

ARKANSAS
DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

LIS No. 18-071

Arkansas Electric Cooperative Corporation

Carl E. Bailey Generating Station
Highway 339 South
Augusta, AR 72006
AFIN: 74-00024

John L. McClellan Generating Station
1625 Bradley Ferry Road
Camden, AR 71701
AFIN: 52-00055

ADMINISTRATIVE ORDER

This Administrative Order (AO) is issued pursuant to the authority delegated under the federal Clean Air Act, 42 U.S.C. § 7401 *et seq.*, and the federal regulations issued thereunder. In addition, this AO is issued pursuant to the authority of the Arkansas Water and Air Pollution Control Act, Act 472 of 1949, as amended, codified at Ark Code Ann. § 8-4-101 *et seq.*, including Ark. Code Ann. § 8-4-311.

The issues herein having been settled by agreement between Arkansas Electric Cooperative Corporation (AECC) and the Director of the Arkansas Department of Environmental Quality (ADEQ), it is hereby stipulated that the following STATEMENT OF BASIS and ORDER AND AGREEMENT be entered. ADEQ and AECC hereby agree to the entry of this AO in order to satisfy first planning period requirements associated with the Regional Haze Rule, 40 C.F.R. Part 51 Subpart P, and 40 C.F.R. Part 51, Appendix Y.

STATEMENT OF BASIS

1. AECC is an Arkansas Corporation with its principal headquarters in Little Rock, Arkansas.
2. On July 1, 1999, the United States Environmental Protection Agency (U.S. EPA) published regulations to address visibility impairment in the nation's Class I areas. 64 Fed. Reg. 35714. On July 6, 2005, the U.S. EPA published an amendment to Best Available Retrofit Technology (BART) requirements included in the 1999 regulations. 70 Fed. Reg. 39103. Collectively, these regulations are commonly known as the "Regional Haze Rule," codified at 40 C.F.R. §§ 51.300–51.309.
3. Two Class I areas in Arkansas are covered by the Regional Haze Rule: Caney Creek Wilderness Area (Caney Creek) and the Upper Buffalo Wilderness Area (Upper Buffalo).

4. To meet the requirements of the Regional Haze Rule, states must submit state implementation plans (SIPs) implementing the requirements of the Regional Haze Rule to the U.S. EPA for approval. *Id.* Each Regional Haze SIP for the first planning period must contain “emission limitations” representing BART and schedules for compliance with BART for each BART-eligible source that may reasonably be anticipated to cause or contribute to any impairment of visibility in any mandatory Class I Federal area....” 40 C.F.R. § 51.308(e).
5. BART-eligible sources include those sources that: (1) have the potential to emit 250 tons or more of a visibility-impairing air pollutant; (2) were in existence on August 7, 1977, but not in operation prior to August 7, 1962; and (3) whose operations fall within one or more of the specifically listed source categories in 40 C.F.R. § 51.301 (including fossil fuel-fired boilers of more than 250 million British thermal units per hour [MMBtu/hr] heat input). 40 C.F.R. Part 51, Appendix Y(I)(C)(1), and 42 U.S.C. § 7491(b)(2)(A).
6. ADEQ determined that the following two (2) units are BART-eligible sources:
 - a. Carl E. Bailey Generating Station Unit 1 and
 - b. John L. McClellan Generating Station Unit 1.
7. BART or an alternative to BART is required for any BART-eligible source that emits any air pollutant that may reasonably be anticipated to cause or contribute to any impairment of visibility in a Class I Area. 42 U.S.C. § 7491(b)(2)(a); 40 C.F.R. § 51.308(e). Both listed in Paragraph 6 were determined by ADEQ to be subject-to-BART in Arkansas’s 2008 Regional Haze SIP. EPA approved the subject-to-BART determinations for both units in 2012 but disapproved other elements of the SIP. 77 FR 14604 (March 1, 2012).
8. EPA issued a federal implementation plan (FIP) in 2016 to address disapproved portions of the SIP. 81 FR 66332 (September 27, 2016). The FIP imposes BART requirements on the two (2) units identified in Paragraph 6.
9. The Regional Haze Rule requires comprehensive periodic revisions of implementation plans for regional haze at 40 C.F.R. § 51.308(f) in which each state, including Arkansas, must revise and submit its regional haze SIP revision to EPA in 2021, 2028, “and every ten years thereafter.”
10. ADEQ considers the requirements set forth in the ORDER AND AGREEMENT to be “applicable requirements” within the meaning of Title V of the Clean Air Act. The addition of these applicable requirements necessitates the reopening of the respective permits for the Carl E. Bailey and John L. McClellan facilities in order to incorporate the applicable requirements. 40 C.F.R. § 70.7(f)(1)(i).


ORDER AND AGREEMENT

WHEREFORE, without any admission by AECC of the factual and legal allegations contained herein, ADEQ and AECC do hereby stipulate and agree as follows:

1. AECC shall comply with all requirements set forth in this Order and Agreement.
2. No later than October 27, 2021, Carl E. Bailey Generating Station Unit 1 and John L. McClellan Generating Station Unit 1 shall comply with BART for sulfur dioxide and particulate matter by burning only fuel that has 0.5% or less sulfur content by weight.
3. As of the effective date of this AO, AECC shall not purchase fuel for combustion at either Carl E. Bailey Generating Station Unit 1 or John L. McClellan Generating Station Unit 1 that does not meet the sulfur content limit in Paragraph 2.
4. To determine compliance with the sulfur dioxide and particulate matter requirements in paragraph two of the Order, AECC shall sample and analyze each shipment of fuel to determine the sulfur content by weight. All records pertaining to the sampling of each shipment of fuel must be maintained by AECC and made available upon request to ADEQ representatives.
5. A violation of this AO shall be considered unlawful under Ark. Code Ann § 8-4-217 and subject to the penalties set forth in Ark. Code Ann § 8-4-103 in the same manner as a violation of a permit issued by ADEQ.
6. AECC shall submit permit modification applications to ADEQ for the Carl E. Bailey Generating Station and John L. McClellan Generating Station facilities in order to incorporate the applicable requirements of this AO no later than eighteen (18) months after the effective date of this AO.
7. Prior to the execution of any agreement for the transfer of ownership or operation of the Carl E. Bailey Generating Station Unit 1 or John L. McClellan Generating Station Unit 1, AECC shall provide notice of and a copy of this AO to the proposed transferee. No transfer of ownership or operation of any portion of the Carl E. Bailey Generating Station Unit 1 or John L. McClellan Generating Station Unit 1 shall relieve AECC of its obligation to ensure that the terms of the AO are implemented unless, at least 30 days prior to such transfer, AECC provides written notice of the prospective transfer to EPA Region 6 and ADEQ, and the prospective transferee executes an AO with ADEQ prior to the effective date of the transfer providing for continued compliance with the terms set forth in the AO. The Notice of Transfer shall clearly identify the parties responsible for any existing violations of this AO. Any attempt to transfer ownership or operation of the Carl E. Bailey Generating Station Unit 1 or John L. McClellan Generating Station Unit 1 without complying with this Paragraph constitutes a violation of this AO.
8. Nothing contained in this AO shall relieve AECC of any obligations imposed by any other applicable local, state, or federal laws, nor, except as specifically provided herein, shall this AO be deemed in any way to relieve AECC of responsibilities contained in the permit.
9. If the U.S. Congress or a federal court takes action on the Arkansas Regional Haze SIP revision or Regional Haze Rule resulting in the alteration of compliance requirements of the AO including deadlines or other requirements, in whole or in part, then the AO shall be enforceable only to the extent it is federally enforceable.


10. If any provision or requirement of this AO pertaining to the Carl E. Bailey Generating Station or John L. McClellan Generating Station facilities is disapproved by EPA, all provisions or requirements specifically pertaining to that facility shall be severed and rendered inoperative, and the remaining provisions of this AO shall continue to be binding on the parties.
11. This AO is effective upon execution by the Director of ADEQ.
12. By virtue of the signature appearing below, the individual represents that he or she is either an Officer or authorized representative of AECC.

SO ORDERED THIS 7th DAY OF August, 2018.


Becky W. Keogh, Director
Arkansas Department of Environmental Quality

APPROVED AS TO FORM AND CONTENT:

Arkansas Electric Cooperative Corporation

By Steve Metcalf 
Its Vice President PP&D
Date 7/20/18