



# State of New Mexico

Susana Martinez  
*Governor*

April 26, 2012

The Honorable Lisa P. Jackson  
Administrator, U.S. Environmental Protection Agency  
1200 Pennsylvania Avenue, N.W.  
Washington, D.C. 20460

Dear Administrator Jackson:

On behalf of the State of New Mexico, I am requesting the U.S. Environmental Protection Agency (EPA) to reconsider its position with respect to the Federal Implementation Plan for Interstate Transport of Pollution Affecting Visibility and Best Available Retrofit Technology (76 Fed. Reg. 52,388) (hereafter, "BART FIP"). As you are aware, EPA's BART FIP could cost up to \$1 billion to implement and increase the rates for New Mexico's residential ratepayers by up to \$85 per year. The BART FIP also violates the tenet of cooperative federalism embodied in the Clean Air Act by essentially ignoring the State of New Mexico's Regional Haze State Implementation Plan (NM SIP), which was submitted on June 29, 2011, and which remains the subject of multiple lawsuits. I initiated one of those suits against the EPA because I could not stand idly by as EPA infringed on New Mexico's rights and moved to impose a significant economic burden on our citizens. However, I believe we owe it to taxpayers to see if we can avoid further litigation by resolving this dispute outside of the courtroom. Therefore, I am urging EPA, Public Service Company of New Mexico (PNM) and other interested stakeholders to evaluate whether there are any viable alternatives to the BART FIP that will be in both the environmental and economic best interests of New Mexico.

In order to create a structure in which discussions of potential solutions to the regional haze dispute can occur, EPA must immediately issue a short term (90-day) stay of BART FIP. A stay will provide PNM, and ultimately New Mexico ratepayers, temporary relief from the compliance costs imposed by the FIP so that alternative plans for the San Juan Generating Station may be developed and considered. Absent a stay, it will be almost impossible to have meaningful, productive negotiations since PNM will be forced

The Honorable Lisa P. Jackson  
April 26, 2012  
Page 2

to continue investing money in a federal plan that might ultimately be set aside by the United States Court of Appeals for the Tenth Circuit or which the parties may agree not to implement. In addition, EPA must immediately respond to the NM SIP by approving it or explaining why it is unacceptable. As you are aware, the NM SIP addresses BART for San Juan in a manner that imposes the presumptive emission limit established by EPA and utilizes a much less expensive, post-combustion control technology. The NM SIP enjoys broad public support, including the support of the Navajo Nation, and New Mexico deserves to understand why EPA is unwilling to approve our plan, especially when the alternative will drastically increase our energy costs.

If EPA temporarily stays the BART FIP and responds to the NM SIP, then PNM must immediately investigate whether there are any viable alternatives to the BART FIP that will be in both the environmental and economic best interests of New Mexico and, if so, present those to EPA and the New Mexico Environment Department.

The plan I have outlined above is ambitious. It will require EPA, New Mexico, PNM and environmental groups to put aside our differences and resolve this complex issue as quickly as possible. However, the stakes are too high for us to let these differences prevent us from finding a solution that will be in the best interests of the citizens of New Mexico. We all must rise to the occasion.

I appreciate your time and consideration of this matter and welcome the opportunity to discuss this issue in detail with you and your staff. Please contact David Martin, Secretary of the New Mexico Environment Department, at 505-827-2855 or [David.Martin@state.nm.us](mailto:David.Martin@state.nm.us) if you have any questions or would like to discuss this further.

Sincerely,

A handwritten signature in black ink, appearing to read "Martinez", written in a cursive style.

Susana Martinez  
Governor of the State of New Mexico

rf/am

Enclosures

The Honorable Lisa P. Jackson

April 26, 2012

Page 3

cc via e-mail:

Senator Jeff Bingaman

Senator Tom Udall

Congressman Steve Pearce

Congressman Ben Lujan

Congressman Martin Heinrich

President Ben Shelly, The Navajo Nation

Dr. Al Armendariz, EPA Regional Administrator, Region 6

Pat Vincent-Collawn, CEO and President of Public Service Company of New Mexico

Bob Perciasepe, EPA Deputy Administrator

Gina McCarthy, EPA Assistant Administrator, Air and Radiation

Janet McCabe, EPA Principle Deputy Assistant Administrator, Air and Radiation

David Martin, Secretary of the New Mexico Environment Department