

ARKANSAS
DEPARTMENT OF ENVIRONMENTAL QUALITY

In the Matter of:

LIS No. 18-072

Southwestern Electric Power Company

Flint Creek Power Plant
2197 SWEPCO Plant Road
Gentry, AR 72734
AFIN: 04-00107

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 Southwestern Electric Power Company (AEP/SWEPCO) 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 AEP/SWEPCO 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. AEP/SWEPCO owns and operates electric generating units in the state of Arkansas including Flint Creek Unit 1 (SN-01). AEP/SWEPCO is a corporation registered to do business in the state of Arkansas with its principal place of business in Columbus, Ohio.
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 Flint Creek Unit 1 (SN-01) is a BART-eligible source.
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). Flint Creek Unit 1 (SN-01) was determined by ADEQ to be subject-to-BART in Arkansas’s 2008 Regional Haze SIP. U.S. EPA approved the subject-to-BART determination for this unit in 2012 but disapproved other elements of the SIP. 77 FR 14604 (March 1, 2012).
8. Current Arkansas Regional Haze regulations are located in APC&EC Regulation 19, Chapter 15. In APC&EC Regulation 19, Chapter 15, ADEQ identified Flint Creek Unit 1 (SN-01) as a BART-eligible and subject-to-BART source, and includes the following BART requirements for Flint Creek:
 - a. An emission rate for sulfur dioxide (SO₂) of 0.15 pounds per million British thermal unit (lb/mmBtu) on a 30-day rolling average;
 - b. An emission rate for nitrogen oxides (NO_x) of 0.23 lb/mmBtu on a 30-day rolling average; and
 - c. The existing particulate matter (PM) emission rate of 0.1 lb/mmBtu based on emission testing conducted in accordance with U.S. EPA Methods 5 and 202.
9. On March 26, 2010, the Arkansas Pollution Control & Ecology Commission enacted a variance under Ark. Code Ann. § 8-4-313, Minute Order No. 10-08, which altered the compliance deadlines specified in APC&EC Reg. 19.1504(B). Minute Order No. 10-08, Docket No. 10-002-MISC. The variance states that the sources subject to BART listed in Regulation 19.1504(A) [are] granted a variance from the October 15, 2013 deadline, imposed by Regulation 19.1504(B), and, instead, the sources subject to BART are required to comply with BART as expeditiously as practicable but in no event later than five (5) years after U.S. EPA approval of the Arkansas Regional Haze SIP.

10. On March 12, 2012, U.S. EPA finalized a rule partially approving and partially disapproving the Arkansas Regional Haze SIP. *Approval and Promulgation of Implementation Plans; Arkansas; Regional Haze Implementation Plan; Interstate Transport Implementation Plan to Address Pollution Affecting Visibility and Regional Haze; Final Rule*, 77 Fed. Reg. 14,603 (March 12, 2012). With respect to Flint Creek Unit 1, U.S. EPA approved the BART determination for PM, but disapproved the BART determinations for SO₂ and NO_x.
11. To facilitate preparation of a revised state implementation plan, AEP/SWEPCO prepared and submitted a report to ADEQ and U.S. EPA in December of 2012 entitled *Five Factor Analysis - Flint Creek Power Plant*, a copy of which is attached as Exhibit A. The report identifies available technologies for reducing emissions of SO₂ and NO_x at Flint Creek Unit 1, examines the feasibility and cost-effectiveness of the available technologies considering the remaining useful life of the unit, evaluates their energy and non-air quality environmental impacts, and models the impacts on visibility at four nearby Class 1 areas. Based on consideration of all of these factors, the report recommends installation of a Novel Integrated Deacidification System (NIDS) to reduce emissions of SO₂ to 0.06 lb/mmBtu on a 30-day average basis, and participation in the ozone season CSAPR NO_x budget program as BART for NO_x, as provided in EPA's final rule *Regional Haze: Revisions to Provisions Governing Alternatives to Source-Specific BART Determinations, Limited SIP Disapprovals and Federal Implementation Plans*, 77 Fed. Reg. 33,651 (June 7, 2012).
12. On July 10, 2013, the Arkansas Public Service Commission determined in Docket No. 12-008-U that the installation of Dry Flue Gas Desulfurization with pulse jet fabric filter, a "dry scrubber", low NO_x burners with overfire air, and activated charcoal injection to reduce emissions of sulfur dioxide and particulate matter was in the public interest. Installation of the dry scrubber and activated carbon injection system was completed in May of 2016.
13. On September 27, 2016, U.S. EPA finalized a federal implementation plan (FIP) containing BART requirements for Flint Creek Unit 1 and other subject-to-BART units in Arkansas. EPA's final action was the subject of petitions reconsideration and petitions for judicial review filed by ADEQ and the Environmental and Energy Alliance of Arkansas, of which AEP/SWEPCO is a member. Among other matters, the petitions challenged the compliance deadline established in the FIP.
14. On April 25, 2017, U.S. EPA issued notice of its intent to convene a proceeding to reconsider the Arkansas FIP.
15. AEP/SWEPCO and ADEQ agree that the deadlines set forth in this AO constitute compliance that is as expeditious as practicable within the meaning of Minute Order No. 10-08. Docket No. 10-002-MISC.
16. The Regional Haze Rule provides [r]equirements for 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 U.S. EPA in 2021, 2028, “and every ten years thereafter.”

17. ADEQ considers the requirements set forth in paragraphs 2 and 3 of 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 Flint Creek in order to incorporate the applicable requirements. 40 C.F.R. § 70.7(f)(1)(i).

ORDER AND AGREEMENT

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

1. AEP/SWEPCO shall comply with all requirements set forth in this Order and Agreement.
2. Flint Creek Unit 1 (SN-01) shall comply with BART for sulfur dioxide by meeting an emission limit of 0.06 pounds of sulfur dioxide per million British thermal units (0.06 lb/MMBtu) on a rolling 30-boiler-operating-day averaging period as of the effective date of this AO.
3. Compliance with Paragraph 2 in this Order and Agreement shall be determined by using data from a continuous emission monitoring system.
4. 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.
5. AEP/SWEPCO shall submit permit modification applications to ADEQ for the Flint Creek facility in order to incorporate the applicable requirements of this AO no later than eighteen (18) months after the effective date of this AO.
6. Prior to the execution of any agreement for the transfer of ownership or operation of Flint Creek, AEP/SWEPCO shall provide notice of and a copy of this AO to the proposed transferee. No transfer of ownership or operation of any portion of Flint Creek shall relieve AEP/SWEPCO of its obligation to ensure that the terms of the AO are implemented unless, at least 30 days prior to such transfer, AEP/SWEPCO provides written notice of the prospective transfer to U.S. 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 Flint Creek without complying with this Paragraph constitutes a violation of this AO.
7. Nothing contained in this AO shall relieve AEP/SWEPCO 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 AEP/SWEPCO of responsibilities contained in the permit.

8. 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.
9. If any provision or requirement of this AO is disapproved by EPA, the provision shall be severed and rendered inoperative, and the remaining provisions of this AO shall continue to be binding on the parties.
10. This AO is effective upon execution by the Director of ADEQ.
11. By virtue of the signature appearing below, the individual represents that he or she is either an Officer or authorized representative of AEP/SWEPCO.

SO ORDERED THIS 7th DAY OF August, 2018.


Becky W. Keogh, Director
Arkansas Department of Environmental Quality

APPROVED AS TO FORM AND CONTENT:

Southwestern Electric Power Company

By 
Its Vice President External Affairs
Date July 20, 2018