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BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH

<p>In the Matter of:</p> <p>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</p>	<p>Docket No. 12-035-92</p> <p>ROCKY MOUNTAIN POWER'S MEMORANDUM IN OPPOSITION TO SIERRA CLUB'S MOTION FOR A STAY OR CONTINUANCE PENDING FINAL ACTION</p>
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Rocky Mountain Power (sometimes also referred to as the “Company”) submits this memorandum in opposition to the Sierra Club’s Motion for Stay or Continuance Pending Final Action (the “Stay Motion”).

INTRODUCTION

The Sierra Club asks the Commission to stay its review of the Company's decision to install selective catalytic reduction systems ("SCR") at Units 3 and 4 of the Jim Bridger power plant in Sweetwater, Wyoming (the "Plant"). The Sierra Club argues that because the U.S. Environmental Protection Agency ("EPA") recently delayed its final action on the Wyoming Regional Haze State Implementation Plan ("SIP") until September 27, 2013, the Commission should likewise delay its review to accommodate the impacts, if any, the EPA's determination will have on the Company's plans. Its Motion, however, is based on a faulty premise. The Sierra Club assumes that because of the EPA's delayed action, the Company's deadlines for completing the SCR Project are likewise delayed. According to the Sierra Club, the Company "will be able to install the controls at a later date as long as it meets the five-year compliance window of 2018." This premise is false.

The State of Wyoming has not adopted the Sierra Club's interpretation. The Company is under an independent obligation to complete the SCR Projects or otherwise meet the associated unit-specific emission limits pursuant to the "BART Settlement Agreement;" the Wyoming Environmental Quality Commission's ("EQC") Order; Chapter 6, Sections 2 and 9 of the Wyoming Department of Environmental Quality Air Quality Division Standards and Regulations; and the Wyoming SIP imposed by the State of Wyoming. Specifically, the Company is obligated to complete the SCR Project by December 31, 2015 for Unit 3 and December 31, 2016 for Unit 4 (the "Deadlines") under Wyoming law. Wyoming has never indicated that it will amend its Deadlines to accommodate the EPA's delayed action, nor that it is willing to forgo compliance with the Deadlines. Thus, the Company must consider itself (as the Wyoming Department of Environmental Quality does) under an independent, legally enforceable

obligation to the state of Wyoming to meet the Deadlines irrespective of the EPA's delay. For the Company to meet the Deadlines in the most economical manner, review of the SCR Project cannot be suspended and the Company cannot delay work until September, or after, given the complex and time-intensive nature of designing and implementing the SCR system. The Sierra Club proffers no evidence to the contrary. Thus, in order for the Company to be able to meet the Deadlines in the most economical manner and still have an opportunity for Commission review of the Project before substantial work begins, this docket must proceed as currently scheduled. Barring any express amendment to the Deadlines by the state of Wyoming, the Sierra Club's Stay Motion should be denied.

BACKGROUND

1. The Bridger Plant consists of four coal-fueled units which are two-thirds co-owned by Rocky Mountain Power and one-third co-owned by the Idaho Power Company. The Plant has been, and remains, integral to the Company's charge of providing electrical service to its customers. (Tepley Direct at 10-11.)

2. As with other such plants, the Bridger Plant is subject to a variety of laws, rules, and regulations relating to various emissions, including emissions of nitrogen oxides ("NO_x").

3. Pursuant to the Regional Haze Rules, Wyoming has imposed environmental standards which (a) limit the amount to NO_x emissions at the Bridger Facility;¹ and (b) set forth express deadlines by which those limits must be achieved.

4. In November 2010, the Company and the Wyoming Department of Environmental Quality ("DEQ") entered into a settlement agreement in Docket No. 10-281 (the "BART Settlement Agreement," attached as Exhibit 1) before the Environmental Quality

¹ The Wyoming standards require NO_x emission limits of 0.07 pounds per million British thermal units ("lb/mmBtu) to be achieved on Unit 3 and Unit 4 via the installation of SCR or alternative add-on NO_x control systems.

Council relating to Wyoming's BART permit for the Bridger facility. In order to achieve the required NOx emission limits, the BART Settlement Agreement, which is enforced via an Order issued by the Environmental Quality Council (attached as Exhibit 2), requires the Company to install SCR systems or alternative add-on NOx control systems on Unit 3 by the Deadlines – the end of 2015 for Unit 3 and the end of 2016 for Unit 4. The Environmental Quality Council has maintained jurisdiction over the Settlement Agreement and its' Order is enforceable in district court under the Wyoming Administrative Procedure Act. (*See* Wyo. Stat. § 16-3-114.)

5. The Wyoming Regional Haze 309(g) State Implementation Plan (the “Wyoming SIP,” attached in part as Exhibit 3) includes the same requirements – including the Deadlines by which NOx-reducing control systems must be installed.

6. The EPA had previously proposed to approve certain of the Wyoming SIP requirements, including those at Jim Bridger Units 3 and 4. The EPA was previously under a court-ordered deadline to issue its final decision on the Wyoming Regional Haze SIP by October 15, 2012; that deadline was extended to December 14, 2012. Just days before the deadline, the EPA, filed a motion to modify the consent decree deadlines, extending the existing deadlines to address the Wyoming Regional Haze requirements “because of the public comments EPA received and new information gathered by EPA.” (Def.’s Unopposed Motion to Modify Two Deadlines in Consent Decree, *WildEarth Guardians v. Lisa Jackson as EPA Administrator*, 1:11-cv-00001 (12/10/12, Fed. D. Ct. Colo.), attached as Exhibit 4, at 3) The EPA’s motion to action does not reference the Jim Bridger projects in any manner and, instead suggests that “because the extensions [to the deadlines to take action on the SIP] will postpone final action by almost one year. . . in preparing the re-proposal EPA will consider appropriate compliance dates for the installation of any selected emission controls.” (*Id.* at 4.) The EPA does not, as Sierra Club

suggests, indicate it will allow five years from September 2013 to install controls. Rather, the EPA indicates that it will “determine, for each source subject to BART, the period of time for BART compliance that is as expeditious as practicable, as required by 42 U.S.C. § 7491.” (*Id.* at 5.)

7. The Sierra Club’s current suggestion that the Company has five years after EPA takes final action on the Wyoming Regional Haze SIP is contrary to their public comments filed in the EPA’s Regional Haze docket where Sierra Club, along with other conservation organizations, concludes “because EPA’s initial proposal to require BART installation by 2016 best complies with the statutory requirement that BART be installed and operated ‘as expeditiously as practicable,’ 42 U.S.C. § 7491(b)(2)(A), we support EPA’s proposal over the alternative for Jim Bridger Unites 3 and 4.”

<http://www.regulations.gov/#!documentDetail;D=EPA-R08-OAR-2012-0026-0056>.)

8. Despite the EPA’s modified deadlines for action on the Wyoming Regional Haze SIP, neither the Wyoming DEQ nor the Wyoming Environmental Quality Council (the “EQC”) has amended the Deadlines or suggested that they will.

9. Emission reduction projects of this size are extremely complex, and take years to plan, permit, engineer, and construct. Completion of the Bridger SCR Project by the Deadlines will require the Company to keep to a tight planning and implementation schedule. The Company believes that Spring 2013 is the latest time in which it can commence the Project and meet the Deadlines in the most economical manner. (Teply Direct at 9.)

10. If this docket were stayed until September 2013 and PacifiCorp were to cease work, the SCR Project may not be able to comply with the Deadlines, and certainly not within the same cost parameters. If the Company were to cease work on the Project until September

2013, and then attempt to complete regulatory reviews and effectuate the necessary contracting, designing, engineering, and construction to meet the Deadlines, the cost of the project could potentially increase by millions of dollars.

ARGUMENT

I. The Motion to Stay Should Be Denied Because Wyoming Has Not Amended the SCR Implementation Deadlines.

The Commission should deny the Sierra Club's Stay Motion because the State of Wyoming has not amended the Deadlines under which the Company is obligated to install the SCR systems or otherwise meet the associated unit-specific emission limits. Specifically, the BART Settlement Agreement, the EQC Order, and the Wyoming SIP all require the Company to complete the SCR Project by December 31, 2015 for Unit 3 and December 31, 2016 for Unit 4. Neither the Wyoming DEQ nor the EQC has amended these Deadlines following the EPA's delayed action.

The Company cannot be forced to assume the risk of non-compliance with Deadlines based on the Sierra Club's unsupported theory that the State's Deadlines are not binding, that Wyoming will accommodate new timeframes, or that the EPA will propose extension of deadlines in contrast to its previously proposed action on Jim Bridger Units 3 and 4. Thus, without the express agreement or consent by Wyoming amending the Deadlines to accommodate the EPA's delayed action, the Company must move forward with the SCR projects. Because the Company must move forward, the Commission should deny the Motion to Stay and consider the Company's Voluntary Request on the current schedule so that the Commission can render a decision within a timeframe for the Company to meet the Deadlines.

II. A Stay Is Not Necessary Because the EPA’s Final Action Will Not Obviate the Need for SCR Systems to Be Installed at the Jim Bridger Plant.

Beyond the fact that Wyoming has not amended the Deadlines and EPA has not amended the Deadlines for the Jim Bridger SCR projects², the Commission should deny the Sierra Club’s Motion because the EPA’s action is not expected to materially impact the proposed SCR Project. While the Sierra Club relies on the “uncertainty” of what the EPA’s ultimate standards may be as the basis for its Motion, the Sierra Club has overstated that uncertainty. Indeed, the only “uncertainty” that exists is what the EPA’s emission limits will be, *not* the technology to be used. In other words, the EPA’s review will be to assess emission limits – not technology standards.

Contrary to the Sierra Club’s suggestion, the uncertainty of what the EPA’s ultimate emission standards might be does not impact the need to install the SCR systems at Bridger. If the EPA’s final determination were to include standards moving the NOx limits downwards – as the Sierra Club may suppose – those new emission limits, as long as they were appropriately established and reasonably achievable with SCR technology at the Jim Bridger facility, could be accommodated in the context of the ongoing contract negotiations and ultimate SCR Project design. Nonetheless, the Company believes that the existing emission limits are appropriately established and would oppose efforts to lower the emission rates. However, the Company would incorporate new emission limits into its contractual emissions-performance guarantees, should such compliance obligations be incorporated into the EPA’s final action.³

Potential changes in emission limits, however, will not render the need for SCR systems unnecessary. If anything, the EPA’s final action is expected to simply reinforce the need for the

² The EPA has amended its deadline to take final action on the Wyoming Regional Haze SIP but has not amended any Deadlines for the Company.

³ While incorporating more aggressive emission limits may be contemplated, the incremental costs have not yet been factored in to the Company’s analyses. At this time, incorporating such costs is not expected to change the Company’s recommended installation of SCR.

SCR systems at the Jim Bridger Plant. The Sierra Club has not suggested anything to the contrary – nor can it. Thus, given that the SCR technology will still be required, there is no practical reason to stay this docket.

III. The Sierra Club Ignores the Cost that a Delay Would Impose Upon Customers.

The Stay Motion anticipates that all parties stand down from taking any further action until the EPA issues its final determination on September 27, 2013. But the Sierra Club ignores the negative consequences that such a delay could have on the Company's customers. If this docket were stayed until EPA is expected to take final action in September 2013, and if the state of Wyoming or the EPA demanded compliance with the current Deadlines, timely implementation of the Jim Bridger Unit 3 SCR may not be practicable – or perhaps even possible – and would certainly incur additional costs. Under such circumstances, the Company would have to attempt to obtain competitive pricing for an exceedingly accelerated implementation cycle. However, assuming the Company could obtain such pricing, the increased costs would be significant, and could reach into the millions of dollars. Those increased costs and the additional risk of timely performance under such an accelerated schedule would have to be fairly borne by the Company's customers. But again, neither the Company nor its customers should bear the increased risk that the Sierra Club is inviting.⁴

IV. A Stay Would Circumvent the Purpose of the Statute Allowing for Voluntary Review of a Resource Decision.

As stated above, as long as Wyoming requires adherence to the Deadlines, the Company cannot, from a practical perspective, stop its preparations to wait for the EPA's final decision without incurring significant costs, and potentially failing to meet its compliance obligation

⁴ Indeed, it is possible that the delay would result in increased pricing even if new deadlines are imposed. The simple likelihood of price increases over decreases indicates the labor and materials to complete the project will cost more in future dollars, even if the project is completed without a "rush."

Deadlines. Given this reality, a stay in this docket would frustrate the very purpose of Utah Code Ann. § 54-17-401 et seq (the “Review Statute”). The purpose of the Review Statute is to set forth an avenue for providing meaningful stakeholder review and a level of certainty on prudence and ratemaking for a resource-decision before significant work commences. But here, a stay would circumvent that purpose by denying the Company the opportunity to have its resource decision reviewed by the Commission prior to having to commence significant work.

Specifically, in this case, the Company has sought the Commission’s review of the SCR Project, which is exactly the type of resource decision that the Commission should be reviewing. The Company has filed testimony that spring 2013 is the latest time in which it can commence the Project and meet the Deadlines in the most economical manner. In other words, the Company cannot put the project on hold until September and still meet the Deadlines in the most economical and cost efficient manner, if at all.⁵

Thus, a stay in this docket would delay any possible hearing date well beyond the time that the Company must complete the contracting process for the SCR Project and commence implementation. Hence, a stay would have the practical effect of denying the Company the opportunity to have its decision reviewed under the Statute prior to starting the work. Indeed, if the Commission was to issue a stay, the Company would likely have no alternative but to continue planning, preparing, and installing the SCR systems at the Bridger Plant.

The Commission should reject this outcome. The Company has appropriately managed the multitudes of analyses, competitive market procurement practices, permitting obligations,

⁵ Staying this Commission’s review of the SCR Project could set a harmful precedent for future delays as well. For example, there is no guarantee that the EPA will issue its final determination in September 2013. It very well could delay action once again. Moreover, even if the EPA were to issue its final determination in September 2013, it is likely to be litigated, which could be used by the Sierra Club to justify even further delays. Unless Wyoming agrees to alter the Deadlines accordingly, the Commission should not allow itself to be put into a position to stay this docket until the EPA’ final determination actually becomes final.

project development activities, and regulatory review filings to position the SCR Project for this Commission's review and for successful implementation. The Commission should not permit the Sierra Club to squeeze the Company into a box in which Commission review cannot realistically occur in time for compliance Deadlines to be met in the most cost effective manner for customers.⁶

CONCLUSION

The Commission should deny the Motion to Stay. Unless Wyoming extends the Deadlines to correspond with the EPA's delayed final action, the Company must consider the current Deadlines operative and binding. In order to meet those Deadlines, the Company would have to continue working toward completion. Moreover, there is no practical need for a stay because EPA's final determination is not expected to affect the need for the SCR Projects. In fact, the only practical effect a stay would have in the docket would be to deny the Company the opportunity to have its resource decision reviewed by the Commission before substantial work on the project will be completed. The Company should not be forced to gamble, as the Sierra Club does, that the Deadlines are not binding or will be vacated. The Sierra Club's Motion to Stay should be denied.

⁶ The Commission should be aware that the Company will be requesting a one-month extension for filing its 2013 Integrated Resource Plan ("IRP") due to the EPA's recent action in Arizona relating to that state's Regional Haze SIP and the EPA's delayed final action relating to the Wyoming Regional Haze SIP from until April 30, 2013. The Company's requested extension, however, is distinguishable from the stay requested by the Sierra Club. First, the Company's request is for a one-month extension, while the Sierra Club is seeking a stay until September at the earliest. Second, the purpose and nature of the Company's request to extend the IRP schedule is different. The Company's request for a one month extension to the IRP schedule is to allow the Company the time needed to conduct the necessary modeling work to account for the EPA's action regarding the Arizona SIP issued on December 5, 2012. Moreover, an extension to the IRP deadline will not violate potential independent state obligations to implement emission controls, and will not impact the start date for any new construction. In addition, unlike the Sierra Club's proposed stay, there are no significant costs associated with extending the IRP schedule.

DATED this ____ day of January, 2013.

Respectfully submitted,

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