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BUSINESS COMMITTEE OF THE UTE INDIAN TRIBE
COMMENTS ON THE
DESERT POWER ELECTRIC COOPERATIVE
BONANZA POWER PLANT – NOTICE OF INTENT TO ISSUE CLEAN AIR ACT
TITLE V FEDERAL OPERATING PERMIT

June 3, 2014

The Ute Indian Tribe of the Uintah and Ouray Reservation (the "Tribe") thanks the United States Environmental Protection Agency Region 8 (EPA) for hosing this public hearing on the proposed Bonanza Power Plant ("Bonanza") Title V Federal Operating Permit (the "Permit"). The Tribe also thanks the EPA for the opportunity to comment on the Permit.

The Bonanza Power Plan has been operating without a Title V Federal Operating Permit for over 14 years.

It is imperative that the EPA issue a Title V Federal Operating Permit to Bonanza to ensure that it complies with the Clean Air Act (the "CAA" or "Act") and stays within the federally mandated emissions limits. The Tribe has made known its concerns of over tens of thousands of violations of the CAA by Bonanza at its Bonanza coal-fired power plant near Vernal, Utah. The Tribe is concerned that the power plant poses unacceptable public health impacts due to its air pollution, is disproportionately impacting Tribal members and tribal lands, and is inappropriately contributing to regional air quality problems that have the potential to adversely affect the economy of the Tribe.

However, prior to issuing the Permit, the EPA must ensure that Bonanza also complies with all applicable federal air permitting regimes and regulations for coal fired power plants. For example, the Bonanza Plant needs to comply with the Tribal NSR for Minor Sources (i.e. its fueling stations for its fleet) if it applies to any portion of the facility. Bonanza must comply with current and new applicable regulations affecting coal fired power plants. The Bonanza Power plant must be retrofitted if necessary to comply with the EPA's rule, known as MATS, for mercury and air toxics. Bonanza must also comply with the Clean Water Act and any regulations promulgated thereunder that apply to the plant (i.e. its underground and above ground storage tanks for fuel must be inspected and tested).

Under the Clean Air Act, EPA established National Ambient Air Quality Standards ("NAAQS") to protect human health and the environment for seven "criteria" air pollutants, including nitrogen

dioxide, ground-level ozone, and particulate matter, including particulate matter less than 10 microns in diameter ("PM10") and particulate matter less than 2.5 microns in diameter ("PM2.5"). See 40 C.F.R. § 50.1, et seq. An area that meets the NAAQS for a criteria pollutant is deemed to be in "attainment" for that pollutant. See 40 U.S.C. § 7407(d)(1). The region where the Plant is located is often referred to as the Uinta Basin, and more particularly is located within the Uintah and Ouray Reservation (the "Reservation"), and has been and is currently in attainment of all National Ambient Air Quality Standards ("NAAQS"). However, air pollution levels are on the rise and the region is now close to violating NAAQS for ground-level ozone and particulate matter less than 2.5 microns in diameter, or PM2.5. Given that NOx emissions can form ozone and both NOx and SO2 can form PM2.5, there is increasing concern that emissions from the Bonanza Plant are fueling the region's growing air pollution problems.

Every year, the plant spews more than 3.5 million of tons of air pollution from a 600-foot smokestack. At the same time, the region around the power plant has been choked with high air pollution. Monitors located on the Reservation have registered concentrations of ground-level ozone, the key ingredient of urban smog, that have frequently surpassed federal health standards in the last three years. Ozone levels during certain periods of time are higher than those recorded in Los Angeles. In Los Angeles, ozone levels frequently reach over 75 ppb, well over the standard set by EPA at 70 ppb.

Ground-level ozone is a major health concern on the Reservation. Ozone can trigger asthma attacks, scar the lungs of children, send elders to the emergency room, and even cause premature death. The Tribe is concerned that the Bonanza plant may be a huge contributor to the ozone problem in the Uintah Basin.

The Tribe wishes to express our concern over what we see as failed regulatory oversight by EPA at the Bonanza Plant for well over a decade. There are numerous alleged violations of the CAA falling into three specific categories: (1) violations associated with modifications to the plant made in 2000 that failed to comply with the CAA's prevention of significant determination ("PSD") program; (2) violations of the plant's existing PSD permit; and (3) violations of federal limitations on opacity contained in the New Source Performance Standards ("NSPS").

The first, and most significant, of the alleged violations involves construction at the Bonanza plant in approximately 2000 as part of a project to increase the capacity of the facility and to extend its life. Under the federal PSD program, certain physical modifications of major sources of pollutants that are known to be adverse to human health—like particulate matter ("PM10"), nitrogen oxides ("NOx"), and sulfur oxides ("SOx")—are required to go through a special permitting process. This process, known as PSD, is intended to ensure that increases in air pollution are offset by the facility through various regulatory means, primarily the installation of air pollution controls known as Best Available Control Technology ("BACT").

With regards to Bonanza, the record is quite clear that the 2000 modifications resulted in actual, significant increases of air pollution that not only exceeded regulatory limits, but pose a real threat to human health and the environment. Emissions of NOx increased somewhere between 365 and 1124 tons per year. Similarly, emissions of SOx increased at upwards of 1,171 tons per year and the emissions of PM10 increased upwards of 686 tons per year. These increases are quite large and undoubtedly present an increased risk of harm to human health, such as respiratory illnesses like

asthma and lung disease, cardiovascular illness, and possibly even brain cancer. The impacts on health are particularly hard on children and the elderly living on tribal lands.

The second set of alleged violations involves the violation of the existing PSD permit for Bonanza, which was issued in 1981 by EPA. This permit limited both the maximum heat input rate for the plant as well as the maximum emissions of NOx. There were at least 23,413 exceedances of the heat input rate limitation and 315 exceedances of the NOx limit between 2007 and 2012.

The final set of alleged violations involve excess capacity from the plant's 600 foot high emissions stack. Under federal NSPS the facility's opacity emission level—that is the density of the smoke emitted from its operations—is generally limited to 20%, except in certain defined situations. These excepted situations primarily involved startup, shutdown, and qualifying malfunctions. In addition, the facility is allowed to exceed 20% opacity, but not exceed 27% opacity, for one 6 minute period in an hour. Even taking these exceptions into account, the plant has violated the 20% opacity limit on 540 occasions; 431 of these occasions also exceeded the 27% imitation.

The Tribe is concerned as to how the Permit for continued operation of Bonanza will affect the air designation of the Uintah Basin. The Tribe is concerned that the continued operation of Bonanza will ultimately lead to a designation of nonattainment for the Uintah Basin. A designation of nonattainment for the Uintah Basin will negatively affect the Reservation and the development of the Tribe's natural resources.

The EPA has jurisdiction over Bonanza vis-à-vis the Tribe. The Tribe terminated the Disclaimer of Civil/Regulatory Authority on May 9, 2011. Thus any prior disclaimer over tribal civil/regulatory jurisdiction over Bonanza is no longer in effect. As a matter of federal and tribal law, the Tribe has asserted and continues to assert civil/regulatory jurisdiction over Bonanza.

The Tribe supports to the use of natural gas as an alternative fuel source to coal. Old coal plants like Bonanza should be phased out or subject to more stringent regulations to control air emissions given the availability of newer clean technology like natural gas plants that emit fewer pollutants. Natural gas burns cleaner and is more environmentally friendly than coal.

Again, thank you for the opportunity to provide comments on the Bonanza Permit.

Sincerely,

Gordon Howell, Chairman
Ute Tribal Business Committee