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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

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 **ROCKY MOUNTAIN POWER'S REPLY COMMENTS RELATING TO EPA ACTION**

INTRODUCTION

PacifiCorp dba Rocky Mountain Power (the "Company") respectfully submits these *Reply Comments Relating to EPA Action* in support of its Voluntary Request for Approval of Resource Decision (the "Request") to add selective catalytic reduction ("SCR") systems on Units 3 and 4 of the Jim Bridger steam electric plant (the "Bridger Plant" or the "Plant"). Collectively, the SCR upgrade project at Bridger Units 3 and 4 are referred to herein as "the Project".

These comments will reply specifically to issues and inaccuracies contained in the Sierra Club's *Post-Hearing Brief Addressing EPA Ruling*, and the Office of Consumer Services ("OCS") Comments, each of which was filed April 5, 2013.

The Company also asks that the Commission take judicial notice of the fact that, as described in the Affidavit of Daniel E. Solander, filed with the Commission April 12, 2013, the Wyoming Public Service Commission approved the Company's Application for a Certificate of Public Convenience and Necessity to Construct Selective Catalytic Reductions Systems on Jim Bridger Units 3 and 4.

ARGUMENT

I. The Sierra Club Has Mischaracterized the Cited Case Law

In order to support its argument for denial of the Company's Request, in its *Post Hearing Brief Addressing EPA Ruling*("SC Brief"), the Sierra Club mischaracterizes the holdings of several key cases. First, the Sierra Club cites to both *Duquesne Light Co. v. EPA*, 698 F.2d 456 (D.C. Cir. 1983) and *Train v. Natural Resources Defense Council*, 421 U.S. 60 (1975) to attempt to expand the EPA's actual role under the Clean Air Act and to diminish the role of the states. (*See* SC Brief at 4.) These citations, however, are misleading. Specifically, both of these cases confirm that the states and federal governments are "partners in the task of improving the

nation's air quality." *See Duquesne, supra*, 698 F.2d at p. 471; *Train, supra*, 421 U.S. at p. 64. Moreover, *Duquesne* confirms that the EPA only needs to step in "should a state fail to develop or to enforce an acceptable plan." *See Duquesne, supra*, 698 F.2d at p. 471. That certainly did not occur here. If anything, it has been the EPA that is lagging behind, and the states are not required to wait.

The Sierra Club also improperly cites to *New York v. United States*, 505 U.S. 144, 167 (1992). (*See* SC Brief at 4-5.) Specifically, the Sierra Club suggests that *New York* is a Clean Air Act case concerning the relationship between SIPs and the federal standards. It is not. *New York* addresses the Low Level Radioactive Waste Policy Amendment Act and, to a lesser extent, the Commerce Clause. It is simply inapplicable to the current situation. Finally, the Sierra Club cites to both *St. Bernard Citizens for Envtl. Quality v. Chalmette Refining, L.L.C.* 399 F.Supp. 2d 726 and *Mont. Sulphur& Chem. Co. v. EPA*, 666 F.3d 1174 (9th Cir. 2012) for the proposition that a proposed SIP that is not approved by the EPA has "no legal weight" and "is not a valid and enforceable part of [the state's] implementation plan." (*See* SC Brief at 6.) Again, these cases do not support the stated proposition.

St. Bernard involved an EPA approved SIP. Subsequent to the EPA's approval, the Louisiana Department of Environmental Quality ("LDEQ") issued an emergency rule declaring that certain types of violations under its EPA-approved SIP were not actually violations. The Court rejected this emergency rule and held that a state cannot revise an EPA-approved SIP by declaring that certain permit violations are not in fact violations without EPA approval. To this end, the Court stated that "a proposed revision" to Louisiana's implementation plan, particularly one that had the effect of creating less stringent requirements, has no legal weight until approved by the EPA. Thus, *St. Bernard* is inapposite to this case because the relevant SIP is not a

proposed revision that creates less stringent requirements.

Montana is also factually distinguishable. *Montana* involved a situation where the EPA disapproved of a portion of a proposed revision to a SIP and, consequently, filled in the gap with an item from the FIP. Once again, this is not the situation in this case. Here, the EPA has failed to approve or disprove of Wyoming's SIP. Moreover, the Sierra Club cites this case for the proposition that a proposed SIP that is not approved has no legal weight. (SC Brief at 6.) *Montana* did not merely involve a "proposed SIP," rather, it involved a proposed and rejected SIP. Wyoming's SIP has clearly not been rejected by the EPA. Indeed, if anything, the EPA has tacitly approved of the SIP. *See* 77 Fed. Reg. at 33036.

II. Sierra Club's Entire Brief Incorrectly Presupposes that a Federal Implementation Plan Will Supersede the State Implementation Plan

On page three of its brief, Sierra Club made the following statement:

> Sierra Club contends that EPA will disapprove the Wyoming proposal for all four Jim Bridger units because (1) the proposed NOx emission limit of 0.07 lb/mmBtu is inconsistent with federal standards, and (2) Wyoming proposed to require SCR as part of its long-term strategy, rather than making the required determination that SCR is BART for Jim Bridger. EPA will therefore issue a federal implementation plan ("FIP") and make a determination that SCR with a lower NOx emissions limit is BART for all four units. (internal citations omitted).

This statement, particularly the final sentence, is factually incorrect, and ignores the steps that the State of Wyoming may take to cure and implement the SIP, even if a FIP is issued by the EPA. A FIP would only be implemented by the EPA if the State of Wyoming completely ignores the processes that are available to a state to move forward with implementation of a SIP after a FIP is issued by the EPA.

Sierra Club's entire brief is based around this incorrect premise.

III. The EPA's Final Action Will Not Change the Fact that SCR is the Least-Cost Method of Compliance.

In its Comments, the OCS stated following regarding the impact of the EPA's notice of re-proposed rulemaking:

> If the new requirements had been known today, as anticipated, minor changes could have been evaluated quickly and parties could have made recommendations for how to treat more major changes prior to a Commission order.
> …
> However, having a further extension of the re-proposal deadline exacerbates the uncertainty of whether the SCRs will be able to meet the requirements or will be the least-cost method of compliance. Now, the Commission will have to decide whether to rely on Company assertions that its plans are flexible enough to respond to potential differences in the EPA's re-proposal. The Office cautions against such action. Even if the Company is able to respond flexibly, it has not demonstrated that such a response would be the preferred or least-cost method of compliance. (OCS Comments, p. 3).

This statement is not based on the record, and ignores the unrebutted testimony of Company witnesses Mr. Teply in this Docket. As Mr. Teply stated in his surrebuttal testimony, and as noted in the Company's initial Brief, if the EPA's rulemaking were to move the limit toward the 0.05lb/mmBtu level, such a limit could be accommodated in the Company's ongoing contract negotiations and ultimate SCR Project design. (Teply Surrebuttal at 2-3.)The EPA rulemaking will not render the SCR systems unnecessary, and will not change the Company's selection as the SCR systems as the BART. As Mr. Teply testified, reasonably expected changes to the emission limits could be incorporated in the SCR design, and therefore, there is no practical reason to wait for the EPA's proposed or final action, particularly since the Wyoming Public Service Commission has approved the Company's application for a certificate of public convenience and necessity to construct the SCR system.

CONCLUSION

For the reasons stated above, and in the Company's previous two post-hearing briefs filed in this Docket, the Commission should not wait for further action by the EPA. Instead, the Commission should find that that the SCR Project is in the public interest and approve it pursuant to Utah Code Ann. § 54-17-402.

DATED this 19th day of April, 2013.

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