

STATE OF UTAH

Public Service Commission

In the Matter of the Voluntary Request
of Rocky Mountain Power for Approval
of Resource Decision to Construct
Selective Catalytic Reduction Systems
on Jim Bridger Units 3 and 4

Docket No. 12-035-92

**SIERRA CLUB MOTION FOR A STAY OR CONTINUANCE
PENDING FINAL EPA ACTION**

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Rocky Mountain Power (“RMP”) has requested from the Utah Public Service Commission (“Commission”) approval of a resource decision to construct selective catalytic reduction systems (“SCR”) on Jim Bridger units 3 and 4. On September 24, 2012, the Commission issued a Scheduling Order and Notice of Hearing in this proceeding. Sierra Club and other parties filed direct testimony on November 30, 2012. Hearings are scheduled for February 5, 2013. In accordance with Utah Administrative Code R746-100-3, Sierra Club hereby moves for a stay or continuance of this proceeding until such time as the U.S. Environmental Protection Agency (“EPA”) issues its final BART determination for the Jim Bridger coal-fired power plant. Utah Code Ann. § 54-17-402(6) authorizes the Commission to extend the time for issuing a decision in this proceeding, if the Commission determines additional time to analyze the resource decision is warranted and is in the public interest.

Last week, EPA notified the public that it was delaying its final BART determination¹ for the Jim Bridger facility until September 27, 2013. The purpose of the current proceeding before this Commission is to consider whether the installation of BART pollution controls at Jim Bridger units 3 and 4 is necessary to meet RMP's present and future demands for service. (Sections 204-206 of the Commission's General Rule and Regulations.) Without a final EPA BART determination, the type and number of controls, the required emission limits and the relevant compliance deadlines at the Jim Bridger coal plant is unknown, and therefore it is premature to proceed with this docket.

The Company filed its application with the Commission because it must comply with EPA's final BART determination for the Jim Bridger coal-fired power plant. When the Company initiated this proceeding, EPA had already issued a proposed BART determination. The Company and intervenors believed that EPA would issue a final BART determination for the Jim Bridger facility by mid-October of 2012, which would have allowed sufficient time to incorporate EPA's final rule into the evidentiary record of this proceeding. However, last week EPA requested and received an extension to their court-ordered deadline to issue a final BART determination for Jim Bridger and the other Wyoming BART-eligible facilities. Rather than issuing a final decision this year, EPA will now issue a newly proposed BART determination for Jim Bridger by March 29, 2013, with a final rule to follow by September 27, 2013. The Commission and parties should assume EPA intends to

¹ Best Available Retrofit Technology (BART) is a pollution source determination made under the Clean Air Act's Regional Haze Rule.

significantly revise its prior draft rule. EPA's final rule on the environmental compliance obligations at Jim Bridger will therefore come after the evidentiary hearings in this proceeding have finished. In the interests of judicial economy and to allow the Commission and intervening parties to fully assess the need for and cost of the proposed installation of pollution controls at Jim Bridger, Sierra Club moves for a continuance or stay of this proceeding until EPA has issued a final BART determination for Jim Bridger.

I. EPA Will Issue A Final Rule for Jim Bridger Pollution Controls In September 2013.

EPA will now issue a final BART determination for Jim Bridger and other BART-eligible Wyoming facilities on September 27, 2013. On December 13, 2012, the U.S. District Court for the District of Colorado issued an order to modify a consent decree governing the schedule under which EPA is required to issue a final rulemaking with respect to BART determinations for Wyoming BART-eligible facilities (the "Revised Consent Decree"). (Attached hereto as Exhibit 1.) Under the Revised Consent Decree, EPA will issue a new proposed BART determination for Jim Bridger by March 29, 2013, with a final rule required by September 27, 2013. EPA's request for additional time signals substantial uncertainty as to the underlying pollution controls and emission limits that are at issue in this proceeding.

RMP's stated need for installing the proposed pollution controls is to comply with the Clean Air Act's Regional Haze Rule.² The Regional Haze Rule was issued

² Direct Testimony of Chad A. Teply, p. 41.

in 1999, and revised in 2005. A key component of this program is the imposition of air pollution controls and emission limits on existing facilities that impact visibility in Class I areas. Specifically, the rules require installation of “best available retrofit technology” (BART) that is developed for pollution sources on a case-by-case basis. In addition, EPA’s BART determinations specify particular emission limits and specific control technology for each BART-eligible facility. EPA evaluates BART for the air pollutants that impact visibility in our national parks and wilderness areas – namely sulfur dioxide (SO₂), nitrogen oxides (NO_x) and particulate matter (PM).

RMP’s application in this proceeding is premised on the need to install selective catalytic reduction (“SCR”) systems on Jim Bridger units 3 and 4 in order to comply with the Clean Air Act’s Regional Haze program as implemented by the proposed Wyoming Regional Haze State Implementation Plan (“SIP”).³ In June of 2012, EPA had previously proposed approval of the state’s proposed timing and configuration to install SCR at Jim Bridger units 3 and 4.⁴ However, that proposed action is no longer applicable, and EPA will now issue a draft determination on the Wyoming SIP by March 29, 2013. EPA’s newly proposed action will therefore occur after the scheduled evidentiary hearings in this proceeding.

The fact that EPA has withdrawn its prior draft rule and will issue a new draft rule addressing BART-eligible facilities in Wyoming strongly indicates that EPA intends to make significant changes to Wyoming’s BART program. This expected change creates substantial uncertainty concerning the timing of and need

³ Direct Testimony of Chad A. Teply, p. 7.

⁴ Id. pp. 7 and 11-12.

for SCR at the Jim Bridger facility, as well as the cost implication that a new rule could have for RMP's other Wyoming coal facilities. Accordingly, it is premature to continue with this proceeding.

RMP has itself acknowledged this uncertainty in testimony supporting its application: "The Company cannot fully determine the impacts of EPA's proposals on the affected [BART-eligible] units listed above until final SIP and/or FIP actions are taken and the appropriate appeal periods pass."⁵ The Company further testified generally that substantial changes to EPA regulations could alter the Company's proposed actions: "If the preliminary or final form of a proposal would alter the Company's business plan, those plans may be amended to reflect the likely impact on the Company to achieve compliance with the requirements within the relevant compliance period after considering our compliance options."⁶ In this case, both the "preliminary" and the "final form" EPA BART determinations for Jim Bridger are unknown and will remain unknown until March 2013 and September 2013, respectively. The Commission should therefore suspend this proceeding until such time as the Company and intervening parties can know and evaluate the final compliance requirements for the Jim Bridger power plant.

II. State Requirements to Install SCR at Jim Bridger Are Dependent on EPA Approval.

EPA's final BART determination for the Jim Bridger plant establishes RMP's compliance obligations under the Clean Air Act's Regional Haze program. Under the Clean Air Act, states develop regional haze proposals, but EPA approves state

⁵ Direct Testimony of Chad A. Teply, pp. 33-34.

plans for compliance with the Clean Air Act. 42 U.S.C. § 7410(c). If EPA finds the plans are not consistent with the Clean Air Act, it adopts a federal plan with BART and reasonable progress requirements. *Id.* Affected facilities must comply with the EPA BART determinations as expeditiously as practicable but no later than five years from the date EPA approves the state plan or adopts a federal plan. (40 CFR 51.308(e).)

According to RMP's application and supporting testimony in this proceeding, "The Company is installing emissions control equipment at this time to comply with the Regional Haze Rule..."⁷ As noted above, EPA's Regional Haze determination is part of the nation-wide program that is implemented by states through the promulgation of plans approved by EPA. Without EPA approval, the final requirements necessary to comply with the Regional Haze Rule remain unknown.

RMP will benefit from the certainty provided by staying this proceeding. EPA will set out the specific emission limits and control technology RMP will be subject to in its final rule. Moreover, Jim Bridger will have five years from the date of the final rule to comply with EPA's final BART determination. (40 CFR 51.308(e).) If EPA completes its final rule in September 2013, as currently required to do so by the Revised Consent Decree, then RMP will have until September 2018 to install the BART controls. Given EPA's delay in finalizing the rule, if RMP cannot practically install the SCR controls by 2015 once EPA has issued a final rule, then RMP will be able to install the controls at a later date as long as it meets the five

⁶ *Id.* at pp. 38-39.

⁷ Direct Testimony of Chad A. Teply, p. 41.

year compliance window of 2018. As noted above, any state permits that would require an earlier compliance deadline are contingent on EPA’s final approval.

III. Public Utility Commissions in Other Jurisdictions Have Taken Similar Action to Stay Proceedings.

The certainty provided by waiting for EPA’s final BART determination has prompted other public utility commissions to suspend similar proceedings. In 2009, Entergy Arkansas, Inc. (“Entergy”) initiated a proceeding before the Arkansas Public Service Commission requesting pre-approval to install a flue gas desulfurization system (SO₂ scrubber) and low-NO_x burners with separated overfire air at its White Bluff coal coal-fired plant.⁸ The stated purpose of the pollution controls was to comply with the Arkansas Department of Environmental Quality (“ADEQ”) proposed BART determination for White Bluff under the Regional Haze Rule.⁹ The procedural posture of that docket was essentially the same as the proceeding before this Commission.

On December 3, 2009, Arkansas Public Service Commission staff filed a motion to immediately suspend the proceeding.¹⁰ Staff filed the motion because it had recently received copies of letters to ADEQ from EPA and the U.S. Department of Agriculture (“USDA”) that “call into question the 2013 implementation date and identify other areas of concern regarding ADEQ’s review of [Entergy’s] application

⁸ Entergy Petition for Declaratory Order, Arkansas Public Service Commission Docket No. 09-024-U, March 10, 2009, at p. 3. Available at: http://www.apscservices.info/pdf/09/09-024-u_6_1.pdf (accessed Dec. 18, 2012.)

⁹ Id.

¹⁰ Motion to Immediately Suspend Procedural Order, Arkansas Public Service Commission Docket No. 09-024-U, December 3, 2009, at p. 1. Available at: http://www.apscservices.info/pdf/09/09-024-u_179_1.pdf (accessed Dec. 18, 2012.)

for an air permit.”¹¹ Specifically, EPA’s letter rejected Arkansas’ proposed BART emission rate for SO₂ and cautioned against proceeding without EPA approval:

It appears that ADEQ is attempting to implement the BART requirements of its regional haze SIP prior to an EPA proposed action on the SIP. We encourage ADEQ to work with EPA to address our concerns prior to drafting the final proposed permit since not doing so may result in EPA reopening the permit and more stringent emission limits for the stationary source upon EPA’s final action on the regional haze SIP.¹²

In response to the issues raised by EPA about the lack of a final BART determination, Staff filed its motion to immediately suspend the proceeding:

The issues raised by the EPA and USDA may delay the implementation date beyond 2013 and may affect the allowed emissions rate which may, in turn, affect the technology required to meet a different allowed emissions rate. Consequently, until ADEQ and these federal agencies resolve these issues and more information is known, the most logical and administratively efficient course of action would be to suspend the procedural schedule in this Docket.¹³

The Arkansas Commission granted the motion to suspend the proceeding on February 16, 2010, and Entergy ultimately withdrew its petition on May 5, 2010.¹⁴

The Utah Commission faces the same circumstance with RMP’s current application in this proceeding. EPA will not issue a final BART determination for the Jim Bridger facility until September 2013, which calls into question the implementation dates for the proposed SCR projects at Jim Bridger as well as the technology and emission limits that RMP will be required to meet. Therefore, as in

¹¹ Id.

¹² Id. at Attachment 1.

¹³ Id. at 1-2.

the Arkansas White Bluff proceeding, the most logical and administratively efficient course of action would be to suspend this proceeding until EPA issues its final BART determination.

IV. Conclusion

The Commission, staff, intervening parties, and RMP have and will expend substantial time and effort in this docket to address the need for and cost effectiveness of installation of the SCR controls at Jim Bridger units 3 and 4. EPA's delay in issuing a final BART determination calls into question the underlying premise of this entire docket: whether or not RMP will be required to install SCR on any or all of its units. The Commission and intervenors cannot effectively evaluate the public convenience and necessity of SCR at Jim Bridger units 3 and 4 while the primary environmental regulation that is prompting the retrofit remains uncertain. Sierra Club therefore moves for a continuance or stay of all deadlines in the September 24, 2012 Scheduling Order and requests that the Commission stay this proceeding until EPA has issued a final BART determination for the Jim Bridger facility.

For the foregoing reasons, Sierra Club respectfully requests that the Commission grant this motion

DATED this 21st day of December, 2012.

¹⁴ See Order, Arkansas Public Service Commission Docket No. 09-024-U, May 26, 2010. Available at:

Respectfully submitted,

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CERTIFICATE OF SERVICE

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