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AIR POLLUTION

Hoping for settlement, EPA seeks delay in Utah haze court case

Sean Reilly, E&E News reporter

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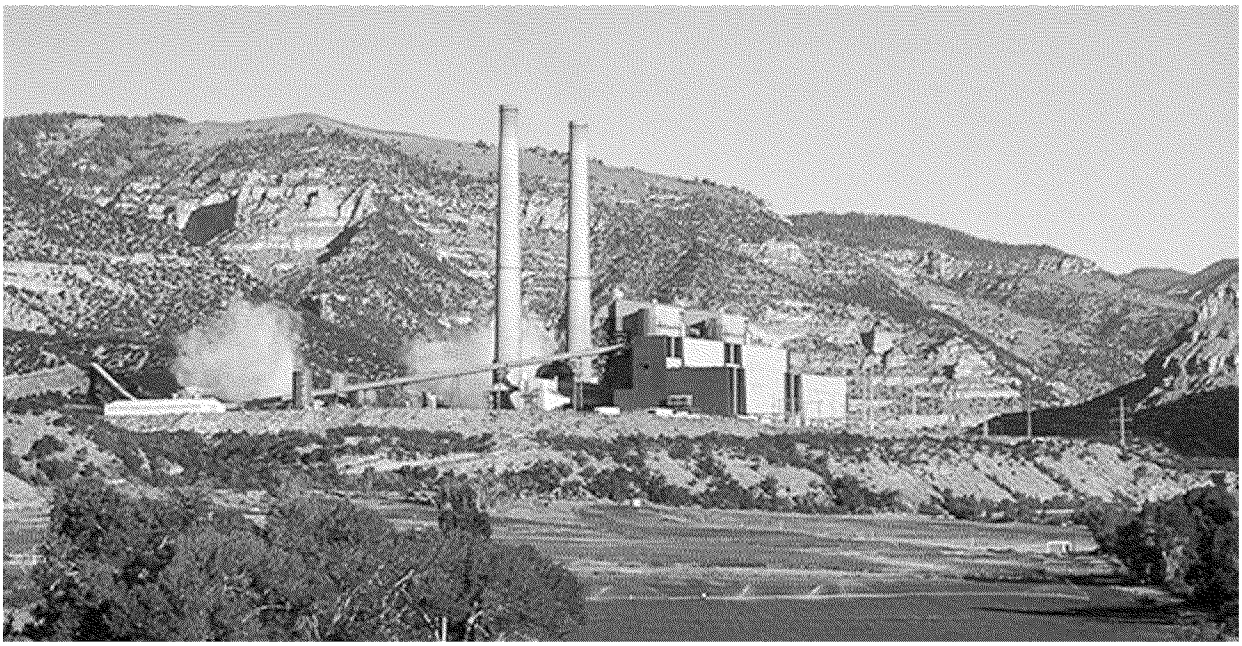

U.S. EPA aims to administratively resolve state and industry legal challenges to its haze reduction plan for Utah, which would require two coal-fired plants, including the Huntington plant, to install stricter controls on emissions of nitrogen oxides. Pacific Power/Flickr

U.S. EPA is hoping to administratively resolve state and industry legal challenges to its haze reduction plan for Utah, agency lawyers said in a court motion yesterday.

The motion, which asks the 10th U.S. Circuit Court of Appeals for a blanket 60-day extension in the briefing schedule, said the two sides "have initiated a productive dialogue that may obviate the need for the court's further involvement and that will benefit from additional time to allow discussions to develop."

The filing also alluded to the numerous holes in the ranks of EPA's political leadership under the Trump administration.

Although Administrator Scott Pruitt took over in late February, "the administration has yet to fill many decision-making roles, including for officials that would have direct responsibility for this case," the motion said.

The 10th Circuit has not yet ruled on the agency's motion. In an order today, the court instructed challengers and intervenors in the litigation to respond by Friday.

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Under the regional haze plan, issued last June, two coal-fired plants in central Utah would have to install stricter controls on emissions of nitrogen oxides (NOx). The state and the plants' owner, Oregon-based PacifiCorp, filed suit in September.

The broader haze program, which dates back to 1999 in its current form, is supposed to restore pristine views to 156 national parks and wilderness areas — the bulk of them in the West — by 2064.

The Obama administration's willingness to override state regulators' cleanup proposals has spawned a string of legal fights. As in Utah, they typically revolve around the stringency of new pollution curbs needed for older coal-fired power plants.

The two PacifiCorp facilities are decades old. Under an EPA forecast last year, the agency's haze plan will eventually cut annual NOx releases by almost 10,000 tons — about a 75 percent drop by one environmental group's calculations — and lead to better views in eight national parks.

Utah's air quality chief has countered that the new regulations will produce little visibility improvement in return for a $700 million price tag.

As Oklahoma attorney general, Pruitt spent three years waging an unsuccessful legal fight against a separate EPA haze reduction plan for his state (*Greenwire*, Feb. 14). The agency's tack in the Utah case is the latest sign that he may be more sympathetic to complaints of federal overreach from state officials and utilities.

Last month, EPA announced it would reconsider key aspects of a haze reduction rule for Arkansas; the agency had previously obtained a 90-day court stay in hopes of reaching at least a partial settlement to lawsuits brought by Arkansas' Attorney General Leslie Rutledge (R) and affected power producers (*E&E News PM*, April 24).

Last week, in a separate legal clash over Wyoming's haze plan, EPA raised no objection to challengers' bid to stay proceedings while a partial settlement takes effect, even as conservation groups objected that the result would be a significant delay in pollution cuts (*Greenwire*, May 18).

In the Utah case, agency attorneys also cited "the number and complexity of issues" raised by PacifiCorp and the state, according to yesterday's motion. Coupled with "the many demands on decision-makers' time during this time of transition," the motion added, "internal deliberations regarding the agency's path forward on this matter have taken longer than EPA anticipated."

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