

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 POST-HEARING BRIEF

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Pursuant to the direction of the Utah Public Service Commission (“Commission”) on March 7, 2013, Sierra Club hereby submits its post-hearing legal brief. In its filings and testimony, Rocky Mountain Power failed to show that installation of the proposed selective catalytic reduction (“SCR”) systems on Jim Bridger units 3 and 4 is clearly in the best interest of Utah ratepayers. Rocky Mountain Power also failed to include a full, plant-wide analysis of the impact that EPA’s final best available retrofit technology (“BART”) determination will have on all four of the Jim Bridger units. **Sierra Club therefore recommends that the Commission deny Rocky Mountain Power’s request for approval without prejudice** and provide the Company with the opportunity to file a subsequent application that includes a full, plant-wide analysis of the least-cost, risk adjusted alternative to comply with EPA’s final BART determination for Jim Bridger units 1, 2, 3, and 4. The Commission should further direct the Company to adequately address in a future proceeding the deficiencies and uncertainties identified by Sierra Club and other parties in this proceeding.

I. INTRODUCTION

Rocky Mountain Power is requesting that the Commission essentially guarantee its recovery of a [REDACTED] capital project that addresses only half of the Jim Bridger facility. Rocky Mountain Power requests preapproval of these substantial costs to install SCR at units 3 and 4 without knowing: the emission limits EPA will ultimately require in its final BART determination, along with the timeline and specific technology for installing controls on all four units. The Company’s application will be premature until EPA takes final action; until then, the Company’s Bridger BART expenses are offered in a piecemeal fashion that omit any discussion of BART compliance for units 1 and 2. The Commission simply does not need to rush its decision on this matter. The Company will have a full and fair opportunity to present its case to the Commission in a future proceeding after it knows the BART controls that EPA will require on all units, along with an emission limit and compliance schedule.

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Rocky Mountain Power's analysis is also flawed because it ignores any impact of installing SCR on units 1 and 2. To be clear, units 1 and 2 are also subject to BART under the Clean Air Act because those units, like units 3 and 4, commenced operation between 1962 and 1977 and cause air quality impacts on national parks and wilderness areas. EPA will likely require the same control technology on Jim Bridger units 1 and 2, i.e., SCR, by 2018 or 2019.¹ In fact, EPA would have no legal basis to extend BART compliance on units 1 and 2 past the statutory five-year compliance time.² Significantly, the Commission will be required to review capital expenditures for BART controls at units 1 and 2 in a future docket regardless of its decision in this proceeding. It does not make sense to separate the prudence review of approximately \$600 million in capital costs for SCRs on all four units into two separate, resource-intensive dockets. The Commission should review the entire plant in a single docket after EPA has issued its final BART determination for all four units. At that time, the Commission will have the benefit of a more complete evidentiary record that will allow it to judge the prudence of the Company's decision. The Commission does not need to fully commit Utah's ratepayers to a course of action based on incomplete information.

II. LEGAL STANDARD

Under traditional ratemaking principles, Rocky Mountain Power bears the burden of proof in a rate case to show that its expenditures are prudent.³ "The Commission's evaluation of prudence will be based on the reasonableness of the Company's decision-making process given the information available at the time the decision is made."⁴

¹ See 77 Fed. Reg. 33053, June 4, 2012.

² 42 U.S.C. § 7491A .

³ Comm. of Consumer Services v. Pub. Serv. Comm'n of Utah, 2003 UT 29, 75 P.3d 481, 486 ("[the utility holds the] burden of establishing that its decision to enter into the contract and the costs it agreed to were prudent").

⁴ *In re Questar Gas Co.*, Docket No. 07-057-01, Dec. 14, 2007, 2007 WL 5087078, *13 (Ut. P.S.C. 2007).

In this proceeding, Rocky Mountain Power relied for the first time on Utah Statute 54-17-402 to make a voluntary request for preapproval of a resource decision.⁵ Utah Statute 54-17-402 directs the Commission to, “determine whether the [resource] decision...(b) is in the public interest, taking into consideration: (i) whether it will **most likely** result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to the retail customers of an energy utility located in this state...” (emphasis added). If the Commission grants approval, then Rocky Mountain Power will carry a presumption of prudence into a future request for recovery of the [REDACTED] expenses identified in this docket.⁶ If the Commission does not approve the resource decision now, then Rocky Mountain Power may later request recovery of the SCR retrofits in a subsequent proceeding, based on the information available to it at the time it makes the relevant decisions to incur the capital costs.⁷

III. ARGUMENT

Rocky Mountain Power has not demonstrated that installation of the proposed [REDACTED] SCR retrofits is in the public interest. There are enormous uncertainties and deficiencies evident in the record that make it impossible for the Commission to determine that installation of the SCRs will most likely result in the lowest reasonable cost to retail customers in Utah. Sierra Club agrees with the standard articulated by the Office of Consumer Services for preapproval under Section 54-17-402: “the benefits to be derived from the resource must be clear or pre-approval must be denied.”⁸ Based on the current record before the Commission, the benefits of spending [REDACTED] on Bridger units 3 and 4 are not clear at this time. Therefore, the Commission must deny the Company’s request for preapproval.

The consequences of Commission approval of Rocky Mountain Power’s request in this proceeding would create a substantial risk for ratepayers. Preapproval now would constrain the

⁵ Direct Testimony of Cheryl Murray, p.2 line 38.

⁶ *Id.* at § 54-7-13.4(4)(c).

⁷ *Id.* at § 54-17-402(4)(b).

⁸ Direct Testimony of Cheryl Murray, p.3, line 52-53.

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Commission's future ability to review the prudence of the Company's ongoing decision-making and would remove the incentive for Rocky Mountain Power to continue to scrutinize lower cost alternatives to the installation of SCR retrofits at Jim Bridger. Under Utah Statute 54-7-13.4, if the Commission grants preapproval of the SCRs in this docket, then "the commission shall presume the prudence of the utility's capital costs up to the projected costs specified in the commission's previous...resource decision order." In other words, if the Commission grants Rocky Mountain Power's current request for preapproval, then the Company will carry a [REDACTED] presumption of prudence into a subsequent request for cost recovery. This presumption of prudence is currently not warranted because there are several pending key decision points that cannot be made until EPA issues its final BART determination for all four units.

If the Company chooses to proceed with the initial steps of installing the SCRs by May 15, 2013, then it should do so at its own risk and with the clear understanding that its decisions will be subject to a later prudence review. It is impossible to say now whether continuing forward with all aspects of the SCR projects at Bridger will be the most prudent course of action in light of the substantial uncertainties remaining in this case. This uncertainty is precisely the motivation that will encourage the Company to make reasonable and prudent management decisions as circumstances develop and change. Granting the Company an unlimited presumption of prudence would remove that uncertainty and would therefore remove the incentive for Rocky Mountain Power to continue to thoroughly scrutinize its decisions in the months to come.

Rocky Mountain Power's desire for certainty in the recovery of the SCR expenses would benefit its shareholders to the detriment of its ratepayers. The Company would be motivated to continue with the SCR retrofits regardless of changes in future circumstances such as EPA's BART decision, changes in gas price forecasts, the potential for new CO2 prices, or any other unforeseen changed circumstance

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that may occur between now and the time that final decisions on future expenses must be made. To be clear, Sierra Club does not suggest that Rocky Mountain Power should remain paralyzed and inactive until all uncertainties regarding the future of Jim Bridger are resolved; the practical reality of the electric service industry require utilities to make decisions with less than perfect information from time to time. With respect to the decision to begin a construction schedule to meet Wyoming's proposed 2015 compliance date, the Company must weigh (1) the risks of incurring costs by initiating a project before EPA's final BART determination, compared to (2) the risks of incurring costs from a potentially compressed construction schedule. Whatever course of action Rocky Mountain Power chooses, it must be required to demonstrate the prudence of that decision in a later proceeding once all facts are known.

The Commission should not substitute its judgment in this proceeding for Rocky Mountain Power's ongoing managerial obligations. Instead, the Commission must require the Company to make its own decisions as circumstances develop with the knowledge that the Company will face full scrutiny of all of its current and future decisions related to the SCR projects. This is precisely the type of review that Utah contemplates under traditional ratemaking principles, and it will be the standard of review if the Commission denies Rocky Mountain Power's application in this proceeding. In contrast, granting preapproval now would effectively guarantee that the Company could recover up to [REDACTED] in capital expenses merely by sticking to its plan to install SCRs at Bridger units 3 and 4. There would be no incentive for the Company to continue to critically evaluate the impact that changing circumstances may have on the economic viability of Bridger units 3 and 4 compared to other lower-cost alternatives. Therefore, based on the record that is before the Commission today, and in light of the numerous deficiencies described herein, the Commission must deny Rocky Mountain Power's request for preapproval to install the SCR retrofits at Jim Bridger 3 and 4.

A. It is Premature to Grant Approval of the SCRs Prior to EPA's Final BART Determination

The current record is insufficient to make a resource decision of this magnitude. Even after EPA's anticipated March 29, 2013 proposed BART-determination for the Bridger plant, the Commission will not have sufficient clarity to make an informed decision. The proposed ruling is just that: proposed. EPA will take public comment on its proposal, and then may substantially change the draft rule in its anticipated September 27, 2013 final rule.⁹ The fact remains that the Company is requesting preapproval to proceed with a massive capital project to comply with federal law before the specific federal requirement is finalized.

The state's proposed 2015/2016 compliance dates will be irrelevant if EPA disapproves the proposed Wyoming SIP.¹⁰ However, until EPA issues its final rule, neither Rocky Mountain Power nor the Commission will know what the actual compliance dates will be. In deciding whether or not to proceed with the initial phases of construction by May 15, 2013, Rocky Mountain Power must consider the risk of incurring sunk costs and potential contract penalties if it issues a notice to proceed to its contractors to meet state compliance time lines and construction parameters that may become irrelevant. That risk must be compared to the estimated risk of incurring an additional [REDACTED]¹¹ in increased costs that could result under a compressed schedule if the Company waited for a final EPA rule and the proposed Wyoming compliance dates were approved in that final EPA rule.¹² It is

⁹ See Rebuttal Testimony of Chad A. Teply, p. 14, lines 3-8 (outlining the currently anticipated schedule of the EPA ruling). EPA may ultimately delay this schedule, subject to modification to a court approved consent decree.

¹⁰ Sierra Club will address the impact of EPA's pending action in more detail in the subsequent brief requested by the Commission.

¹¹ Transcript, p.84, line 4 (Teply).

¹² This later scenario is **very** unlikely. EPA has never required a source to install SCR controls sooner than five years from a final rule. Furthermore, 40 CFR 51.308(e)(1)(iv) requires sources "to install and operate BART as expeditiously as practicable, but in no event later than 5 years after approval of the implementation plan revision." If, as Rocky Mountain Power insists, the Company must issue notices to proceed to meet a 2015 deadline before the final BART determination, then it follows that a 2015 EPA deadline would not be "practicable."

imprudent, however, to guarantee [REDACTED] to this project by blindly assuming that EPA will approve the state of Wyoming's dates.

B. Rocky Mountain Power Improperly Relied on Coal Remediation Costs to Drive its Analysis in Favor of Installing SCR

Rocky Mountain Power's initial application attributed [REDACTED] of the PVRR(d) in favor of the SCR projects to its assumption that the Bridger mine would need to be remediated immediately if either Jim Bridger unit 3 or 4 stopped using coal.¹³ In its updated analysis, the Company made two corrections related to the Bridger mine: [REDACTED] in favor of SCR, and [REDACTED] against the case for SCR (a net change of [REDACTED] against the SCR).¹⁴ The impact of the Bridger mine on the PVRR(d) analysis therefore declined from [REDACTED] in the original analysis to [REDACTED] in the corrected analysis. This single issue still accounts for nearly 70% of the Company's estimate of [REDACTED] in overall benefit to install SCR.¹⁵

It was improper for the Company to attribute all of the Bridger mine surface remediation costs to the fate of Jim Bridger 3 and 4 in this docket. The Company did not account for the possibility that the surface mine could remain open,¹⁶ and it did not consider the possibility that the surface mine may close regardless of the outcome of this proceeding. It is highly likely that the EPA will require the installation of SCR on Jim Bridger units 1 and 2 within five years of the final EPA rule.¹⁷ Rocky Mountain Power has repeatedly stated that such a requirement would create a financial hardship for the Company and its ratepayers.¹⁸ As such, it is quite possible that a plant-wide analysis would show that an alternative to

¹³ Direct Testimony of Jeremy Fisher, p. 23, line 10.

¹⁴ Rebuttal Testimony of Rick T. Link, p.19, Table 1R.

¹⁵ Dr. Fisher also identified inconsistencies in the Company's different mining plans that resulted in a \$89 million inflation of the costs of surface mine remediation on a compressed and accelerated schedule. Surrebuttal of Jeremy Fisher, p. 8, line 18; *see, also*, Transcript, p.89 line 19 to p.90, line 8 (verifying the timing differences identified by Dr. Fisher).

¹⁶ Direct Testimony of Jeremy Fisher, p.23, line 15 to p.24, line 5.

¹⁷ *See* Proposed Wyoming BART Determination, 77 Fed. Reg. 33053, June 4, 2012.

¹⁸ Sierra Club Exhibit 35, p.7, July 12, 2012 Comments of PacifiCorp, Docket ID No. EPA R08-OAR-2012-0026 ("All of these costs [from accelerated and additional controls under the proposed FIP] will be put on the

installing controls on Jim Bridger units 1 and 2 would provide a lower-cost option for customers. If Jim Bridger units 1 and 2 are repowered or replaced in the near future, then the accelerated remediation costs that the Company has attributed to the closure of Jim Bridger 3 or 4 in this proceeding would occur regardless of whether or not the Company proceeded with the SCR installations on units 3 and 4. The Company's analysis ignored this consideration because it did not complete a full, plant-wide analysis of Bridger. If the surface mine remediation cost is removed from the analysis of units 3 and 4, or at a minimum evenly distributed over the entire plant, then the Company's case for proceeding with the SCR projects at 3 and 4 is substantially weakened.

C. Rocky Mountain Power Failed to Consider any Avoidable or Deferrable Costs Related to Transmission Planning

Rocky Mountain Power's analysis completely ignored the potential cost savings that might be available if the 700 MW of Jim Bridger units 3 or 4 were taken offline.¹⁹ On cross examination, Mr. Teply confirmed that removing Jim Bridger would have an impact on the transmission system.²⁰ He also confirmed that for a new resource decision, there are very detailed transmission requirements and potential costs that must be considered.²¹ However, the Company made no effort to analyze any savings from incremental avoidable transmission costs such as the Anticline to Populus segment of the Energy Gateway Project.²² Ignoring this potential cost savings in a retirement scenario unfairly biased the Company's analysis. This omission is particularly disconcerting given the Company's heavy reliance in its analysis on the indirect effects that changes in the Bridger mine remediation plan would have on their

backs of PacifiCorp and its customers in an extremely short time frame..."; *id.* at p. 8 ("PacifiCorp's Customers Cannot Absorb Increasing Environmental Costs, Particularly When Implemented in a Short Period of Time").

¹⁹ Direct Testimony of Jeremy Fisher, p. 21, lines 15-18.

²⁰ Transcript, p.46, lines 12-13 (Teply: "obviously there would be impacts to a transmission system if you lost 2,000 megawatts in a day").

²¹ *Id.* at p.46, line 19 to p.47, line 7.

²² Transcript, p. 101, lines 16-19 (Link). The Company's only sensitivity related to transmission assumed that 100% of the Gateway Project never existed. This sensitivity does not address the potential of avoidable incremental expenses related to Jim Bridger.

preferred outcome. The Company has cherry-picked costs to include or avoid in its analysis in order to support its preferred outcome.

D. The Company's Analysis is Highly Sensitive to Natural Gas and CO₂ Price Estimates

Rocky Mountain Power's own analysis shows that the decision to install SCR is highly dependent on natural gas and CO₂ prices. According to Figure 8R in the Rebuttal Testimony of Rick T. Link, all three of the low gas scenarios are unfavorable to SCR.²³ If the Company were to properly address the impacts of mine remediation and transmission costs, as discussed above, all of the data points in Figure 8R would shift toward the "SCR unfavorable" conclusion. Even without those adjustments, the Company's analysis shows that a change in natural gas prices or CO₂ price estimates impacts the conclusion of whether or not to install SCR. If natural gas price estimates drop, then it would be more beneficial for customers if the Company pursued an alternative to Jim Bridger.

The Company's analysis also includes a built-in assumption that any CO₂ price will automatically result in higher natural gas prices. For example, the Company's "low gas" estimate changes from \$3.41 to \$3.70 to \$3.78 depending on the CO₂ price assumption.²⁴ The same effect applies to the mid and high gas estimates. This linkage between natural gas and CO₂ prices means that the Company is diluting the potential cost implications of a CO₂ price. Mr. Link admitted that there is no empirical evidence to support this correlation, and Mr. Link stated that he was not familiar with contradictory economic models cited by other parties.²⁵

Similarly, CO₂ price estimates have an impact in their own right. The Company's current CO₂ estimates are among the bottom 22nd percentile of other utilities,²⁶ which means that the Company is underestimating the potential impact of CO₂ regulation compared to other utilities. In fact, the Company

²³ Rebuttal Testimony of Rick T. Link, p.34, Figure 8R.

²⁴ Rebuttal Testimony of Rick T. Link, p.29, line 568 to p.30, line 579.

²⁵ Transcript, p.110, lines 20-24 (Link).

²⁶ Surrebuttal Testimony of Jeremy Fisher, p. 22, line 20.

has assumed since the filing of its initial case that CO₂ price increases are *less* likely to occur.²⁷ This adjustment completely ignores the major policy developments of the past year related to CO₂ that include the reelection of President Obama, the increasing public discussion about the impacts of climate change related to Hurricane Sandy, prolonged droughts across the country, and severe wildfires in Colorado and other states.²⁸ Rocky Mountain Power is forcing its ratepayers to bet against any action on CO₂ regulation over the next ten years when the policy developments of just the past six months indicate that the national momentum on the issue is changing. This gamble is shortsighted and puts customers at risk.

IV. CONCLUSION

For the foregoing reasons, Sierra Club respectfully recommends that the Commission deny Rocky Mountain Power's request for approval **without prejudice** and allow Rocky Mountain Power the opportunity to file a subsequent application that includes a full, plant-wide analysis of the least-cost, risk adjusted alternative to comply with EPA's final BART determination for Bridger units 1, 2, 3, and 4.

DATED this 27th day of March, 2013.

Respectfully submitted,

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²⁷ Transcript, p.108, lines 6-14.

²⁸ Transcript, p.108, lines 2-5 (Link: "there are not changes that have occurred since that filing that would cause me to believe we need to reassess anything now").