

- BEFORE THE PUBLIC SERVICE COMMISSION OF UTAH -

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In the Matter of the Voluntary Request of )  
Rocky Mountain Power for Approval of ) DOCKET NO. 12-035-92  
Resource Decision to Construct Selective )  
Catalytic Reduction Systems on Jim Bridger ) ORDER DENYING REQUEST FOR  
Units 3 and 4 ) REVIEW OR REHEARING  
)

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ISSUED: June 26, 2013

By The Commission:

**SYNOPSIS**

The Commission denies Western Resource Advocates (“WRA”) request for review or rehearing because:

(a) The record in this proceeding is void of any evidence that an SNCR alternative as applied to the Bridger plant, as opposed to the approved decision to construct the SCR alternative, would result in the least-cost means, adjusted for risk, to meet the emissions limits for Bridger plant units 3 and 4 established by the Wyoming State Implementation Plan;

(b) None of the information presented by WRA after the record in this proceeding was closed provides persuasive indication that an SNCR alternative as applied to the Bridger plant, as opposed to the approved decision to construct the SCR alternative, would result in the least-cost means, adjusted for risk, to meet the emissions limits for Bridger plant units 3 and 4 established by the Wyoming State Implementation Plan; and

(c) The information presented by WRA after the record in this proceeding was closed indicates only that the EPA has apparently come to a tentative agreement with respect to a different coal plant with different cost implications, located in a different state that is regulated by a different EPA region.

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**BACKGROUND**

This proceeding was initiated August 10, 2012, with PacifiCorp, dba Rocky Mountain Power’s (“RMP” or “Company”) notice of intent to file a voluntary request for

approval of its significant energy resource decision to construct two major emission-reduction projects; the addition of selective catalytic reduction (“SCR”) systems on Unit 3 and on Unit 4 of the Jim Bridger steam electric plant (the “Bridger SCR Projects”).

Thereafter, parties (including WRA) were provided an opportunity to submit three rounds of testimony and conduct discovery. On March 7, 2013, the Commission held a duly-noticed hearing at which parties (including WRA) had the opportunity to present witnesses and cross-examine other parties’ witnesses. Subsequently, parties (including WRA) filed post-hearing briefs with the Commission. Based on the evidence in the record in this docket, the Commission issued its Report and Order approving the Company’s request on May 10, 2013 (“Order”).

As described in the Order, it is uncontroverted in the record that Wyoming law currently requires the reduction of NOx emissions at Bridger Units 3 and 4 by 2015 and 2016, respectively.<sup>1</sup> The Order further notes it is undisputed the proposed SCR technology is a compliant technology to meet the Wyoming emission limits.<sup>2</sup> We further found that the Company’s proposed timing for completing the Project will benefit ratepayers by avoiding increased project cost due to the requirements of a compressed construction schedule and

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<sup>1</sup> See Order at p.28. That portion of the Order also points to correspondence from the WYDEQ, dated March 6, 2013, stating the Company is required to meet the Wyoming SIP, including the limits and deadlines for Bridger Units 3 and 4.

<sup>2</sup> *Id.* The Commission also observes that since the date of the Order (May 10, 2013), the EPA Regional Administrator for Region 8, Shaun McGrath, signed a notice on May 23, 2013, that was later published in the Federal Register at Vol. 77, No. 107, June 4, 2012. That notice proposes to partially approve and partially disapprove a State Implementation Plan (“SIP”) submitted by the State of Wyoming on January 12, 2011, that addresses regional haze. Significantly, EPA’s proposal continues to include the use of SCR on Unit 3 and on Unit 4 of the Bridger plant as technically feasible for reducing NOx emissions. Although the Commission acknowledges that EPA’s proposal is subject to comment and consideration, the fact that the SIP does not propose SNCR as a viable alternative appears to cut against WRA’s arguments. We have taken administrative notice of the EPA proposal even though it, like what has been provided here by WRA, is also not in the record for this docket.

possible additional outages. Finally, the Order finds that the Company demonstrated the Bridger SCR Project is the least-cost means, adjusted for risk, to meet the emissions limits for Bridger Units 3 and 4 established by the Wyoming emission standards.<sup>3</sup>

On June 10, 2013, WRA filed its request for the Commission to review or rehear the Order (“Request”) pursuant to Utah Code §§ 63G-4-301 and 54-7-15. In support of its Request, WRA points to the same argument made in its post-hearing brief that the Company failed to investigate an allegedly less-costly alternative to the Bridger SCR Projects; namely the installation of selective non-catalytic reduction (“SNCR”) control technology. WRA explains this alternative technology was tentatively agreed to by and among the State of New Mexico, the Environmental Protection Agency (“EPA”) and the Public Service Company of New Mexico for the San Juan Generating Station, pursuant to a term sheet dated February 15, 2013 (“New Mexico Term Sheet”).

The Company filed its response to WRA’s request on June 25, 2013 (“Response”), arguing generally that the Commission should deny the Request because WRA failed to introduce evidence supporting its argument prior to the closure of the record in this proceeding.

### **DISCUSSION, FINDINGS AND CONCLUSION**

#### New Mexico Term Sheet

As described in the Request, WRA introduced the New Mexico Term Sheet as WRA Cross Exhibit 1 at the March 7, 2013, hearing and cross-examined the Company’s witness regarding the Company’s exploration of the SNCR alternative addressed in that document.

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<sup>3</sup> Order at p. 32.

WRA further indicates that the Company's witness testified PacifiCorp did not explore the alternatives because it did not believe such a combination of features would be compliant with the Clean Air Act.<sup>4</sup> WRA argues the New Mexico Term Sheet "disputes that contention and makes it clear that the EPA would consider a conversion of one unit and a lesser control technology at a second to be Clean Air Act compliant."<sup>5</sup> WRA further argues the "Commission would be remiss in preapproving a project that neglected to consider such an obvious alternative."<sup>6</sup>

As pointed out in the Company's Response, RMP witness Teply did not testify the Company failed to explore the SNCR alternative because it did not believe such a combination of features would be compliant with the Clean Air Act. Rather, witness Teply simply indicated the SNCR alternative was not among the number of alternatives reviewed by the Company.<sup>7</sup>

Contrary to WRA's assertion, introduction of the New Mexico Term Sheet into evidence does not make "it clear that EPA would consider a conversion of one unit and a lesser control technology at a second to be Clean Air Act compliant." Rather, the record is void of any evidence as to whether or why the alternatives addressed in the New Mexico Term Sheet are applicable to the Bridger plant or if EPA Region 8 would consider such alternatives as applied to the Bridger plant. Based on the record evidence on this issue, we can only surmise that the EPA

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<sup>4</sup> Response at p.2, *citing* Tr. at pp. 55-56.

<sup>5</sup> Request at p. 2.

<sup>6</sup> Request at p. 2.

<sup>7</sup> Response at p. 3, *citing* Tr. at 57.

has apparently come to a tentative agreement with respect to a different coal plant with different cost implications, located in a different state that is regulated by a different EPA region.

Although the New Mexico Term Sheet is dated February 15, 2013, we observe that the letter to Shaun McGrath (EPA Administrator-Region) from WRA dated June 10, 2013, and attached to Ms. Nancy Kelly's affidavit, indicates that "[WRA] was involved in the discussions that led to a tentative resolution, earlier this year, between EPA, the State of New Mexico, and the Public Service Company of New Mexico . . ." (emphasis added). From this, the Commission can only infer that WRA was well aware of the general concepts embodied in the New Mexico Term Sheet well in advance of the March 7, 2013 hearing date.

Moreover, one could assume that WRA may have had full knowledge of the general concepts embodied in the New Mexico Term Sheet during the time parties (including WRA) in this proceeding were provided the opportunity to submit rounds of testimony and conduct discovery. Notwithstanding, WRA's only proffer of evidence on this subject was the introduction at hearing of the New Mexico Term Sheet and a brief line of cross examination resulting in evidence only that RMP did not consider SNCR—not (as implied by WRA) that RMP considered SNCR but abandoned that path based on the belief such technology would not meet Clean Air Act requirements.

The simple fact is WRA failed to introduce any evidence in the record (or for that matter after the record was closed) regarding the applicability of New Mexico's tentative agreement with the EPA to the Bridger plant. For example, there is no evidence regarding the feasibility of SNCR as applied to the Bridger plant or the potential cost implications of the SNCR alternative as applied to the Bridger plant, including the cost implications of shutting-

down additional units as proposed in the New Mexico Term Sheet. In short, we are not persuaded by WRA's argument that introduction of the New Mexico Term Sheet justifies a modification of the Order.

Post-Hearing Documents

In further support of its Request, WRA provides the affidavit of Nancy Kelly, which identifies "recent events and developments" that "appear to indicate that the [EPA] would indeed be open to considering a SNCR/repowering alternative to installing expensive SCR controls at Bridger."<sup>8</sup> Ms. Kelly's affidavit describes a series of attached documents including:

- An Albuquerque Journal press report dated March 9, 2013, indicating that EPA Region 6 confirmed that the EPA views the New Mexico term sheet outcome as a collaborative model it intends to develop and adopt elsewhere;
- Correspondence between Arizona Electric Power Cooperative ("AEPSCO") and EPA Region 9 regarding that region's willingness to reconsider AEPSCO's SCR requirements at the Apache coal plant and instead consider utilization of an SNCR alternative; and
- A letter dated June 10, 2013, to EPA Region 8, requesting that region consider an SNCR alternative for the Company's Bridger plant.

As the dates above indicate, none of these documents were considered as evidence by the Commission in reaching its decision to approve the Company's request to approve its resource decision to construct the Bridger SCR Projects. Assuming *arguendo* the documents attached to Ms. Kelly's affidavit were made part of the record evidence in this proceeding, the Commission would continue to lack justification to modify the Order. Like the New Mexico Term Sheet (that was actually made part of the record), the documents described

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<sup>8</sup> Request at p. 3.

above do not present a compelling argument that EPA Region 8 would likely consider SNCR as a viable alternative for the Company's Bridger plant. More important, these documents (like the New Mexico Term Sheet) do not support a conclusion that a SNCR alternative as applied to the Bridger plant, as opposed to our decision to approve the decision to construct the SCR alternative, would result in the least-cost means, adjusted for risk, to meet the emissions limits for Bridger plant units 3 and 4.<sup>9</sup>

Having reviewed the WRA's Request in the context of the record, we are satisfied that our decision in the Order is reasonably based upon the evidence of record in accordance with applicable law and regulations. We therefore deny WRA's Request.

**ORDER**

Pursuant to the foregoing discussion, findings and conclusions made herein, we deny WRA's Request. Review of this order is governed by Utah Admin. Code § R746-100-11, Utah Code Ann. §§ 54-7-15, 63G-4-302(b) and 63G-4-401(3), which requires the filing of a petition for judicial review of an order constituting final agency action within 30 days of issuance.

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<sup>9</sup> As pointed out in the Order, the ultimate cost recovery of the Bridger SCR Projects is governed by Utah Code § 54-17-403(2)(a), which allows the Commission to disallow some or all costs incurred in connection with an approved resource decision if the Commission finds that an energy utility's decision in implementing an approved resource decision are not prudent because of new information or changed circumstances that occur after the Commission approves such a decision. In other words, the Company has an ongoing responsibility to evaluate its decision based on most current information.

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DATED at Salt Lake City, Utah, this 26<sup>th</sup> day of June, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
D#245188

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 26<sup>th</sup> day of June, 2013, a true and correct copy of the foregoing was served upon the following as indicated below:

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