

BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF)
ROCKY MOUNTAIN POWER FOR)
APPROVAL OF A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY TO)
CONSTRUCT SELECTIVE CATALYTIC)
REDUCTION SYSTEMS ON JIM BRIDGER)
UNITS 3 AND 4 LOCATED NEAR POINT OF)
ROCKS, WYOMING)

Docket No. 20000-418-EA-12
(Record No. 13314)

ORDER DENYING MOTION FOR A STAY OR CONTINUANCE
PENDING FINAL EPA ACTION
(Issued February 4, 2013)

This matter is before the Wyoming Public Service Commission (Commission) upon the Sierra Club's *Motion for a Stay or Continuance Pending Final EPA Action (Motion)* filed in the above-docketed matter.

The Commission, having reviewed its files in this matter, Sierra Club's *Motion*, the other parties' responses and their comments at the open meeting, and being otherwise fully advised in the premises, FINDS AND CONCLUDES:

1. On January 12, 2011, the Wyoming Department of Environmental Quality (WDEQ) submitted a State Implementation Plan (SIP) to the United States Environmental Protection Agency (EPA) to address the requirements of the Clean Air Act. On June 4, 2011, the EPA issued a Notice of Proposed Rulemaking (NOPR) which would, in part, approve the SIP's Best Available Retrofit Technology (BART) determination for Jim Bridger Units 3 and 4 (both of which are coal-fired). EPA final action was expected to occur in October 2012.

2. On August 7, 2012, Rocky Mountain Power (RMP or the Company) applied for a Certificate of Public Convenience and Necessity (CPCN) to construct the Selective Catalytic Reduction Systems (SCR) on Jim Bridger Units 3 and 4 (the projects) located in Sweetwater County, Wyoming. The application was filed in compliance with a *Stipulation and Agreement (Stipulation)* approved by the Commission in Docket No. 20000-384-ER-10 (Sub 384). RMP stated that the projects are required to operate Unit 3 beyond December 31, 2015, and Unit 4 beyond December 31, 2016, in compliance with environmental permits and emissions requirements. RMP proposed to begin construction on the projects upon receipt of a CPCN and stated that construction would be complete by December 31, 2015.

3. The Commission issued its *Notice of Application* with a protest deadline of September 27, 2012, for interested parties to file a public comment, statement, protest, intervention petition or request for a public hearing. The Office of Consumer Advocate (OCA), Wyoming Industrial Energy Consumers (WIEC), Powder River Basin Resource Council (PRBRC), and Sierra Club were admitted as parties.

4. The Commission originally set the public hearing for March 4-6, 2013, approximately four months after the EPA final action was expected.

5. On December 21, 2012, Sierra Club filed its *Motion* requesting a stay or continuance of this proceeding until the EPA issues its final BART determination under the Clean Air Act's Regional Haze Rule which will address the need for and cost effectiveness of the SCR controls at Jim Bridger Units 3 and 4. Sierra Club stated the EPA will now issue a newly proposed BART determination for Jim Bridger by March 29, 2013, with its final rule to be issued by September 27, 2013. The purpose of this proceeding 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. According to Sierra Club, without the EPA's BART determination, the type and number of controls, the required emission limits and the relevant compliance deadlines at the Jim Bridger coal plant are unknown. Sierra Club stated the Commission and Intervenor cannot effectively evaluate the public convenience and necessity of SCR at Jim Bridger Units 3 and 4 while the primary environmental regulation prompting the retrofit remains uncertain. Therefore, Sierra Club requested a continuance or stay of this proceeding until the EPA has issued a final BART determination for the Jim Bridger facility.

6. On December 27, 2012, WIEC submitted its *Response in Support of Sierra Club's Motion for a Stay or Continuance Pending Final EPA Action* noting that the circumstances have materially changed since the EPA requested and received an extension of time to issue its final rulemaking regarding emission controls for Bridger Units 3 and 4 until September 27, 2013. WIEC argued a stay in this proceeding would allow RMP more time to address what it termed numerous errors and omissions related to the instant application. WIEC further argued a stay would secure regulatory certainty, avoid wasted time and resources and spare ratepayers the higher costs of unnecessarily early construction. On January 10, 2013, WIEC filed its *Supplemental Response in Support of Sierra Club's Motion for a Stay or Continuance Pending Final EPA Action* to more directly address the newly-announced delay in EPA final action that gave rise to Sierra Club's *Motion*.

7. On January 10, 2013, OCA filed its *Response in Opposition of Sierra Club's Motion for a Stay or Continuance Pending Final EPA Action* which argued that the *Stipulation* in Sub 384 contemplated [i] RMP receiving authority to proceed with the application in the instant matter and [ii] an agreement that the parties to the *Stipulation* would not challenge prudence or cost recovery of the facilities in future rate cases, with certain exceptions. OCA contended that allowing the design process to go forward will not put customers at risk, while a delay could result in the Company having to pay more to install the SCR systems on what could be an accelerated schedule. OCA believed that the emission limits established in WDEQ's SIP for the Jim Bridger Units 3 and 4 are unlikely to change in any re-proposed rule by the EPA. OCA noted the SCR system RMP proposes to install is considered BART and no better technologies are available.

8. On January 10, 2013, RMP filed its *Memorandum in Opposition to Sierra Club's Motion for a Stay or Continuance Pending Final Action (Response Memorandum)*, arguing the *Motion* should be denied because [i] WDEQ has not amended the SCR Implementation deadlines; [ii] a stay was not necessary because the EPA's final action will not obviate the need

for SCR Systems at the Jim Bridger Plant; [iii] a delay would increase costs to be borne by customers; and [iv] a stay would circumvent the purpose of the Company's Sub 384 *Stipulation* allowing for a CPCN proceeding prior to incurring the costs associated with the SCR.

9. Sierra Club's *Motion* came before the Commission for consideration at its open meeting of January 17, 2013. Paul Hickey and Daniel Solander, counsel for RMP, Catherine Wollums, counsel for PacifiCorp, and Chad Teply, appeared on behalf of Rocky Mountain Power. Robert Pomeroy and Sarah Rundell appeared for WIEC; Ivan Williams, counsel for OCA, and Bryce Freeman appeared for the OCA; Gloria Smith, counsel for Sierra Club, and Shannon Anderson, counsel for PRBRC, also appeared. Leo Standers, OCA consultant, participated via telephone. Smith presented Sierra Club's *Motion*, stating RMP filed its application seeking preapproval of the Jim Bridger retrofit to comply with the Regional Haze Rule. She stated the WDEQ proposed control technology and emission limits but the EPA has neither approved nor disapproved those requirements. Until it does, the Company will not know the exact deadlines or emission limits. Therefore, Sierra Club requested a stay of this matter until such time as the EPA makes its final determination so that the Commission can make a fully informed decision.

10. Smith addressed some of the points raised by RMP and OCA arguing that, under the Regional Haze Rule, EPA could require all units at Jim Bridger be retrofitted with SCR by 2018. Sierra Club wants the Commission to have the opportunity to review costs, alternatives, and the reasonableness of retrofitting the entire plant by 2018. Upon questioning by the Commission, Smith admitted there was no better technology for NO_x control than SCR. Sierra Club wants SCR installed on all four Jim Bridger units but thinks it advisable to wait until EPA issues its final determination so that RMP knows: [i] what control technology and emission rates will be allowed, and [ii] the deadlines for installation of control technology at all four Jim Bridger units. She noted the EPA issued a .05 emission limit in Arizona, yet here RMP proposes to comply with a .07 level. She agreed the .07 emission limit would not go up but stated an approved emission limit of less than .07 could cause additional costs which might affect RMP's ability to complete the project.

11. Pomeroy stated that WIEC believed that for every year the proposal can be delayed, customers could see a savings of \$22 million. Regarding RMP's argument that it is obliged to complete the SCR projects on the Jim Bridger plant by 2015 and 2016 pursuant to a Settlement Agreement between PacifiCorp and WDEQ, Pomeroy stated RMP could request an extension of those deadlines rather than moving forward now. He stated the Settlement Agreement contemplated requests for extensions in compliance dates if there were changes in federal requirements. WIEC and Sierra Club expressed concern that RMP has not asked WDEQ for an extension of the deadlines in light of EPA's recent actions.

12. Hickey stated that the Company has an independent legal obligation under the BART Agreement with WDEQ to complete the work on Jim Bridger Units 3 and 4 by December 31, 2015, and December 31, 2016, respectively, regardless of further action by EPA. If the Commission went forward with the public hearing and denied RMP's application for a CPCN, it would still have a legal obligation to meet these deadlines. Wollums stated she spoke with WDEQ's counsel who said RMP has a legal obligation regardless of the EPA's actions. Counsel

stated to Wollums that WDEQ wants to enforce the existing deadlines, emission requirements, and remediation plans found in the BART Agreement. According to Hickey, the *Motion* should be denied because [i] delaying implementation of the planning process would have negative effects on rate payers due to an increase in the cost of compliance; and [ii] delays could cause more forced outages which would result in the loss of generation from a lower cost generation source with the resultant higher costs falling on rate payers. Hickey argued that customers should not be placed at risk for these additional costs. He stated that EPA final action is not expected to materially alter the proposed SCR project, the only uncertainty being what emission limits EPA may require. Hickey represented that, if EPA approved an emission limit of 0.65 (lower than the RMP proposed .07 limit), the Commission would not need to reopen the hearing. He said RMP was making an effort to plan and design the SCR controls with the flexibility to adjust the emission levels and the associated costs incurred in meeting a .65 emission limit rather than a .07 limit, i.e. RMP considers a change from .07 to .65 to be modest and within expected cost estimates.

13. For RMP, Teply addressed appropriate emission limits, stating the .07 is an industry standard but he was seeing lower limits of .05 which he believed to be realistic in certain states on certain units. He stated RMP believed the .07 emission limit established for Jim Bridger is reasonable and appropriate, with anything lower not being either reasonable or necessary. Teply said the project is still in its design and planning phase and construction has not begun. If EPA changes emission requirements, RMP could implement them without a great deal of additional cost. RMP has included room for adjustment to required emission limits in its bid process, requiring contractor guarantees their technology would accommodate a range of emission control limits. OCA counsel Williams said ratepayer risks described by WIEC can be mitigated by the Commission in a general rate case. OCA was in support of denying the *Motion*. Anderson offered comments in support of Sierra Club's *Motion* stating PRBRC supported stronger emission limits.

14. We find and conclude that RMP has a legal obligation under the BART Settlement Agreement with WDEQ to complete the work on Jim Bridger Units 3 and 4 by December 31, 2015, and December 31, 2016, respectively. This obligation is independent of EPA actions. We are concerned that, if RMP is not in compliance with the SIP by the December 31, 2015, deadline, it would have to shut down Jim Bridger Unit 3. Loss of this low cost resource could drive up the cost of electricity for ratepayers. This problem would be similarly exacerbated if RMP failed to meet the December 31, 2016, deadline for Jim Bridger Unit 4. The only way to avert this expensive problem is to proceed with the public hearing in March 2013. Because the project is in its design and planning phase and construction has not begun, if the EPA were to alter emission requirements, RMP would still be able to implement any necessary changes. RMP has included room for adjustment to emission limits in its bid process, requiring contractor guarantees that their technology can meet a range of levels of emission limits. The hearing in this matter will proceed but must be rescheduled to allow the parties time to adequately prepare for the hearing.

IT IS THEREFORE ORDERED:

1. Pursuant to open meeting action taken on January 17, 2013, Sierra Club's *Motion for a Stay or Continuance Pending Final EPA Action* is denied.

2. This *Order* is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on February 4, 2013.

PUBLIC SERVICE COMMISSION OF WYOMING



ALAN B. MINIER, Chairman



STEVE OXLEY, Deputy Chairman



WILLIAM F. RUSSELL, Commissioner



STEVE MINK, Assistant Secretary