Intermountain Power Agency
Intermountain Power Service Corporation

Intermountain Power Waste Water Basin
Intermountain Power Bottom Ash Basin

NOTIFICATION OF INTENT TO COMPLY WITH THE ALTERNATIVE CLOSURE REQUIREMENTS

September 12, 2018

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1.0 Executive Summary

The purpose of this document is to provide notification that Intermountain Power Agency ("IPA") and Intermountain Power Service Corporation ("IPSC") intend to comply with the alternative closure requirements of the Coal Combustion Residuals Rule (the "CCR Rule") pursuant to 40 C.F.R. § 257.103(b)(1) and Utah Administrative Code R315-319-103(b)(1) for closure of the following CCR impoundments: Intermountain Power Waste Water Basin and Intermountain Power Bottom Ash Basin (the "CCR Impoundments").

Section 2.0 provides background on the CCR Impoundments, the status of the CCR Rule in the D.C. Circuit Court of Appeals litigation, and the State of Utah's coal combustion residuals ("CCR") regulations. Section 3.0 provides that the CCR Impoundments have triggered closure under § 257.101(a)(1) and R315-319-101(a)(1). Section 4.0 demonstrates pursuant to § 257.103(b)(1) and R315-319-103(b)(1) that the CCR Impoundments qualify for alternative closure because they will cease operation of coal-fired boilers by a date certain and no alternative CCR disposal capacity is available either on-site or off-site. Section 5.0 describes the necessary notification requirement for alternative closure and IPA's and IPSC's compliance with this requirement.

2.0 Background

IPA is the owner of the Intermountain Power Project (the "IPP"), a 1900-megawatt coal-fired, steam electric generation station located near Delta, Utah and allied transmission systems that deliver electricity to California, Utah, and Nevada. IPSC is the operating company responsible for the IPP's day-to-day operations. The IPP has been in continuous commercial operation since 1986 and delivers energy to 35 participants in the project that principally serve Utah and Southern California.

IPA and IPSC have been diligently implementing all substantive and procedural requirements of the U.S. Environmental Protection Agency's ("EPA's") CCR Rule since its effective date in October 2015. Meanwhile, due to a loss of existing customers, a weak market for coal-fueled electricity and environmental regulatory issues that impact the project's economic viability, IPA and IPSC announced in May 2017 that they will cease electricity generation using coal in 2025. The IPP participants are already moving forward with plans to develop new natural gas-fueled electricity generation at the project site.

2.1 The CCR Impoundments

The IPP is located in rural Utah on a more than 4,600-acre site in the Sevier Desert, and there are no surface waters on the site. IPSC operates the two CCR Impoundments and also operates a CCR landfill. When the site was first developed in the late 70s to early 80s, extensive geotechnical studies were conducted to guide the design of facilities and advance environmental controls, including a process water and groundwater monitoring system, and lined impoundments. IPSC has taken a proactive approach to CCR management to ensure protection of the environment and promote reuse of resources.

IPSC operates the CCR Impoundments and its landfill in accordance with multiple state permitting programs. Since its inception, the IPP has been regulated by the Utah Department of Environmental Quality ("UDEQ"). Although the IPP is a zero-discharge facility, IPA and IPSC have held a Groundwater Discharge Permit for the project through the UDEQ Division of Water Quality since 2001, which requires IPSC to monitor compliance at wells located adjacent and downgradient to IPSC's lined ponds and permitted facilities, sets groundwater protection levels, and requires semi-annual reporting. IPSC has also held a Class IIIb Combustion Byproducts Landfill permit since the early 1990s through 2017, upon the State of Utah's implementation of its CCR rule. The permit regulates the type and volume of waste accepted, dictates design and construction of the cells, and requires extensive recordkeeping and routine compliance checks. The IPP's CCR Impoundments are also subject to regular inspection by the Utah Division of Water Rights Dam Safety Section for the condition of embankments, foundations, shore stability, freeboard, settlement monuments, staff gages, and piezometers.

2.2 Coal Combustion Residuals Rule Status

On April 17, 2015, the EPA published its final rule regulating CCR as a solid waste under Subtitle D of the Resource Conservation and Recovery Act ("RCRA"). 80 Fed. Reg. 21302 (Apr. 17, 2015). Beginning with an effective date of October 19, 2015, the final rule established extensive requirements for existing and new CCR surface impoundments, including groundwater monitoring requirements, location standards, and closure requirements.

A few months after the final rule was published, the Utility Solid Waste Activities Group ("USWAG"), along with other industry groups, petitioned for review of the CCR Rule. Sierra Club, along with other environmental groups, intervened in the industry groups' petition and filed separate challenges that were consolidated into one case before the D.C. Circuit Court of Appeals. *Util. Solid Waste Activities Grp. v. EPA*, No. 15-1219 (D.C. Cir. Jul. 15, 2015). In 2016, the D.C. Circuit Court granted an unopposed motion by EPA to remand voluntarily specific provisions of the CCR Rule for further consideration.

In late 2016, Congress passed the Water Infrastructure Improvements for the Nation ("WIIN") Act, amending Section 4005 of RCRA to give states the authority to implement and enforce the CCR Rule. In response to the WIIN Act, USWAG petitioned EPA for rulemaking to reconsider provisions of the CCR Rule and EPA granted USWAG's petition for reconsideration. Shortly after granting the Petition for Reconsideration, EPA filed a motion with the D.C. Circuit Court to hold the ongoing litigation in abeyance.

On March 1, 2018, EPA finalized the first of two rules to amend the April 17, 2015 CCR Rule. The rulemaking addressed provisions of the rule that were remanded to EPA on June 14, 2016 by the D.C. Circuit Court, incorporated flexibility for states with approved CCR permit programs to set certain alternative performance standards (consistent with Congressional direction in the WIIN Act) and made changes to other narrow provisions in the rule.

On August 21, 2018, the D.C. Circuit Court issued a decision in the 2015 litigation resolving matters that have been pending since late 2017. In the decision, the Court denied EPA's motion to hold the litigation in abeyance while EPA reconsiders the CCR Rule and granted in part and denied in part EPA's motion to voluntarily remand certain provisions of the Rule. Among other things, the Court vacated and remanded for further consideration § 257.101(a), which allowed existing unlined surface impoundments to continue to operate until a leak is detected; it is unclear how this remand may affect the closure trigger in § 257.101(a)(1). The court did not, however, invalidate the closure timelines, the groundwater monitoring requirements, the notice requirements, or any other provisions that are inherently tied to § 257.101(a)(1), creating uncertainty in the path forward for projects like the IPP that are well into the numerous assessments, monitoring analyses, and notifications required by the CCR Rule. The D.C. Circuit Court's decision will almost certainly be subject to a rehearing request, request for *en banc* review, and/or appeal to the U.S. Supreme Court, creating significant regulatory uncertainty while EPA simultaneously responds to the remand. The corresponding CCR regulations in the State of Utah, as described further in Section 2.3, remain in effect.

2.3 State of Utah CCR Program

On September 1, 2016, the State of Utah enacted its state CCR regulations, which are substantially identical to the CCR Rule and reflect the same standards and timelines, including the closure triggers and alternative closure timelines. Utah Admin. Code R315-319. The state rule has not been subsequently amended to reflect congressional and EPA developments since 2016. However, IPSC has applied for a CCR Permit under the state program for the CCR Impoundments and landfill, and the State of Utah is expected to publish a draft for public comment in September 2018.

3.0 Closure of the CCR Impoundments

Notwithstanding the significant uncertainty created by the D.C. Circuit Court's opinion, and the remand of the closure triggers in the CCR Rule, IPA and IPSC have elected to continue implementing their compliance and closure plan pursuant to the remaining provisions of the CCR Rule and Utah State Law.

Pursuant to § 257.101(a)(1) and R315-319-101(a)(1):

> *[I]f at any time after October 19, 2015 an owner or operator of an existing unlined CCR surface impoundment determines in any sampling event that the concentrations of one or more constituents listed in appendix IV to this part are detected at statistically significant levels above the groundwater protection standard established under §257.95(h) [R315-319-95(h)] for such CCR unit, within six months of making such determination, the owner or operator of the existing unlined CCR surface impoundment must cease placing CCR and non-CCR wastestreams into such CCR surface impoundment and either retrofit or close the CCR unit in accordance with the requirements of §257.102 [R315-319-102].*

The CCR Impoundments are subject to closure under § 257.101(a)(1) and R315-319-101(a)(1) because a sampling event detected concentrations of one or more constituents listed in Appendix IV at levels above the groundwater protection standard under § 257.95(h) and R315-319-95(h). The CCR Impoundments became subject to closure under § 257.101(a)(1) and R315-319-101(a)(1) on July 14, 2018.

4.0 Qualification for Alternative Closure

Pursuant to § 257.103(b)(1) and R315-319-103(b)(1):

> ***Notwithstanding the provisions of §257.101(a) [R315-319-101(a)]*** *. . . a CCR unit may continue to receive CCR if the owner or operator of the CCR unit certifies that the facility will cease operation of the coal-fired boilers within the timeframes specified in paragraphs (b)(2) through (4) of this section, but in the interim period (prior to closure of the coal-fired boiler), the facility must continue to use the CCR unit due to the absence of alternative disposal capacity both on-site and off-site of the facility.*

(emphasis added). The CCR Rule further requires that a facility that ceases operation of a coal unit under § 257.103(b)(1) and R315-319-103(b)(1) must (i) document that no alternative capacity is available on or off-site; (ii) remain in compliance with all other requirements,

including the requirement to conduct any corrective action; and (iii) prepare an annual progress report documenting the continued lack of alternative capacity and the progress toward closure of the coal-fired boiler. § 257.103(b)(1)(i)–(iii); R315-319-103(b)(1)(i)–(iii). This annual report requirement is distinct from that of a non-closing facility electing alternative closure to document its "progress towards the development of alternative CCR disposal capacity." § 257.103(a)(1)(iv). EPA recognized the possibility of a circumstance where "a facility's only disposal capacity, both on-site and off-site, is in a CCR unit that has triggered the closure requirements in § 257.101(a)" including where it is not feasible to transport wet CCR to an off-site alternative disposal facility or convert to dry handling systems. 80 Fed. Reg. at 21423. In providing the alternative closure timelines, EPA also expressly recognized the significant risks to human health that would arise if a community were left without power for an extended period of time due to having to prematurely close a CCR unit. *Id*.

As described in the following subsections, the CCR Impoundments qualify for alternative closure pursuant to § 257.103(b)(1)(i)–(iii) and R315-319-103(b)(1)(i)–(iii).

4.1 Cessation by a Date Certain

As indicated above, IPA and IPSC anticipate that they will cease operation of the coal units in 2025. IPA and IPSC hereby certify that they will close the CCR Impoundments before October 17, 2028, as required by § 257.103(b)(3) and R315-319-103(b)(3).

4.2 No Alternative Disposal Capacity

There is no alternative CCR disposal capacity available on-site or off-site for the IPP. Consistent with EPA's example provided in the preamble to the CCR Rule, the CCR Impoundments provide the only on-site or off-site disposal option for wet CCR waste. Because the majority of the IPP's wet fly ash, bottom ash, and Flue Gas Desulfurization sludge is wet waste, the IPP's only disposal option is in the on-site impoundments. Not only is it infeasible to transport wet CCR waste to an off-site disposal facility, there is no other facility in Utah that is currently permitted to accept wet CCR waste. Indeed, any such facility would have to comply with the requirements of the CCR Rule. No wet waste can be disposed in the IPP's on-site landfill. And, in accordance with EPA's preamble discussion and given IPA and IPSC's plans to shutter the coal units by 2025, IPA and IPSC are not obligated to demonstrate efforts to develop alternative capacity.

4.3 Compliance with All Other Requirements

IPA and IPSC are in compliance with all other requirements of 40 C.F.R. Part 257 Subpart D and R315-319, including the requirement to conduct any necessary corrective action. IPA and IPSC have complied with the following requirements to provide notification that one or more constituents in Part 257 Appendix IV and R315-319 Appendix IV have been detected at statistically significant levels above the groundwater protection standards:

- Place notification in the CCR Impoundments' operating records identifying the constituents that have exceeded the protection standards by August 13, 2018 pursuant to §§ 257.95(g) and 257.105(h)(8) [R315-319-95(g), -105(h)(8)].
- Send notification to the State Director by September 12, 2018 pursuant to § 257.106(d) and (h)(6) [R315-319-106(d), (h)(6)].
- Place notification on the CCR Impoundments' CCR websites by September 12, 2018 pursuant to § 257.107(d) and (h)(6) [R315-319-107(d), (h)(6)].

Additionally, IPA and IPSC will initiate an assessment of corrective measures by October 12, 2018 pursuant to §§ 257.95(g)(3)(i), (g)(5) and 257.96 [R315-319-95(g)(3)(i), (g)(5), -96]. IPA and IPSC intend to place notification in the CCR Impoundments' operating records of initiating the assessment of corrective measures by November 11, 2018 pursuant to §§ 257.95(g)(5) and 257.105(h)(9) [R315-319-95(g)(5), -105(h)(9)]. Pursuant to the CCR Rule, the assessment will include characterizing the nature and extent of the release and site conditions to inform development of a corrective action plan.

4.4 Annual Progress Reports

IPA and IPSC intend to fully comply with the requirement to prepare annual progress reports documenting the continued lack of alternative capacity and the progress towards shuttering the coal units.

5.0 Notification Requirement

Under § 257.103(c)(1) and R315-319-103(c)(1), IPA and IPSC are required to prepare and place this notification in the CCR Impoundments' operating records within six months of becoming subject to closure pursuant to § 257.101(a)(1) and R315-319-101(a)(1). Given IPA and IPSC's previously determined plan to cease operation of the coal units, this notification has been prepared and placed in the CCR Impoundments' operating records well in advance of the required deadline of January 14, 2019.