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PINNACLE WEST
CAPITAL CORPORATION

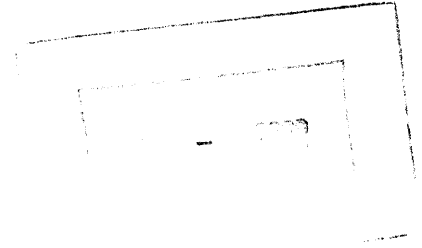
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Scott Davis
Manager
Environmental, Health & Safety Department

July 3, 2002

Via FedEx

Air and Radiation Docket and Information Center (6102)
Attention: Docket No. A-2000-5 1
U.S. EPA
1200 Pennsylvania Avenue, NW
Washington, DC 20460



Re: Comments of Pinnacle West Capital Corporation on Proposed Revisions to Regional Haze Rule to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes within that Geographical Area; Proposed Rule - 67 Fed. Reg. 30418 (May 6, 2002)

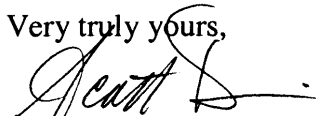
Dear Sir/Madam:

Enclosed with this letter please find an original and one copy of the comments of Pinnacle West Capital Corporation, for itself and its subsidiaries (collectively "**PWCC**"), on the Proposed Revisions to Regional Haze Rule to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program for Nine Western States and Eligible Indian Tribes within that Geographical Area; Proposed Rule - 67 Fed. Reg. 30418 (May 6, 2002), DOCKET NO. A-2000-5 1.

PWCC strongly supports adoption of the annex submitted by the Western Regional Air Partnership ("**WRAP**") on September 29, 2000 (the "**WRAP Annex**") into the regional haze rule, with consideration to the attached comments.

If you have any questions about these comments, please call me at (602) 250-3225.

Very truly yours,


Scott Davis

APS • APS Energy Services • Pinnacle West Energy • SunCor • El Dorado

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APS Energy Services and APS are subsidiaries of Pinnacle West Capital Corporation; however, APS Energy Services is not the same company as APS. You do not have to be an APS Energy Services customer to receive quality regulated services from APS.

Comments of Pinnacle West Capital Corporation

On:

**Proposed Revisions to Regional Haze Rule to Incorporate Sulfur Dioxide Milestones
and Backstop Emissions Trading Program for Nine Western States and Eligible
Indian Tribes Within That Geographical Area
67 Fed. Reg. 30418 (May 6, 2002)**

submitted to
**The United States
Environmental Protection Agency
Docket No. A-2000-51**

July 5, 2002

The Environmental Protection Agency (“EPA” or “Agency”) has requested comment on its Proposed Revisions to Incorporate Sulfur Dioxide Milestones and Backstop Emissions Trading Program from Nine Western States and Eligible Indian Tribes Within That Geographical Area. 67 Fed. Reg. 30418 (May 6, 2002) (hereinafter the “Proposed Revisions”). EPA’s adoption of the Proposed Revisions is essential if Western States and tribes are to implement regional visibility requirements in state implementation plans (“SIPs”) and Tribal Implementation Plans (“TIPs”) under 40 C.F.R. § 51.309 (“§ 309”). Pinnacle West Capital Corporation (“PWCC”) submits these comments on its own behalf, and on behalf of its subsidiaries.

PWCC is the parent company of Arizona Public Service Company (“APS”) and Pinnacle West Energy Corporation (“PWEC”) (collectively referred to hereinafter as “the Company”). APS is an electric utility company that operates both nuclear and fossil generation power plants, along with transmission and delivery services. APS currently has two coal-fired plants; one at Joseph’s City, Arizona and the other on the Navajo Reservation in New Mexico. PWEC will soon acquire the generating assets of APS, including both coal-fired plants. PWCC engages in market trading activities. The proposed revisions to the Regional Haze Rule will have a direct impact on the Company if finalized. The Company strongly supports the adoption of the annex submitted by the Western Regional Air Partnership (“WRAP”) on September 29, 2000 (the “WRAP Annex”) into the regional haze rule. The Company encourages EPA to consider its comments below in adopting the WRAP Annex as part of the Proposed Revisions.

I. Background

EPA’s Proposed Revisions would essentially adopt the WRAP Annex dated September 29, 2000. The “Annex contains recommendations for implementing the regional haze rule in the West, including a set of recommended regional emissions milestones for 2003-2018 sulfur dioxide (SO₂). . .” 67 Fed. Reg. at 30418. “EPA proposes to approve the

provisions of the Annex submitted by the WRAP as meeting the requirements of the regional haze rule and applicable requirements of the Clean Air Act (“CAA”).”

The Company has been a participant in the WRAP since its inception, and participated directly in the development of the WRAP Annex. As indicated by EPA in the federal register regarding the Proposed Revisions:

“ . . . EPA believes that it is also important to recognize that the WRAP program has resulted from a consensus effort, which included broad-based participation of many Western stakeholders.”

See 67 Fed. Reg. at 30426. The Company would like to emphasize the importance of this statement in its support of the WRAP Annex and the Proposed Revisions. The Company encourages EPA to consider difficult issues or concerns associated with the approval of the Proposed Revisions in light of the fact that the WRAP Annex is the result of a consensus effort of Western stakeholders with varying interests.

II. *American Corn Growers Association v. EPA*

Recently, the U.S. Court of Appeals for the D.C. Circuit issued a ruling in the *American Corn Growers Association v. Environmental Protection Agency*, 2002 WL 1040579 (D.C. Cir. 2002). As expressed by EPA in Ms. Lydia Wegman’s June 7, 2002 letter to WRAP representatives Rick Sprott and Julie Simpson regarding the *American Corn Growers* decision, we too agree that the WRAP Annex is fully consistent with the Court’s ruling, and that it poses no impediments to states choosing to submit State Implementation Plans (SIPs) under Section 309 of the rule.

In a 2-to-1 ruling, the Court held only two aspects of the haze rule to be impermissible, both pertaining to the implementation of best available retrofit technology (BART) on existing sources of air pollution. In its decision, it is clear that the Court did not object to the method of implementation *per se*, but to EPA’s *requirement* that states implement BART in its prescribed fashion. In short, the Court saw some of the rule’s BART provisions as “an infringement on states’ authority.” The WRAP Annex, however, was designed as an *alternative* to BART and developed *voluntarily* through *consensus* by Western states, tribes, and stakeholders, not according to an EPA prescription that “constrains state authority.” We therefore agree with EPA that the WRAP Annex is unaffected by the Court decision and that Section 309 remains a viable option under which states can submit regional haze plans.

III. *Specific Comments to the Proposed Revisions*

The Company urges EPA to adopt the Proposed Revisions, taking into account the Company’s comments below.

A. Headroom and Uncertainty

EPA specifically requested comments regarding the 35,000 tons/year the WRAP Annex included for “headroom/uncertainty” when calculating the emission reduction milestones. See 67 Fed. Reg. at 30424. It is important to note that a number of variables contribute to this uncertainty, including scarcity of fuels, hydro-power availability due to weather conditions, and the threat of natural disasters. The uncertainty is compounded by the fact that the WRAP attempts to calculate emissions, taking into account the types of uncertainty for all the sources that are spread across the Western U.S.

The 35,000 tons/year of “headroom” is a good faith attempt by the WRAP to quantify the uncertainty for the entire Western region. The 35,000 tons/year figure was a critical assumption used by the WRAP in reaching a consensus regarding the emissions milestones. If EPA adjusts this figure, it threatens to undermine the basis for the WRAP consensus set forth in the WRAP Annex. Because the WRAP Annex involved the differing views of so many stakeholders, EPA should not attempt to modify the 35,000 tons/year of headroom set aside for uncertainty.

B. “Steady and Continuing” Emission Reductions

Section 309 of the regional haze rule requires that the emissions milestones must provide for “steady and continuing” progress. “The EPA believes that these milestones provide for “steady and continuing” emissions reductions and satisfy the requirements of 40 C.F.R. 5 1.309(f)(1)(i).” See 67 Fed. Reg. at 30425. The Company agrees with EPA’s conclusion. In support of this conclusion, the Company emphasizes the following points.

When evaluating the “steady and continuing” progress requirement, the relevant time period is from 1990 to 2018. It is essential that early emission reductions be considered together with later emissions reductions when assessing whether the total reductions over time meet the “steady and continuing” progress requirement. There will be approximately 50%-70% of emission reductions by 2040. This, taken together with the fact that all the requirements of the CAA are met, support the conclusion that the total reductions meet the “steady and continuing” progress requirement.

C. Adjustments to Milestones

The Proposed Revisions address adjustments to the milestones. The Company would like to comment specifically regarding adjustments to the milestones for illegal emissions and when States and/or Tribes choose to opt out of the program.

1. Illegal Emissions

In the Proposed Revisions, EPA specifically requested comments on whether the term “illegal emissions” should be further clarified in the final rule, and on how settlements should affect the milestones. *Id.* at 30430. The Company does not think it is necessary to specifically define “illegal emissions” in the final rule. In any case, the adjustments to the

milestones should only be made for emission reductions arising out of consent decrees or administrative orders where the EPA or authorized State has commenced an enforcement action. Adjustments should not be made to the milestones, where the emission reductions arise out of voluntary settlements initiated by a facility or company. EPA should adopt this distinction so as to encourage sources to voluntarily approach EPA or authorized States regarding reductions in emissions. To further clarify the point, EPA should change the phrase “adjustments for illegal emissions” to “adjustments due to enforcement actions.”

2. Adjustments For States and Tribes That Opt Out of Program

The Company would like to emphasize that EPA must protect the interests of sources on tribal lands. Section 309 of the regional haze rule requires that States and tribes specifically adopt SIPs or TIPs in order to participate in the regional haze program in lieu of § 308. Unless a tribe has a formal program, it cannot submit a TIP or opt into the § 309 program. Many tribes will be unable to participate in § 309 because they do not have, and in some cases, do not desire, Clean Air Act authorization to administer an air program. In some cases, tribes are currently seeking to establish only Title V authority, and do not desire to develop a TIP. Sources on tribal lands will be unduly prejudiced if they are denied the opportunity to participate in § 309 simply because there is no formal air program on the reservations, or where sources are currently subject only to EPA jurisdiction. EPA should modify the rule to ensure that the interests of sources on tribal lands are protected, and so that such sources are not precluded from reaping the benefits of § 309.

The Company believes that the participation of tribes with large stationary sources is essential to the success of the WRAP Annex and to having a “critical mass” of participants in the program. The Company expects that EPA will fulfill its commitment to consult with tribes to assist them in developing programs that allow them to participate in § 309, and thus protect the interests of tribal sources. As part of this process, it is important to recognize that the WRAP Annex and Proposed Revisions specify the allocations for existing tribal sources. See 67 Fed. Reg. at 30438. The calculation of these allocations was the result of the consensus effort utilized in developing the WRAP Annex. In establishing a program under § 309, It is imperative that EPA and the tribes recognize and preserve the allocations for existing tribal sources listed in the Proposed Revisions.

D. Milestones in WRAP Annex Should Be Treated As Allocations

The EPA suggests that the amounts listed in Table 2 of the Proposed Revisions are for purposes of adjusting the milestones only, and that they do not represent amounts that must be allocated under any future trading program. *See id.* at 30445. The Company strongly advocates that these amounts should be treated as allocations for several reasons.

First, the amounts listed in Table 2 represent the best estimate of emissions reductions for the BART eligible sources in each State or reservation in the Western region. These

figures are the most logical allocation figures in a trading program. Second, if EPA does not construe these amounts as allocation figures, the trading program proposed in the WRAP Annex would likely fail. For example, if each State and Tribe incorporated an emissions figure in its SIP or TIP that was greater than that listed in Table 2, the emissions reductions milestones would be knocked out of balance. Additionally, it would make no sense for a State or Tribe to put an emissions figure lower than that listed in Table 2 into its SIP or TIP because it would be selling all of its sources short and putting them at a disadvantage as to sources in other States or reservations.

In short, the only allocation figures that make sense for the States and Tribes are those listed in Table 2. Importantly, designating Table 2 as the allocation figures in a trading program would not preclude States or Tribes from sub-allocating these amounts to the sources within the States' or Tribes' boundaries.

IV. Conclusion

The Company urges EPA to adopt the Proposed Revisions to the regional haze rule. The *American Corn Growers* case does not preclude EPA from adopting the provisions of the WRAP Annex. The provisions of the WRAP Annex meet all the requirements of the regional haze rule and the CAA. In adopting the Proposed Revisions, EPA should take into account the Company's comments regarding the validity of the 35,000 tons for uncertainty, adjustments for illegal emissions and when States or Tribes opt out of the program, and treatment of the