR VIOLATIONS OF THE CLEAN AIR ACT**

To whom it may concern:

On behalf of the Diné Citizens Against Ruining Our Environment ("Diné CARE"),[1] To' Nizhoni Ani ("TNA"),[2] National Parks Conservation Association ("NPCA")[3] and Sierra Club, with its over 700,000 members[4] (collectively, "Noticing Parties") we are writing to provide you with notice that we intend to file a federal Clean Air Act citizen suit against the owners and operators of the Four Corners Power Plant ("Four Corners"). Four Corners is located on Navajo land in Fruitland, N.M., about 25 miles west of Farmington. The Noticing Parties hereby allege that Four Corners has repeatedly violated the Clean Air Act, 42 U.S.C. § 7401 et seq., as described below. These violations injure, and will continue to injure, the health, aesthetic and economic interests of the Noticing Parties and their members. The injuries are traceable to the violations and redressing the violations will redress the injuries. This notice is being provided pursuant to 42 U.S.C. § 7604(b).

[1] Diné CARE, Attn: Anna Frazier, 63 Box 263, Winslow, AZ 86047, (928) 380-7697
[2] TNA, Attn: Nicole Horseherder, PO Box 657, Kykotsmovi Village, AZ 86039-0657, (928) 675-1851
[3] NPCA, Attn: Stephanie Kodish, Clean Air Counsel, 706 Walnut Street, Suite 200, Knoxville, TN 37902, (865) 329-2424
[4] Sierra Club, Attn: Sanjay Narayan, 85 Second Street, Second Floor, San Francisco, CA 94105, (415) 977-5769

I. FOUR CORNERS

Four Corners is one of the largest coal-fired generating stations in the United States.[5] The plant's five units generate 2,040 megawatts. The first unit went online in 1963.[6] The plant, operated by Arizona Public Service Co. ("APS"), provides power to about 300,000 households in New Mexico, Arizona, California and Texas.[7]

Four Corners is a very large source of air pollution. Based on emissions data from 2006, the plant emits 15 million tons of nitrogen oxide, sulfur dioxide, carbon dioxide, particulate matter, and mercury, an established neuro-toxin. The plant's annual emissions of nitrogen oxide, ("NOx"), are higher than any other US coal plant, totaling 40,742 tons; this amount is equivalent to the emissions released from approximately two million vehicles driven an average of 15,000 miles per year. According to the U.S. Environmental Protection Agency, "[t]he Four Corners Power Plant and Navajo Generating Station are two of the largest pollution sources in the United States. Air pollution from the Four Corners Power Plant and the Navajo Generating Station impacts many of our most pristine and precious natural areas."[8] As reported in a news article from last year,

> Regulated pollutants at the power plant include sulfur dioxide, particulate matter and nitrogen oxide, the latter constituting "the largest single nitrogen oxide source in the United States," according to Colorado state Rep. Scott Tipton, R-Cortez, in a letter March 9 to the state attorney general.
>
> The power plant's "dangerous emission levels of nitrogen oxide have created a permanent haze above Mesa Verde and the surrounding areas," he said. "The National Park Service has reported that the haziest days at Mesa Verde have worsened over the past 10 years."
>
> He said ground-level ozone and fine particle pollution from power plant emissions create health hazards.
>
> "It is past time that we cleaned up the Four Corners Power Plant, one of the largest sources of air pollution in the country, so that we can reduce ozone, people can breathe easier, and we can improve our western vistas towards what they used to be and should be," Colorado Gov. Bill Ritter said in a March 16 press release, as he and the state attorney general joined the controversy.
>
> The Four Corners Power Plant emits more than 40,000 tons of ozone-causing pollution annually . . . .[9]

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[5] http://www.pnm.com/systems/4c.htm
[6] *Id.*
[7] *Id.*
[8] http://yosemite.epa.gov/opa/admpress.nsf/d0cf6618525a9efb85257359003fb69d/9263df2fe9e7215085257618005b8137!OpenDocument
[9] By Carol Berry, *Indian Country Today* (April 22, 2009)

The plant's excessive emissions not only impact scenic vistas, but also pose a serious threat to human health. As described in the following news article, local community groups are raising environmental justice concerns and are analogizing their plight to those who live in "Cancer Alley" in Louisiana.

> Navajos at the environmental group Diné CARE (Citizens Against Ruining our Environment) compare the region to "Cancer Alley" in southern Louisiana, where petroleum companies were built in a poverty-stricken region and high cancer rates followed.
>
> Sarah Jane White of Sanostee, N.M., member of the "Dooda [No] Desert Rock" Navajo group, pointed out that little is being done to counter the pollution and treat the respiratory diseases and cancers resulting from local power plants.[10]

II. VIOLATIONS

A. PSD MAJOR MODIFICATIONS

The Clean Air Act's New Source Review Prevention of Significant Deterioration ("PSD") program requires that anyone constructing or modifying a major source of air pollution obtain a PSD permit and install and operate Best Achievable Control Technology ("BACT"), among other requirements.

At various times since January 1, 1985, Southern California Edison, Arizona Public Service Company, El Paso Electric Company, PNM Resources, Inc, Salt River Project Agricultural Improvement and Power District, Tucson Electric Power Company and/or their predecessors or subsidiaries have modified and/or operated Four Corners without obtaining PSD permits, without installing BACT and without complying with BACT emission limits, in violation of the Clean Air Act's PSD provisions. These modifications were physical changes and changes in the method of operation of the plant, each of which has resulted in a significant net emissions increase in particulate matter ("PM") and PM10, sulfur dioxide ("SO2"), carbon monoxide ("CO"), sulfuric acid mist, fluorides, lead, mercury and nitrogen oxides ("NOx"). Failure to install BACT and meet BACT emission limits has resulted in excess emissions of sulfuric acid mist, fluorides, lead, mercury, CO, SO2, NOx and/or PM and PM10 which will continue unless these violations are corrected. These modifications, as that term is defined in 40 CFR § 52.21(a) & (b), are described in more detail below.

1. First Set of Modifications – Replacement of 18 Pulverizers

During the years 1985 and 1986, the owners and operator of Four Corners replaced at least 18 pulverizers at Units 4 and 5. The owners and operator of Four Corners replaced the existing pulverizers with new Babcock & Wilcox pulverizers ("B&W- 89" or "B&W model

[10] http://www.msnbc.msn.com/id/8161048, accessed on Monday, October 26, 2009.

MPS89"). Those replacements are further described in a Babcock and Wilcox document, attached hereto as "Exhibit A."

2. Second Set of Modifications – Units 4 and 5

Starting in or around 2007, the owners and operator of Four Corners commenced a massive modification project involving Units 4 and 5 of the power plant. The effect of the modification was to extend the life and/or increase the capacity of both of those units by upgrading and/or replacing key components of the boilers, turbines and generators. The following list of modifications comes from documents that APS filed with the California Public Utilities Commission. The relevant portions of those documents are attached hereto as "Exhibit B."

a. Unit 5 Boiler

- Replacement of the lower part of the furnace section of the Unit 5 boiler. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2005 and was completed in or around 2008.

- Replacement of the pendant reheater section of the Unit 5 boiler, along with the outlet header for that section. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2005 and completed in or around 2008.

- Replacement of the horizontal reheater section of the Unit 5 boiler.

- Replacement of the first stage pendant superheater section of the Unit 5 boiler.

- Replacement of the second stage pendant superheater section of the Unit 5 boiler. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2005 and completed in or around 2008.

- Replacement of the nose portion of the furnace section of the Unit 5 boiler.

- Replacement of the baskets in the hot and cold ends of the air heaters associated with the Unit 5 boiler. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2006 and completed in or around 2008.

- Replacement and upgrade of pulverizers associated with the Unit 5 boiler by replacing and/or upgrading the classifiers.

b. Unit 5 Turbine/Generator

- Replacement of the high pressure section of the main turbine, along with some or all of the turbine controls, in Unit 5. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2005 and completed in or around 2008.

- Replacement of the fourth-stage rows of blades in the low-pressure sections of the main turbine in Unit 5. The Noticing Parties are informed and believe, and thereupon allege, that the work was approved in or around 2007 and completed in or around 2008.

- Replacement of one or more rows of blades in one of the low-pressure sections (section A) of the main turbine in Unit 5. The Noticing Parties are informed and believe, and thereupon allege that the work was approved in or around 2007 and completed in or around 2008.

- Replacement of one or more rows of blades of the intermediate-pressure section of the main turbine in Unit 5. The work was approved in or around 2007 and completed in or around 2008.

- The rotor (field) in the generator that is associated with the low-pressure turbine in Unit 5 was rewound. The work was approved in or around 2006 and completed in or around 2008.

c. Unit 4 Boiler

- Replacement of the pendant reheater section of the Unit 4 boiler, along with replacement of the outlet header for that section. The Noticing Parties are informed and believe, and thereupon allege that this work was approved in or around 2006 and was scheduled to be completed in or around 2010.

- Replacement of the second stage pendant superheater section of the Unit 4 boiler. The Noticing Parties are informed and believe, and thereupon allege, that the work was approved in or around 2006 and was scheduled to be completed in or around 2010.

- Replacement of the nose portion of the furnace section of the Unit 4 boiler.

- Replacement of the baskets in the hot and cold ends of the air heaters associated with the Unit 4 boiler. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2008 and completed in or around 2010.

- Upgrade of the capacities of the pulverizers associated with the Unit 4 boiler .

- Upgrade of the pulverizers associated with the Unit 4 boiler by replacing and/or upgrading the classifiers.

d. Unit 4 Turbine/Generator

- Replacement of the high pressure section of the main turbine, along with turbine controls, in Unit 4. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2006 and scheduled to be completed in or around 2010.

- Replacement of the fourth-stage rows of blades in the low-pressure sections of the main turbine in Unit 4. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2007 and completed in or around 2008.

- Replacement of the second stage rows of blades in one of the low-pressure sections (section B) of the main turbine in Unit 4. The Noticing Parties are informed and believe, and thereupon allege that this work was approved in or around 2008 and was scheduled to be completed in or around 2010.

- Replacement of one or more rows of blades in the intermediate-pressure section of the main turbine in Unit 4. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in 2008 and was scheduled to be completed in 2010.

- The rotor (field) in the generator associated with the high-pressure turbine in Unit 4 was rewound. The Noticing Parties are informed and believe, and thereupon allege, that this work was approved in or around 2008 and was scheduled to be completed in or around 2010.

- The stator in the generator associated with the low-pressure turbine in Unit 4 was re-wedged. The Noticing Parties are informed and believe, and thereupon allege that this work was approved in or around 2008 and was scheduled to be completed in or around 2010.

- Replacement of one or more of the high-pressure feedwater heaters in Unit 4.

The Noticing Parties hereby allege that these modifications resulted in a "significant" "net emission increase" in sulfuric acid mist, fluorides, lead, mercury, CO, PM, PM10, SO2 and/or Nitrogen Oxides emissions, as defined in the version of 40 CFR § 52.21(b)(3) and (23) that was in effect at the relevant time(s). The modifications at Four Corners did not constitute

"routine maintenance, repair or replacement" or qualify for any of the other exemptions under 40 CFR 52.21(b) and therefore were not exempt from PSD requirements pursuant to the version of 40 CFR § 52.21(b) that was in effect at the relevant time. Each of the modifications described above involved a component with a long useful life. Each modification was performed to increase capacity, regain lost capacity and/or extend the useful life of Four Corners. None of the modifications at Four Corners qualify for the demand growth exclusion because the emissions increases which occurred after each modification resulted from the modification. No one voluntarily provided US EPA or the State of New Mexico with any information regarding actual emissions after the modifications in any effort to claim that there was no significant net increase in emissions, or with information required to claim that the physical change should qualify as a "pollution control project." In fact, in an effort to separately investigate the emissions consequences related to the second set of modifications, the US EPA has sent a request for information under section 114 of the Clean Air Act. Southern California Edison, Arizona Public Service Co., El Paso Electric, PNM, Salt River Project, Tucson Electric Power and/or their predecessors or subsidiaries violated and continue to violate 40 CFR § 52.21 by constructing and operating major modifications at Four Corners without first obtaining a PSD permit. Each of these violations has been ongoing from the start of the construction of the modification and will continue to be ongoing until Arizona Public Service Co. obtains the appropriate PSD permits and comes into compliance with its BACT emission limits.

B. ARIZONA PUBLIC SERVICE CO. IS OPERATING UNITS 4 AND 5 IN VIOLATION OF THE EMISSION LIMITS FOR SO2 AND PM IN NSPS SUBPART Da

In addition to being in violation of the PSD program of the Clean Air Act, Southern California Edison, Arizona Public Service Co., El Paso Electric, PNM, Salt River Project, Tucson Electric Power and/or their predecessors or subsidiaries are in violation of the emission limits under the New Source Performance Standards ("NSPS") for power plants. More specifically, the modifications described herein are subject to NSPS Subpart Da, which is applicable to affected facilities for which construction is commenced or a modification occurs after September 18, 1978.

Units 4 and 5 of Four Corners were modified as that term is defined under the NSPS after September 18, 1978. The modifications are described above. These modifications resulted in an increase in the emission rates of PM, PM10, SO2, NOx and mercury. Therefore, the above-mentioned entities have owned and operated Units 4 and 5 in violation of the SO2 emission limit of a 90% reduction required by 40 CFR 60.43Da for every day that those Units have operated, excluding periods of startup, shutdown or malfunction, during the five year period previous to the date of this letter and will continue to operate in violation of this standard unless enjoined. Each day is a new violation because each day has a new 30 day rolling average. In addition, the above-mentioned entities have owned and operated Units 4 and 5 in violation of the mercury limit of 20 x 10<-> <6> pound per megawatt hour ("lb/MWh") or 0.020 lb/gigawatt-hour ("GWh"), on an output basis, over a 12 month rolling average period, as

described in 40 CFR 60.45Da. Furthermore, the above-mentioned entities have owned and operated Units 4 and 5 in violation of the 0.5 lb/MMbtu NOx limit, based on a 30-day rolling average basis, as expressed in 40 CFR 60.44Da.

Finally, the above-mentioned entities have owned and operated and continue to own and operate Units 4 and 5 in violation of the 99% particulate matter reduction imposed by 40 CFR 60.42Da during the five year period previous to the date of this letter and will continue to operate in violation of the particulate matter limit unless enjoined.

III. CONCLUSION

The parties to this matter and their counsel have a policy of trying to resolve these matters without the need for litigation. Therefore, we look forward to you contacting us to resolve this matter. If you believe the allegations in this notice letter to be incorrect, we ask you to provide us with any data showing that the above-mentioned replacements did not result in a modification that triggered the Clean Air Act's PSD requirements. We would be willing to discuss a confidentiality agreement with respect to the relevant information, to the extent such data exists. We would like to meet with you as soon as possible to discuss these issues in person. If you wish to discuss this matter, please contact the undersigned counsel at (510) 550-6725.

However, if we do not hear from you in 60 days, we will be forced to assume that you are not interested in resolving this matter and will file a complaint. We will seek injunctive and declaratory relief as well as civil penalties, a supplemental environmental project, costs of litigation and other appropriate relief.

Sincerely,

Original Signed By:
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