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**BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH**

<p><b>In the Matter of:</b></p> <p><b>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</b></p>	<p>Docket No. 12-035-92</p> <p><b>UTAH DIVISION OF PUBLIC UTILITY'S MEMORANDUM IN RESPONSE TO SIERRA CLUB'S MOTION FOR STAY OR CONTINUANCE PENDING FINAL ACTION</b></p>
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The Utah Division of Public Utilities hereby submits this memorandum in response to the Sierra Club's Motion for Stay or Continuance Pending Final Action.

**Introduction**

On December 21, 2012 the Sierra Club requested that the Utah Public Service Commission ("Commission") stay its review of RMP's request for approval of the resource decision to construct selective catalytic reduction systems ("SCR") on units 3 and 4 of the Jim Bridger facilities. The Sierra Club argues that a stay is necessary due to the uncertainty of future air quality standards that are part of an ongoing EPA rulemaking. The EPA recently was granted

a delay in final approval of the BART determination as part of its review of the Wyoming State Implementation Plan (“SIP”) as part of an approved Consent Decree.<sup>1</sup> The Sierra Club requests that the Commission stay this proceeding pending the final agency action of the EPA.

On January 6, 2013 Rocky Mountain Power (“RMP” or “Company”) filed a response to the Sierra Club’s Motion for Stay. RMP responded that the Wyoming state obligations are independent of the EPA process. Because the Wyoming deadlines are not conditioned upon the EPA order if the Jim Bridger units 3 and 4 are to continue in operation, and be compliant with environmental regulation, modifications must be made by December 31, 2015 on Unit 3 and by December 31, 2016 on Unit 4. If construction of the SCR units is delayed until the end of 2013 there is a significant risk of escalating costs of construction as well as possibility of failure to reach completion in time. Therefore the Company argues that it cannot wait for the EPA to act and must proceed without delay in order to cost effectively meet the Wyoming requirements.

## **Discussion**

The interplay between the Wyoming DEQ and the EPA has created a situation in which there are both known air quality standards for Wyoming and unknown future air quality standards yet to be set by the EPA, the stricter of which will be the standards that must be met by the Jim Bridger facilities. The SCR construction at Jim Bridger to meet the Wyoming DEQ requirements will vary in cost depending on planning and construction time. The Company indicates that granting the Stay request could substantially increase the costs of meeting Wyoming’s BART requirements. On the other hand, if the Stay is denied and the eventual EPA requirements render the SCRs ineffectual ratepayers may incur unnecessary (but limited) costs associated with planning and construction.

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<sup>1</sup> See Sierra Club’s Mot. for Stay or Continuance Pending Final EPA Action, Exhibit 1.

The Division recommends the Commission not wait for a final EPA ruling. While clearly there are significant benefits to planning in a more stable regulatory environment that might result from a final EPA order, there is no guarantee that the EPA will complete its rule making process anytime in the near future. The EPA has not shown expedience in approving the Wyoming SIP or implementing an alternative Federal Implementation Plan. As recently as June 6, 2011 the EPA signed a Consent Decree agreeing by October 15, 2012 to “sign a notice of final rulemaking promulgating a FIP for the State of Wyoming, to meet the regional haze implementation plan requirements that were due by December 17, 2007...”<sup>2</sup> October 15, 2012 has passed and as of today the EPA has now agreed to file a proposed rule by March 29, 2013. The history of this process does not indicate that we should rely on adherence to the agreed upon deadlines. It remains possible that the EPA will ask for additional time. The BART Appeal Settlement Agreement, which controls the Company’s actions in Wyoming, in contrast provides specific implementation limits and dates by which the Company must comply.<sup>3</sup>

Because of the known requirements of the settlement agreement with the Wyoming DEQ the Company must take some action with respect to the emissions at the Jim Bridger facilities. To ignore those looming deadlines and wait for unknown final EPA rulings is, according to the Company, likely to result in condensed construction times and additional costs. It remains possible that the EPA will impose rules such that the SCR installation is not the prudent choice. As such there are risks to action or inaction.

The Company retains a duty to act prudently if it wishes to recover the costs, whether or not approved in this docket to construct SCRs. In the event that the EPA proposed rule indicates

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<sup>2</sup> Attached as Exhibit 1.

<sup>3</sup> See RMP’s Memo. in Opposition to Sierra Club’s Motion Stay, Exhibit 1.

that SCR technology will not be sufficient for continued operation of the Jim Bridger facility, prudence may dictate that RMP must cease planning or construction and mitigate losses.

The overall balancing of the risks to RMP and rate payers weighs in favor of continuing substantially with the current schedule. While it may delay the contract some, the relatively short time period between the current scheduled hearings and the EPA proposed rule filing date of March 29, 2013 may be a reasonable time to stay the proceeding. A delay until after the March EPA filing would not be as costly if SCR construction is approved as compared to a delay until final EPA rules are set. If the Commission does stay the proceeding or modify the schedule, it should not wait until the final EPA BART determinations, but should delay at most until after the March EPA filings provide guidance as to what the most likely ruling of the EPA will be and resume the schedule immediately thereafter. An alternative to a stay is a Commission-issued order within the statutory time period for approving a resource decision (CITE) with conditions addressing the Company's continuing duty of prudence in light of any future EPA action.

## **Conclusion**

Staying this proceeding pending the EPA issuing a final rule does not provide the Company sufficient construction time to install SCRs at the lowest reasonable costs. Wyoming DEQ requirements are known and must be implemented by specific dates. Therefore waiting for a final EPA rule is likely to result in higher costs. The intermediate option may be to stay the schedule until the March EPA filing. The March filing may give indication to the Commission of the probable EPA requirements. Therefore the Commission should not stay this proceeding until the final EPA ruling is issued, but it may be in the public interest to temporarily stay the

proceeding until after the March EPA filing or to issue conditions to an approval granted within the statutory time frame.

Respectfully submitted this 4th day of February, 2013.

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CERTIFICATE OF SERVICE

EXHIBIT 1