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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 POST-HEARING BRIEF** **REDACTED VERSION**

INTRODUCTION

PacifiCorp dba Rocky Mountain Power (the "Company") respectfully submits this *Post-Hearing Brief* 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".

There is no dispute that Units 3 and 4 of the Bridger Plant are critical components of the Company's generation fleet serving Utah customers. Similarly, there is no dispute that under the

BART Settlement Agreement with the State of Wyoming, the associated Wyoming Environmental Quality Council Order, and the State of Wyoming Regional Haze State Implementation Plan, Units 3 and 4 cannot continue to operate beyond December 31, 2015, and December 31, 2016, respectively without meeting new NOx emission standards (the "Deadlines"). Further, there is no dispute that pending EPA action will also mandate emissions compliance obligations at Bridger Units 3 and 4. The issue faced by the Company, and now this Commission, is what course of action to take to maintain the benefits the Bridger Plant provides Utah customers in light of these state and federal regulations.

After extensive analysis of a range of options, the Company determined that the Project represents the least-cost compliance alternative to comply with the existing compliance obligations discussed above. Under Utah Code Ann. § 54-17-404, the Commission should approve the Project at the Company's projected share of cost of [redacted] without further updates. (*See* Exhibits CAT-1 at 6-7 & CAT-1.2.)

ARGUMENT

This Docket is the Commission's first opportunity to review a case under the *Voluntary Request for Resource Decision Review* statute, Utah Code Ann. § 54-17-401 *et seq*. (the "Statute"). In doing so, the Commission should be guided by the following considerations:

I. PURPOSE OF THE STATUTE

Stakeholders have long sought to provide input *prior* to large capital expenditures being made. Based in part on those concerns, the Utah legislature adopted the Voluntary Request process outlined in the Statute. The Commission *must* find the Voluntary Request Process has a purpose and incent the parties to utilize this process. Thus, contrary to the testimony of some that the Commission should simply defer a decision on the Project until the next rate case, which is the more "traditional" process, the Commission has an obligation to make a determination on the Project at

this stage; deferring all decisions on capital expenditures until the next rate case *following* an actual expenditure would render the Statute meaningless.

Moreover, the statutory language makes clear the legislative intent that the Commission should presumptively act when voluntary petitions are filed. Indeed, § 54-17-402(3) states:

> [I]n ruling on a request for approval of a resource decision, the Commission *shall* determine whether the decision:
> . . .
> (b) is in the public interest. . .

(Utah Code Ann. § 54-17-402(3)(b)(i) (emphasis added)). This Commission should not merely defer the decision to the next rate case.

A. Statutory Factors for Consideration

Section 402(3)(b) also identifies the factors the Commission should consider when ruling on a voluntary petition. According to the statute, the Commission should focus on whether an application "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." *Id*. at § 402(3)(b)(i). The Commission can also consider both long and short term impacts, risks, reliability, financial impacts on the utility, and other factors determined relevant by the Commission. *Id*. at § 402(3)(b)(ii)-(vi). Accordingly, while the Commission can consider all factors it deems relevant, the focal point of these considerations is to determine what will "result in the acquisition, production, and delivery of utility services at the lowest reasonable cost to retail customers in this state." *Id.*

B. Changes in Circumstance are Accounted for in the Statute

One argument offered by the few parties opposed to the Project was that facts or circumstances underlying this application *could* change in the future. These parties ask the Commission to deny the voluntary application because changes to environmental regulations *in the future* may result in additional equipment expenditures at some unknown point in time. The Company must concede that it is possible for future environmental regulations to require additional capital expenditures at Bridger or any of its plants. This is not a valid reason to deny the Petition

however. The Company (and this Commission) must act on the facts, circumstances and enforceable deadlines that are known now. Moreover, the Utah legislature planned for the possibility of changing circumstances when it adopted the Statute. Utah Code Ann. § 54-17-404(1)(a) states that "in the event of a change in circumstances or projected costs an energy utility may seek a Commission review and determination of whether the energy utility should proceed with the implementation of approved resource decision." That is, *if* there is a change in circumstances in the future, and *if* the Company believes that its proposed resource decision can no longer satisfy the changed circumstances, then the Company can seek a ruling from this Commission on whether to modify the Project. Moreover, § 54-17-403(1)(a)(iii) specifies that the cost recovery in this docket will be limited "up to the projected costs specified in the Commission's order." Accordingly, ratepayers are protected from any future costs being incurred without review. Finally, § 54-17-403(1)(b) also states that "*any increase from the projected costs* specified in the Commission's order. . . shall be subject to review by the Commission as part of a rate hearing under § 54-7-12" (emphasis added).

Hence, the fact that circumstances *may* change, or that costs *may* increase is not grounds to deny this Petition.[1]

II. PREAPPROVAL DOES NOT MODIFY THIS COMMISSION'S PRUDENCE REVIEW

Some of the special-interest intervention groups also argue that the Commission will have more information about EPA requirements and project costs if the Commission defers a decision on the matter until the next rate case, *after* the capital expenditures have been made. This argument erroneously presumes that any "new facts" learned in the future will help determine prudency.[2] However, under Utah law, the standard by which the Commission must determine prudency is to

[1]Thus, the DPU's arguments that the Commission should only conditionally approve the Project in concept, and review expenditures for prudence at a later date should be rejected. The Commission should approve, with finality, the amount requested in the Petition, which is based on estimated EPC costs. The Commission could condition approval to proceed upon obtaining a signed EPC contract and a Certificate of Public Convenience & Necessity in Wyoming. However, the pre-approved cost level should not change. Of course, if the Project's total actual costs exceed the pre-approved amount, the excess amount would be subject to a general rate hearing under § 54-17-403(1)(b).

[2]The Commission should also take judicial notice that the WRA, the entity now claiming the Commission should defer its ruling in order to acquire more information actually opposed Sierra Club's motion to stay this proceeding.

"focus on the reasonableness of the expense resulting from the action of the public utility *judged as of the time the action was taken*." Utah Code Ann. § 54-4-4(4)(a) (emphasis added). Accordingly, the Commission should reject any testimony by parties suggesting that the Commission should defer a review of the Company's actions until *after* those additional facts are learned. Even in a rate case a prudence review will examine what information was known to the Company as of *this* point in time. Testimony of intervenors claiming the approval should only come after more information is gathered and weighed is contrary to Utah Law. Such testimony also necessarily negates the legislative purpose behind the Voluntary Request for Approval Statute. Pre-approved decisions will always be made before "hindsight" is available to the Commission or Company.

III. ANALYSIS OF THE PARTIES' TESTIMONY

Based upon this legal analysis, the Commission should draw the following conclusions from the testimony provided by witnesses.

A. The SCR Project Is in the Public Interest Because it Will Allow the Company to Satisfy Its Environmental Obligations.

As put forward in the unrebutted testimony of Chad Teply and Cathy Woollums, the Project is in the public interest because it will allow the Company to comply with the BART Settlement Agreement, Wyoming law, the Wyoming Regional Haze Implementation Plan and the anticipated EPA requirements. The Settlement Agreement requires that the Company's emissions at Bridger Units 3 and 4 be reduced by 2015 and 2016 respectively.

1. Meeting the Required Emission Standards. It is undisputed that the proposed SCR technology is adequate to meet the new Wyoming emission standards.[3] Nor did any testimony contradict the Company's conclusion that SCR technology (and associated ancillary equipment) is the only appropriate technology to achieve required emission limits. (Confid. Ex. RMP___ (CAT-4) at 19-25; Teply Direct at 21 & 13-15.) The Company notes DPU witness Mark Crisp's testimony

[3]Even *if* the EPA were to require further reduced emission limits to 0.05 lb/mmBtu from the proposed 0.07 limit for the Jim Bridger Units 3 and 4, the SCR Project could accommodate those more stringent limits. (*See* Teply Surrebuttal at 2:18-3:10.) Accordingly, there is no benefit to playing "wait and see" with the EPA's forthcoming decision.

that the SCR technology is a "proven technology," the selection of which he "supports." (Crisp Direct at 7:114-115 & 10:180-181.)

2. Meeting the Deadlines. Emission reduction projects such as the Bridger Project are complicated, time consuming, and must be coordinated with other projects to ensure that service is not compromised. (Teply Direct at 30-31 & 47-48.) As explained above, the Bridger SCR Project must be completed by the Deadlines. As long as the Company can commence the Project this spring, the Company believes that it can meet the Deadlines in the most economical manner, completing the upgrades during planned outages. (*Id*. at 9.)[4]

The Sierra Club's witness Dr. Jeremy Fisher opined that the "Requirement for SCR is not necessary until 2018." (Fisher Surrebuttal Test. at 28:15.) The Sierra Club is wrong and Dr. Fisher has no basis on which to render such an opinion. Dr. Fisher does not account for the BART Settlement Agreement or other Wyoming deadlines. His supposition that Wyoming would alter its deadlines was proven wrong. Specifically, when the Company *again* requested the Wyoming DEQ to delay the Deadlines to "five years after EPA's approval of the Wyoming SIP or FIP issuance," the WDEQ said no. The WDEQ concluded that it "continues to stand by its . . . decision declining to extend the Settlement Agreement deadlines applicable to Jim Bridger Units 3 and 4." (Exhibits CSW-4SR & CSW-5SR at 2.)

B. The Bridger SCR Project Will Benefit Customers Because It Is the Least-Cost Compliance Alternative.

Not only will the SCR Project allow the Company to meet the requirements of the BART Settlement Agreement and anticipated EPA requirements, the Project is in the public interest because it is the least-cost alternative to do so. Even after incorporating the many adjustments proposed by

[4]The Company also notes the testimony of OCS witness Cheryl Murray that completing projects such as this during scheduled outages is preferable to Utah customers. (*See* Murray Surrebuttal at 7:143-146.)

intervening parties, the economic analysis show a [redacted] PVRR(d) in favor of the SCR Project as compared to the next best option (conversion to gas). (Link Rebuttal at 2.)[5]

1. The PVRR(d) Analysis Favors the SCR Option.

The Company has thoroughly examined the economics of the SCR Project to determine whether it is the least-cost compliance alternative. To do so, Company utilized the System Optimizer model ("SO Model") for its PVRR(d) analysis. The SO Model simultaneously and endogenously evaluates capacity and energy tradeoffs between making incremental investments required to meet emerging environmental regulations and a broad range of alternatives. In this way, the SO Model captures the cost implications of prospective investment decisions by evaluating net power cost impacts along with the impacts those decisions might have on future resource acquisition needs, which is particularly important when resource retirement and replacement is considered to be a potential alternative. (Link Direct at 3-4.)[6]

Moreover, in response to concerns raised by the intervening parties, the Company also made a number of changes to its modeling, including:

- Updated and expanded natural gas and CO2 price scenarios;
- Updated base-case natural gas and CO2 price assumptions aligned to the September 2012 official forward price curve;
- Updated coal-cost assumptions;
- Updated load-forecast assumptions;
- New sensitivity study removing portions of the Energy Gateway project; and
- A new sensitivity study for early retirement and resource-replacement alternatives.

[5]Significantly, DPU witness George Evans opined that the risk weighted benefit value of the Project is actually [redacted]—even a higher benefit than the Company's modeling demonstrates. (See Evans Surrebuttal at 4:53.)

[6]OCS witness Falkenberg recommended that the Commission rule that the Company be required to utilize GRID modeling for future filings. First, the Company notes that such a request goes beyond the scope of this docket. Second, the Company notes that Mr. Falkenberg ultimately concluded that the Company's updated SO runs resulted in very similar PVRR(d) results as his GRID Model run (Falkenberg Surrebuttal at 3:67-70.) He further agreed the Company has now addressed his modeling concerns (*Id.* at 9:188-189.) Therefore, any request to require particular modeling runs in future cases should not be addressed in this docket and the modeling runs for this Project have now satisfied even the DPU and OCS witnesses who initially questioned it.

(See Link Rebuttal at 1:16-2:37.)[7]

This analysis concluded that implementation of the SCR Project is the least-cost alternative. The results demonstrate that the SCR Project is favorable to the next best alternative (natural gas conversion) under all base- and high-natural gas price scenarios at all assumed CO2 price levels. In these scenarios, and as shown in Exhibit RMP __ (RTL-5R), the PVRR(d) ranged from [redacted] (base gas price and high CO2 price) to [redacted] (high gas price and zero CO2 price) in favor of SCR. (*Id.*; *see* Link Rebuttal at 29:560-565.) The PVRR(d) in the base-case scenario – which represents the Company's best estimate of relevant conditions -- favored SCR by [redacted]. (*Id.* at 2.) Moreover, as shown on Confidential Exhibit RMP___(RTL-7R), levelized CO2 prices over the period 2016 through 2030 would need to exceed $30 per ton, more than three times the base case nominal levelized CO2 price assumption, to achieve a *breakeven* PVRR(d). (*Id.* at 32.)

2. Intervenors Have Not Demonstrated Any Lower-Cost Alternative.

None of the Intervenors have demonstrated that a realistic lower-cost alternative exists that would allow the Company to comply with the BART Settlement Agreement or anticipated EPA regulations. After the Company made various modifications to its SO modeling in response to the DPU's and OCS's concerns, both the DPU and the OCS rescinded their challenges to the modeling.

For their part, the Sierra Club and Western Resources Advocates ("WRA") make several overreaching and unpersuasive arguments regarding the Company's economic modeling. First, the Sierra Club's witness Dr. Fisher states that the Company's analysis "shows a *marginal*, at best outcome, for ratepayers." (Fisher Direct at 4 (emphasis added).) A PVRR(d) of [redacted], however, cannot honestly be characterized as "marginal." Moreover, even if [redacted] is considered "marginal" by some, it is still the lowest cost solution for Utah ratepayers—the standard adopted by the Utah legislature.

[7]That the Company is willing to collaborate with and make adjustments as requested by stakeholders should be incented; the Commission should reject WRA's suggestion that revisions are grounds to deny the Petition.

Second, the Sierra Club and WRA challenge the Company's CO2 prices (ranging in the base case from $16/ton in 2022 to $23/ton in 2030)[8] as being too low. These criticisms of the Company's CO2 price estimates, however, are misplaced. Indeed, *there is no current CO2 price*, and if or when there will be is speculation.[9]

Third, the Sierra Club challenges the Company's assumption that there would be a relationship between gas prices and CO2 prices (assuming there was a CO2 price) at generation plants. That assumption, of course, cannot be proven or disproven empirically because there is no current CO2 price. However, that such a relationship would exist if there were a CO2 price is a straightforward principle of economics: if the CO2 price goes up, then the demand for natural gas as an alternative to coal would go up, resulting in a corresponding increase in natural gas prices. And a number of forecasters including the U.S. Energy Information Administration recognize that such a relationship would likely exist. (*See* Link Rebuttal at 24-26.)

Fourth, the Sierra Club and WRA argue that the Company did not adequately study potential avoided transmission costs relating to the Gateway Project. This criticism is improper on several levels. First and foremost, the Company has not included in this Docket any request to approve any funds related to the Gateway Project. (Link Rebuttal at 36:726-728.) No part of the Gateway project is driven by the decision to proceed with the SCR Project. (*Id*. at 36:709-711.) Additionally, the Company ***did***, in fact, consider Gateway. In response to the Sierra Club's criticism, the Company also modeled a scenario removing Gateway West and South. The results of that model also favored the SCR option, with a PVRR(d) of [redacted]. (*Id*. at 37:741 to 38:744.)

Fifth, the Sierra Club and WRA challenge the Company's assumption that a decision to convert Units 3 and 4 to gas would result in an increase to the cost of coal to the other units because surface mining would end and reclamation would have to begin. The Sierra Club argues that surface

[8]The sources and rationale for the Company's CO2 price forecasts are discussed in Link's Rebuttal at 27-29.

[9]For example, Dr. Fisher's 2008 Synapse Price Forecast predicted that the "low" CO2 price in 2013 would be $10/ton. (DPU Cross Exhibit 1.) Yet it remains nonexistent. Given the speculative nature of trying to predict the future price of CO2, and Synapse's own mis-judgment of predicting CO2 prices, Dr. Fisher's criticism of the Company's estimates has no credibility.

mining would not have to end because "Bridger Coal Company could feasibly sell coal to other facilities, maintain surface operations and offsetting remediation costs, and therefore not burden the Bridger unit with the costs of an accelerated remediation process." (Fisher Direct at 24:3-5.) The Sierra Club, however, provided no evidence that Bridger Coal could sell coal to other facilities. The Company did provide evidence that (a) the Bridger Mine does not currently have a rail load-out facility; (b) no railroad spur currently exists to the Mine; (c) many of the facilities the Sierra Club points to as perhaps being able to purchase coal from Bridger aren't able to receive the coal by rail; (d) Bridger Coal has relatively low heat and high ash, which make it inconsistent with the specifications for many plants and confines it largely to the local market; and (e) the Company already has coal-contracts with other mines. (*See* Crane Rebuttal at 10-12.) The intervenors' arguments were incorrect, and in fact, highlight that the testimony provided by the intervenors is pure supposition, not actual facts.[10]

CONCLUSION

For the reasons stated above, the Commission should conclude that the Company's decision to implement the SCR Project is in the public interest because it is the lowest-cost alternative to allow the Company to comply with its obligations under the BART Settlement Agreement. Accordingly, the Commission should approve the Project at the projected cost of [redacted]. Approval to proceed may be conditioned upon pending final review of an executed EPC contract; however, the Company urges that the level of costs pre-approved in this proceeding remain at the level in the Company's application.

[10]Much of the testimony submitted in this matter by the special interest groups actually seeks environmental reform rather than the best utility rates for Utah customers. This Commission should disregard the claims by these groups that relate only to environmental preferences. Decisions as to what constitutes best environmental practice has been delegated to Utah's Department of Environmental Quality. Utah Code Ann. § 19-1-201(2). Instead, the Commission should focus, as directed by the Utah Code, on what resource decision will provide the lowest cost for reliable electric service to Utah customers. The evidence clearly demonstrated the Project to be least-cost means to maintain Bridger power production.

DATED this 28th day of March, 2013.

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