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LISA D. NORDSTROM  
Lead Counsel  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)

June 28, 2013

**VIA HAND DELIVERY**

Jean D. Jewell, Secretary  
Idaho Public Utilities Commission  
472 West Washington Street  
Boise, Idaho 83702

**NEW CASE**

Re: Case No. IPC-E-13-16  
Investment in Selective Catalytic Reduction Controls for Jim Bridger Units 3  
and 4 – Idaho Power Company's Application and Direct Testimony

Dear Ms. Jewell:

Enclosed for filing in the above matter are an original and seven (7) copies of Idaho Power Company's Application.

In addition, enclosed are nine (9) copies of the Direct Testimony of Lisa A. Grow, Tom Harvey, and Michael J. Youngblood filed in support of the Application. One copy of each witnesses' testimony has been designated as the "Reporter's Copy." In addition, a disk containing a Word version of the aforementioned testimony is enclosed for the Reporter.

Also enclosed in separate envelopes are an original and seven (7) copies of **confidential** Attachment 1 to Idaho Power Company's Application and nine (9) copies each of **confidential** page 9 to the Direct Testimony of Lisa A. Grow, **confidential** Exhibit No. 5 to the Direct Testimony of Tom Harvey, and **confidential** Exhibit No. 7 to the Direct Testimony of Michael J. Youngblood. Because confidential information is included in the initial filing, a Protective Agreement has also been enclosed for execution by the Idaho Public Utilities Commission Staff and intervening parties. Please handle the confidential information in accordance with the Protective Agreement.

If you have any questions regarding the enclosed documents or this matter, please do not hesitate to contact me.

Sincerely,

  
Lisa D. Nordstrom

LDN:csb  
Enclosures

1221 W. Idaho St. (83702)  
P.O. Box 70  
Boise, ID 83707

LISA D. NORDSTROM (ISB No. 5733)  
JENNIFER REINHARDT-TESSMER (ISB No. 7432)  
Idaho Power Company  
1221 West Idaho Street (83702)  
P.O. Box 70  
Boise, Idaho 83707  
Telephone: (208) 388-5825  
Facsimile: (208) 388-6936  
[lnordstrom@idahopower.com](mailto:lnordstrom@idahopower.com)  
[jreinhardt@idahopower.com](mailto:jreinhardt@idahopower.com)

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IDAHO PUBLIC  
UTILITIES COMMISSION

Attorneys for Idaho Power Company

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF IDAHO POWER )  
COMPANY'S APPLICATION FOR A ) CASE NO. IPC-E-13-16  
CERTIFICATE OF PUBLIC CONVENIENCE )  
AND NECESSITY FOR THE INVESTMENT ) APPLICATION  
IN SELECTIVE CATALYTIC REDUCTION )  
CONTROLS ON JIM BRIDGER UNITS 3 )  
AND 4. )  
\_\_\_\_\_ )

COMES NOW, Idaho Power Company ("Idaho Power" or "Company") and, in accordance with *Idaho Code* §§ 61-526 through 528, 61-541, and RP 112, hereby applies to the Idaho Public Utilities Commission ("Commission") for a Certificate of Public Convenience and Necessity ("CPCN") authorizing investment in Selective Catalytic Reduction ("SCR") controls in Jim Bridger Units 3 and 4 ("Project") and inclusion of the Project in Idaho Power's rate base once the SCR controls are installed and operational. This Application is based on the following:

## **I. INTRODUCTION**

1. Idaho Power is a corporation incorporated under the laws of the state of Idaho. Idaho Power is engaged in the business of generating, purchasing, transmitting, and distributing electric energy and providing retail electric service in the states of Idaho and Oregon. Idaho Power's principal offices are situated in Boise, Idaho, and its address is 1221 West Idaho Street, Boise, Idaho, 83702. Copies of Idaho Power's Articles of Incorporation and Certificates of Convenience and Public Necessity are on file with the Commission.

2. The Company's resource portfolio is among the most diverse in the nation. The Company leverages its hydro, coal, and natural gas resources to provide dependable "baseload" energy to customers, along with purchased renewable resources and a robust set of energy efficiency programs. Idaho Power's current resource portfolio consists of a diverse mix of low-cost generation types totaling nearly 3,600 megawatts ("MW") of nameplate capacity.

3. Idaho Power owns one-third of the Jim Bridger coal-fired power plant ("Jim Bridger Plant") located near Rock Springs, Wyoming. Confidential Attachment 1 is a map detailing the location of Project construction at the Jim Bridger Plant. PacifiCorp has two-thirds ownership and is the operator of the Jim Bridger Plant. The Jim Bridger Plant consists of four generating units and is adjacent to the co-owned Jim Bridger Coal Company Mine, which supplies approximately six million tons per year of sub-bituminous coal to the plant. Also, the Jim Bridger Plant currently employs approximately 350 personnel.

4. As explained in the direct testimony of Lisa A. Grow, Senior Vice President of Power Supply, filed contemporaneously with this Application, the Jim Bridger Plant is the workhorse of Idaho Power's thermal fleet. After adjustment for scheduled maintenance periods and estimated forced outages, the annual energy generating capability of Idaho Power's share of the Jim Bridger Plant is approximately 625 average megawatts. Of Idaho Power's entire thermal generation fleet, it has the lowest dispatch cost and the lowest installed cost of nameplate capacity to operate. The Jim Bridger Plant not only provides highly valuable capacity during periods of peak demand, but also low cost and dispatchable baseload energy.

## **II. PROJECT DESCRIPTION**

5. Idaho Power requests that the Commission issue a CPCN authorizing Idaho Power to invest in and construct SCR systems and associated ancillary equipment for Jim Bridger Units 3 and 4. Each SCR system would be comprised of two separate universal reactors, with multiple catalyst levels; inlet and outlet ductwork; a shared ammonia reagent system; an economizer upgrade; structural reinforcement of the boiler and flue gas path ductwork and equipment; and extension of the existing plant distributed control system. An induced draft fan upgrade and an associated auxiliary power system variable frequency drive insertion are required on Unit 4 only.

6. These emission control investments in SCR systems and associated ancillary equipment will result in the reduction of Nitrogen Oxide ("NO<sub>x</sub>") emissions in compliance with existing state and proposed federal emission requirements. Mr. Tom Harvey, Joint Projects Manager, describes these emissions requirements in greater detail in his direct testimony that accompanies this Application.

7. The BART Appeal Settlement Agreement with the state of Wyoming and the Wyoming Regional Haze State Implementation Plan (“Wyoming Regional Haze SIP”) require the installation of SCR on Unit 3 by the end of 2015 and on Unit 4 by the end of 2016. On May 23, 2013, the United States Environmental Protection Agency (“EPA”) recommended approval of the Wyoming Regional Haze SIP for installation of SCR on Jim Bridger Units 3 and 4 in 2015 and 2016, respectively, as outlined in the Wyoming Regional Haze SIP. The EPA has indicated it will sign a notice of final rulemaking on November 21, 2013, making these emission reduction requirements at Jim Bridger Units 3 and 4 federally enforceable as well. If the environmental upgrades are not installed within the time frame given by the state of Wyoming or the EPA, Idaho Power would be forced to stop generating from these units.

8. In August 2012, PacifiCorp filed a CPCN with the Wyoming Public Service Commission (“Wyoming Commission”) to construct two SCR systems on Units 3 and 4 of the Jim Bridger Plant as well as a “voluntary request for approval of resource decision to construct SCR systems on Jim Bridger Units 3 and 4 with the Public Service Commission of Utah (“Utah Commission”). On May 10, 2013, the Utah Commission issued its final report and order in Docket No. 12-035-92 approving the SCRs. On May 29, 2013, the Wyoming Commission approved a CPCN for the SCRs in Docket No. 20000-418-EA-12 (Record No. 13314). These Orders can be found as Attachment Nos. 2 and 3, respectively, to this Application.

### **III. COST-EFFECTIVE ANALYSES**

9. To determine the economic viability of installing the Jim Bridger Plant SCRs, Idaho Power prepared the Coal Unit Environmental Investment Analysis (“Coal

Study”), which is included in two parts as confidential Exhibit No. 5 (SAIC’s static forecast unit generation analysis) and Exhibit No. 6 (Idaho Power’s dynamic total portfolio analysis) to Mr. Harvey’s direct testimony. The Coal Study analyzed the SCR investment at Jim Bridger Units 3 and 4 as part of a larger analysis conducted for all four units at the Jim Bridger Plant and the two units at the North Valmy plant.

10. The methodology used in the Coal Study examined future investments required or reasonably anticipated for environmental compliance for the existing coal units. Those investments were then compared to the costs of two alternatives: (1) replace such units with combined-cycle combustion turbines or (2) convert the existing coal-fired units to natural gas. For the complete evaluation, Idaho Power used a combination of third-party analysis, input from the operating partners of each coal plant, and a final economic dispatch analysis conducted by the Company to assure a complete and fair assessment of the alternatives.

11. As outlined in Mr. Harvey’s testimony, the Coal Study supports upgrading Jim Bridger Units 3 and 4 with emissions control equipment to allow ongoing coal-fueled energy production from this plant through the Coal Study period as the least-cost, least risk outcome for customers. The planning case (planning case carbon/planning case natural gas) results indicate that the cumulative net present value power costs associated with the upgrade option is \$254 million less than the next least-cost compliance alternative for Unit 3, and \$237 million less than the next least-cost compliance alternative for Unit 4. Figure 4: Total Portfolio Costs, on page 16 of Exhibit 6 summarizes the results from the analysis.

#### **IV. CONSISTENT WITH THE INTEGRATED RESOURCE PLAN**

12. Constructed in the 1970s, the Jim Bridger Plant is an existing baseload generating resource reflected in the Company's 2011 Integrated Resource Plan ("IRP") that was accepted for filing by the Commission in Order No. 32425. The Jim Bridger Plant is currently included as production plant in the Company's rate base. The direct testimony of Michael J. Youngblood, Manager of Regulatory Projects, filed contemporaneously with this Application describes the portfolio analysis of coal-fired generation alternatives developed for the Company's 2013 IRP. The 2013 IRP has been filed in Case No. IPC-E-13-15 and can be found as Attachment 4 to this Application.

13. As part of the development of the Company's 2013 IRP, the Company included four resource planning portfolios that explored options for reducing the amount of coal-fired generation in Idaho Power's generation portfolio. The options to reduce the reliance on coal included replacement with natural gas-fired generation, increased demand-side measures including demand response, changing the fuel at the North Valmy plant to natural gas, and the Boardman to Hemingway transmission line. Two of the evaluated portfolios specifically ceased coal-fired operations at the Company's Jim Bridger and North Valmy coal plants (the Boardman coal plant ceases coal-fired operations at year-end 2020 in all resource portfolios). Because those two portfolios ranked as the two highest cost resource portfolios of the nine portfolios analyzed, the Company's preferred portfolio includes continued operations at the Jim Bridger and North Valmy coal plants.

## **V. COMMITMENT ESTIMATE**

14. As Mr. Youngblood describes in his direct testimony, the total cost of the Project before Allowance for Funds Used During Construction ("AFUDC") is \$353,843,886. Idaho Power's share of that amount, the "Project Cost," is one-third, or \$117,947,962, comprised of a \$57,649,113 investment in Jim Bridger Unit 3 and a \$60,298,849 investment in Jim Bridger Unit 4, before AFUDC. Confidential Exhibit No. 7 to Mr. Youngblood's direct testimony shows the budget projections by year for Jim Bridger Units 3 and 4.

15. Because of the scope of the Project, the extended period of time it takes to plan, permit, engineer, procure, and construct SCR systems, and the uncertainty of the EPA's final ruling approving the portion of the Wyoming Regional Haze SIP that addresses the SCRs at Jim Bridger Units 3 and 4, a Limited Notice to Proceed ("LNTP") contract was signed with the successful Engineering, Procurement, and Construction ("EPC") bidder on May 31, 2013. The Company and PacifiCorp determined this to be a prudent approach that allows for consideration of this Application while waiting for final approval of the SIP by the EPA.

16. Based on the EPC contract, actual costs incurred in the development phase, and the forecast estimate of the work to be completed, Idaho Power is able to make a reliable estimate of the total capital cost of the Project. As it has done in prior CPCN applications, Idaho Power has termed this estimate a "Commitment Estimate." The Commitment Estimate is a good faith estimate of Idaho Power's total capital cost, including AFUDC, and additional costs the Company anticipates it will incur but cannot quantify with precision at this time. Idaho Power's total Commitment Estimate for its

one-third portion of the Project is \$129,837,393, which includes \$11,889,431 in AFUDC. Of this amount, \$62,923,527 is the Commitment Estimate for Jim Bridger Unit 3 and \$66,913,866 is the Commitment Estimate for Jim Bridger Unit 4. The largest portions of the Commitment Estimate are the costs included under the EPC contract.

17. Using the system investment stated above, the Company performed a high-level jurisdictional revenue requirement analysis. Based upon the current jurisdictional split between Idaho and Oregon, the Idaho jurisdictional addition to production plant would be approximately \$60.2 million for investments at Jim Bridger Unit 3 and approximately \$64.0 million for investment at Jim Bridger Unit 4. At the Company's current authorized rate of return, the additional annual revenue requirement for SCR investments in Jim Bridger Unit 3 and Jim Bridger Unit 4 would be approximately \$9.1 million and \$9.7 million, respectively.

#### **VI. REQUEST FOR A CPCN AND BINDING RATEMAKING TREATMENT**

18. Idaho Power requests the Commission issue a CPCN and authorize binding ratemaking treatment under *Idaho Code* § 61-541 for the SCR investment because of the magnitude of the investment and the uncertainty surrounding coal-fired generation in today's political and social environment. Even though Idaho Power does not believe it is required to do so by *Idaho Code* § 61-526, the Company requests a CPCN so that a public process is initiated to provide the Company, Commission, and interested parties a regulatory forum to fully vet these contested issues. The direct testimony of Ms. Grow explains recent social, political, and regulatory events that prompted the Company to make this filing.

19. Pursuant to *Idaho Code* § 61-541, the Company requests that the Commission provide Idaho Power with authorization and a binding commitment to provide rate base treatment for the Company's capital investment in SCRs at Jim Bridger Units 3 and 4 in the amount of \$129,837,393. Of that amount, \$62,923,527 for the investment in Jim Bridger Unit 3 would be closed-to-plant and authorized for cost recovery on or after January 1, 2016, and \$66,913,866 for the investment in Jim Bridger Unit 4 would be closed-to-plant and authorized for cost recovery on or after January 1, 2017. If binding ratemaking is approved for the Total Commitment Estimate of \$129,837,393, the Company could be assured that amounts incurred up to the Commitment Estimate amount would be determined to be prudent. Should the cost of the Project be less than the Commitment Estimate, the savings would directly benefit the customer through a lower amount in rate base. On the other hand, should the Project come in over the Commitment Estimate, Idaho Power would have to demonstrate to the Commission that amounts above the Commitment Estimate were prudently incurred and should be recovered in rates. A discussion of the evidence demonstrating the need for these ratemaking proposals, as well as the Company's proposal for ratemaking commitments, is found in the direct testimonies of Ms. Grow and Mr. Youngblood.

20. Idaho Power intends to fund capital expenditures and costs associated with the Project with a combination of (1) cash available from Idaho Power's operations; (2) Idaho Power's short-term borrowings, as authorized by Commission Order No. 32343; (3) the potential issuance of long-term indebtedness by Idaho Power pursuant to

Commission Order No. 32786; and/or (4) potential capital contributions from IDACORP, Inc., which may result in part from equity issuances by IDACORP, Inc.

21. The return on equity the Company expects to earn on the Project investment is the authorized rate in effect at the time the Project is placed in service. Idaho Power will depreciate the investments over the remaining life of the Jim Bridger Plant in accordance with the Commission-approved depreciation rates in effect at the time the investment is closed-to-plant. The Company's current depreciation rates were approved in Case No. IPC-E-12-08, Order No. 32559.

22. The LNTP concept described above was used to reduce the risk and upfront costs of a Full Notice to Proceed ("FNTP") until the final ruling from the EPA is released, and to ensure the EPC Contractor can meet the deadlines for installation as per the Wyoming Regional Haze SIP. A provision in the LNTP states that December 1, 2013, which is defined as the FNTP Date, is the deadline by which the FNTP must be issued in order for the EPC contractor to attain the project completion guarantee dates without requiring a contract change. Idaho Power and PacifiCorp have agreed that as long as the FNTP is issued on or before December 1, 2013, neither the EPC contract price nor the project guarantee dates will be adjusted. The Company is requesting the Commission issue an order approving the CPCN request by November 29, 2013, so that the Company will be able to approve PacifiCorp's execution of the FNTP by December 1, 2013.

23. In order for the Company to move forward with timely installation of the SCR investments that allow Jim Bridger Units 3 and 4 to lawfully continue operating, it is important for the Company to receive a CPCN from the Commission which includes the

ratemaking assurances and provisions described above. In today's uncertain political environment, the Company believes that this level of regulatory assurance is necessary and warranted. As a result, the installation and operation dates of the Project are directly related to the issuance of a CPCN, including the necessary cost-recovery and ratemaking commitments.

24. In order to streamline review of this Application, the direct testimonies of Ms. Grow, Mr. Harvey, and Mr. Youngblood have been filed contemporaneously with this Application. The Company will make available exhibits, workpapers, and other documentation supporting the Commitment Estimate. That documentation, as well as some of the other documents the Company intends to provide for review, contains information that the Company, PacifiCorp, and bidders deem to be trade secrets. Consequently, the Company will request that Commission Staff and any Intervenors sign a standard Protective Agreement prior to reviewing these materials.

## **VII. CONCLUSION**

25. As supported by the comprehensive analyses presented in this case, the investment in the Jim Bridger SCRs represents the lowest cost and least risk option of serving future customer demands. The SCR investment will allow the Jim Bridger Plant, the Company's lowest cost thermal generation resource, to continue providing customers with reliable energy and will maintain the Company's diverse portfolio of generation resources.

26. Idaho Power respectfully requests that the Commission issue its order approving a CPCN no later than November 29, 2013, finding that:

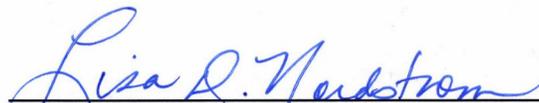
(1) The installation of SRC systems planned for Jim Bridger Units 3 and 4 is consistent with Idaho Power's resource plans and is an appropriate investment to assure the ongoing operation of the Jim Bridger Plant to reliably serve its customers.

(2) Existing Wyoming and anticipated federal regulations require the installation of SCR systems for Jim Bridger Units 3 and 4 by December 31, 2015, and December 31, 2016, respectively.

(3) The approved total Commitment Estimate for the Project, including \$11,889,431 in AFUDC, is \$129,837,393, which includes a Commitment Estimate for Jim Bridger Unit 3 of \$62,923,527 and a Commitment Estimate for Jim Bridger Unit 4 of \$66,913,866.

(4) Pursuant to *Idaho Code* § 61-541, the Commission provides Idaho Power with authorization and a binding commitment to provide rate base treatment for the Company's capital investment in SCR controls at Jim Bridger Units 3 and 4 and related facilities up to the amount of the \$129,837,393 Commitment Estimate at such time the plant is placed into operation. Retail customers will receive the full benefit of the Project being completed under the Total Commitment Estimate, while the Company will have the opportunity to justify any costs above the Total Commitment Estimate as prudently incurred for recovery.

Respectfully submitted this 28<sup>th</sup> day of June 2013.

  
\_\_\_\_\_  
LISA D. NORDSTROM  
Attorney for Idaho Power Company

**BEFORE THE**  
**IDAHO PUBLIC UTILITIES COMMISSION**  
**CASE NO. IPC-E-13-16**

**IDAHO POWER COMPANY**

**ATTACHMENT 1**  
**MAP OF PROJECT**

**ATTACHMENT 1  
IS CONFIDENTIAL AND  
WILL BE PROVIDED TO  
THE APPROPRIATE  
PARTIES  
UPON REQUEST AND  
EXECUTION OF THE  
PROTECTIVE  
AGREEMENT**

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-13-16**

**IDAHO POWER COMPANY**

**ATTACHMENT 2**

**UTAH ORDER**



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DOCKET NO. 12-035-92

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**APPEARANCES**

D. Matthew Moscon, Esq. Stoel Rives LLP	For	PacifiCorp, dba Rocky Mountain Power
Daniel E. Solander, Esq. Rocky Mountain Power	"	"
Justin C. Jetter, Esq. Utah Attorney General's Office	"	Utah Division of Public Utilities
Jerrold S. Jensen, Esq. Utah Attorney General's Office	"	Utah Office of Consumer Services
Steven S. Michel, Esq. Western Resource Advocates	"	Western Resource Advocates
Rob Dubuc, Esq. Western Resource Advocates	"	"
Travis Ritchie, Esq. Sierra Club Environmental Law Program	"	Sierra Club

**I. PROCEDURAL HISTORY**

Pursuant to Utah Administrative Code (“UAC”) R746-440-1(2), Rocky Mountain Power, a division of PacifiCorp (“Company”), filed, on August 10, 2012, with the Public Service Commission of Utah (“Commission”), a notice of its intent to file a voluntary request for approval of its resource decision to construct two major projects to reduce emissions. Pursuant to Utah Code Ann. (“UCA”) § 54-17-402, on August 24, 2012, the Company filed with the Commission a voluntary request for approval of its resource decision (“Application”) to construct selective catalytic reduction (“SCR”) systems on Units 3 and 4 of the Jim Bridger coal-fired steam electric plant (“Bridger” or “Bridger Plant”) located in Sweetwater County, Wyoming. The proposed SCR investments at Bridger Units 3 and 4 are referred to in this order as the “Bridger SCR Project” or “Project”.

On September 6, 2012, the Utah Division of Public Utilities (“Division”) filed comments recommending the Commission notice a scheduling conference in the matter as soon as practicable. A duly-noticed scheduling conference was held on September 19, 2012, and on September 24, 2012, the Commission issued its scheduling order and notice of hearing.<sup>1</sup>

Between September 11, 2012, and November 20, 2012, the following parties were granted intervention in this docket: Western Resource Advocates (“WRA”); Holcim, Inc.,

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<sup>1</sup> UCA § 54-17-402(6) provides the Commission 180 days to approve or disapprove a voluntary request for approval of a resource decision, starting with the day on which the request is filed. In this case, the 180 day time period expired on February 20, 2013. The statute also authorizes the Commission to extend the time for issuing a decision, if the Commission determines additional time to analyze the resource decision is warranted and is in the public interest. Based parties’ comments at the scheduling conference and the absence of any objection, the Commission determined in its September 24, 2012, scheduling order and notice of hearing it would serve the public interest to extend the statutory time period for reaching a decision in this matter by up to 30 days. Subsequently, in context of its oral ruling in the February 6, 2013, pre-hearing conference, the Commission further extended the date of its final decision in this case to mid-May 2013.

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Kennecott Utah Copper LLC, Kimberly-Clark Corp., Praxair, Inc., Proctor & Gamble, Inc., Tesoro Refining and Marketing Co., and Western Zirconium, collectively referred to as Utah Industrial Energy Users (“UIEC”); Utah Association of Energy Users (“UAE”); and Sierra Club.

On November 30, 2012, the Division, Office of Consumer Services (“Office”), and WRA filed direct testimony. On December 3, 2012, WRA filed errata to the direct testimony of Nancy L. Kelly. Also on December 3, 2012, Sierra Club filed its direct testimony.

On January 4, 2013, Sierra Club filed a motion requesting a stay or continuance of this proceeding until such time as the U.S. Environmental Protection Agency (“EPA”) issues its final Best Available Retrofit Technology (“BART”) determination for the Bridger Plant (“Sierra Club’s Motion”). Also on January 4, 2013, the Company filed a motion requesting an amended procedural schedule and referencing its preparation of a response to Sierra Club’s Motion and citing a need to prevent disadvantageous overlap in testimony filing dates between this docket and the Company’s concurrent proceeding in Wyoming in which it was seeking a certificate of public convenience and necessity for the Project (“WY CPCN”).<sup>2</sup>

On January 7, 2013, the Company filed a memorandum opposing the Sierra Club’s Motion. On January 8, 2013, the Commission issued an order amending the procedural schedule and providing notice of a scheduling conference to be held on January 16, 2013. Following the duly-noticed scheduling conference, on January 17, 2013, the Commission issued its notice of amended hearing date, setting March 7, 2013, as the tentative hearing date for this matter pending the Commission’s ruling on Sierra Club’s Motion. On January 18, 2013, UAE

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<sup>2</sup> Filed on December 21, 2012, in Wyoming Docket No. 20000-418-EA-12, Record No. 13314.

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filed a memorandum stating its partial support of Sierra Club's Motion and recommending the Commission not issue a final order in this matter until after the parties had been given an opportunity to review the EPA's proposed BART determination to be issued March 29, 2013, ("EPA March Re-proposal") and to submit to the Commission any pertinent additional information or request for further proceedings. On January 29, 2013, the Commission provided notice it would conduct a pre-hearing conference to hear argument on Sierra Club's Motion.

On January 31, 2013, the Company filed its Notice of Relevant Action in a Related Proceeding asking the Commission to take notice of the January 17, 2013, decision of the Public Service Commission of Wyoming denying Sierra Club's motion for continuance or stay of its review of the Company's WY CPCN until such time as the EPA issues its final BART determination for the Bridger Plant.

On February 4, 2013, both the Division and Office filed comments in response to Sierra Club's Motion. On February 6, 2013, a duly-noticed pre-hearing conference was held during which the Commission issued an oral ruling denying Sierra Club's Motion. The Commission also maintained the procedural schedule as announced in prior orders, and approved the suggestion by parties for additional comments on the EPA March Re-proposal to be received prior to the Commission's issuance of the final order in this proceeding. The Commission stated dates for additional comments would be determined at the conclusion of the March 7 hearing. Section II of this Order contains the rationale for denying Sierra Club's motion.

Also on February 6, 2013, the Office filed errata to the direct testimony of Randall J. Falkenberg, and the Company filed a copy of the Order Denying Motion for a Stay or

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Continuance Pending Final EPA Action, issued by the Public Service Commission of Wyoming on February 4, 2013.

On February 11, 2013, the Company and the Office filed rebuttal testimony. On February 26, 2013, the Company filed errata to the rebuttal testimony of Cindy A. Crane. On February 28, 2013, the Company, Division, Office, and WRA filed surrebuttal testimony. On March 1, 2013, Sierra Club filed surrebuttal testimony. On March 6, 2013, the Company filed additional supportive exhibits as well as the replacement surrebuttal testimony of Chad A. Teply.

On March 7, 2013, the Commission held a duly-noticed hearing to examine the Company's Application. At the hearing, the Commission provided further procedural guidance to the parties regarding the filing of post-hearing briefs on the Application, and comments on the pending EPA March Re-proposal. Specifically, the Commission set March 27, 2013, as the due date for briefs on legal issues and the merits of the Application. Further, the Commission set April 5, 2013, as the due date for initial comments, and April 19, 2013, as the due date for reply comments on the pending EPA March Re-proposal. The Commission noted the extended timelines and indicated it would issue a final order in this case by mid May. The Commission also directed the Company to file any communication it receives regarding the EPA March Re-proposal as soon as possible.

On March 27, 2013, the Company filed a copy of the March 25, 2013, stipulation between the EPA and other litigants, extending the deadline for the EPA March Re-proposal from March 29, 2013, to May 23, 2013, and extending the deadline for the EPA to issue a notice of final rulemaking on the Wyoming Regional Haze State Implementation Plan ("Wyoming

SIP”) from September 27, 2013, to November 21, 2013. On March 27, 2013, the Company, Division, WRA, and Sierra Club filed post-hearing briefs on the Application. On March 28, 2013, the Company filed its replacement post-hearing brief. On April 5, 2013, the Company, Division, Office, and Sierra Club filed initial comments addressing the extension of the EPA re-proposal deadline. On April 19, 2013, the Company and the Office filed reply comments and Sierra Club filed notice it would not file a reply brief on the EPA re-proposal deadline.

## **II. SIERRA CLUB’S MOTION**

Sierra Club’s Motion requests a stay or continuance of this proceeding pending a final BART determination by the EPA, which, at the time, was not expected until September 27, 2013, and which concerns the Company’s Bridger SCR Project.<sup>3</sup>

The Company, the Division, WRA, and to some degree UAE and the Office, opposed Sierra Club’s Motion.<sup>4</sup>

### **A. Sierra Club’s Position**

Sierra Club argues a stay is necessary because it is premature to proceed with this docket since, without an EPA final BART determination, the required emission limits and relevant compliance deadlines for the project are unknown.<sup>5</sup> Sierra Club also argues a stay will provide certainty, which will benefit the Company<sup>6</sup> and notes commissions in other jurisdictions

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<sup>3</sup> See Sierra Club Motion for a Stay or Continuance Pending Final EPA Action, filed January 4, 2013.

<sup>4</sup> See Company’s Memorandum in Opposition to Sierra Club’s Motion for a Stay or Continuance Pending Final Action, filed January 7, 2013; Division’s Memorandum in Response to Sierra Club’s Motion for Stay or Continuance Pending Final Action, filed February 4, 2013; Memorandum of UAE Users in Partial Support of Motion for Continuance, filed January 18, 2013; Memorandum from the Office, to the Commission, filed February 4, 2013; and Transcript of Pre-Hearing Conference at 17, lines 8-25, and at 18, lines 1-10, dated February 6, 2013.

<sup>5</sup> See Sierra Club Motion for a Stay or Continuance Pending Final EPA Action at 3.

<sup>6</sup> See *id.* at 7

have entered stays in similar actions.<sup>7</sup> Sierra Club states the Wyoming Department of Environmental Quality (“WDEQ”) deadlines are not firm as the Company states, but acknowledges they are binding.<sup>8</sup>

**B. Company’s Position**

The Company states it entered into a settlement agreement, in November 2010, with the WDEQ in Docket No. 10-281 (the “BART Settlement Agreement”) before the Wyoming Environmental Quality Council (“EQC”) addressing Wyoming’s BART permit for the Bridger facility. To achieve the required nitrogen oxides (“NOx”) emission limits, the Company contends the BART Settlement Agreement is enforced through an order issued by the EQC, and requires the Company to install SCR systems or alternative add-on NOx control systems on Unit 3 by the end of 2015 and by the end of 2016 for Unit 4. The Company states the EQC maintains jurisdiction over the BART Settlement Agreement and that the EQC’s order is enforceable in district court under the Wyoming Administrative Procedure Act.

The Company argues its EQC imposed deadline for completing the SCR systems at the Bridger Plant is unaffected by the EPA’s delayed action.<sup>9</sup> The Company argues Sierra Club’s Motion should be denied because the WDEQ has not amended the deadlines under which the Company is obligated to install the SCR systems or otherwise meet associated unit-specific emissions limits at the Bridger Plant.<sup>10</sup> The Company further argues Sierra Club’s Motion

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<sup>7</sup> See *id.* at 8.

<sup>8</sup> See Transcript of Pre-Hearing Conference, February 6, 2013, at 8, lines 3-9.

<sup>9</sup> See Company’s Memorandum in Opposition to Sierra Club’s Motion for a Stay or Continuance Pending Final Action at 2.

<sup>10</sup> See *id.* at 6.

should be denied because the EPA ruling is not expected to materially impact the Project.<sup>11</sup> According to the Company, the EPA ruling will only address *emission limits*; it will not address the *technology standard*.<sup>12</sup> The Company adds, even if emission limits are lowered, the Company can accommodate those new limits in its ongoing contract negotiations and project design.<sup>13</sup> The Company argues a stay could have negative consequences for its customers through increased costs due to a condensed construction schedule.<sup>14</sup> Finally, at the pre-hearing conference, the Company agreed there is merit to UAE's proposal to allow parties reasonable time to file comments on the EPA March Re-proposal after the March 7 hearing and before the Commission issues its final order in this case, which the Company states it needs by mid May in order to avoid increased construction cost.<sup>15</sup>

### **C. Division's Position**

The Division recommends the Commission not wait for a final EPA ruling.<sup>16</sup> The Division further notes, "[W]DEQ requirements are known and must be implemented by specific dates. Therefore[,] waiting for a final EPA rule is likely to result in higher costs."<sup>17</sup> At the pre-hearing conference, the Division agreed with the Company's suggestion the Commission should

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<sup>11</sup> See id. at 7.

<sup>12</sup> See id.

<sup>13</sup> Assuming the new limits are "appropriately established and reasonably achievable with SCR technology at the Jim Bridger Facility[.]" Id.

<sup>14</sup> See id. at 8.

<sup>15</sup> See Transcript of Pre-Hearing Conference, February 6, 2013, at 12, lines 18-25 and at 13, lines 1-17.

<sup>16</sup> See Division's Memorandum in Response to Sierra Club's Motion for Stay or Continuance Pending Final Action at 3.

<sup>17</sup> Id. at 4.

maintain the current schedule but provide parties an opportunity to file comments on the EPA March Re-proposal.<sup>18</sup>

**D. UAE's Position**

UAE states, in part, it lacks information to determine or challenge the accuracy of the Company's claim that it has no option but to proceed with the Bridger SCR Project this spring, and therefore, UAE does not support a long-term stay.<sup>19</sup> UAE recommends the Commission wait to issue a final order until after the EPA's proposed BART determination is issued on March 29, 2013, to allow parties an opportunity to submit supplemental information or request further Commission proceedings afterwards.<sup>20</sup>

**E. Office's Position**

The Office supports UAE's recommendation to wait to issue an order until the EPA issues its proposed ruling on March 29, 2013.<sup>21</sup> According to the Office, ". . . the Company has not yet provided adequate analysis to support its request. Unless and until the Company provides such supporting evidence, whether the EPA has issued its determination or not, the Commission will not have adequate support to determine that the request is in the public interest."<sup>22</sup>

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<sup>18</sup> See Transcript of Pre-Hearing Conference, February 6, 2013, at 15, lines 12-18.

<sup>19</sup> See Memorandum of UAE Users in Partial Support of Motion for Continuance at 1.

<sup>20</sup> Id. at 2.

<sup>21</sup> See Memorandum from the Office, to the Commission at 2.

<sup>22</sup> Id.

**F. WRA's Position**

WRA stated at hearing it does not support Sierra Club's Motion. WRA recommends proceeding with the schedule as it currently exists, including the scheduled hearings and Commission decision on the Application.<sup>23</sup> WRA argues parties can file a motion for consideration of any facts which emerge from the EPA March Re-proposal, if and when that occurs.<sup>24</sup>

**G. Discussion, Findings, and Ruling on Sierra Club's Motion**

As noted above, at the February 6, 2013, pre-hearing conference, we issued an oral ruling denying Sierra Club's Motion. We found the BART Settlement Agreement, which controls the Company's actions in Wyoming, provides specific implementation limits and dates with which the Company must comply under Wyoming law. To ignore the Wyoming deadlines while an EPA ruling is pending for an uncertain duration could, as the Company argues, result in compressed construction schedules and additional cost to the Company and its ratepayers.

We also found the cost of the Project is not expected to appreciably increase from the costs represented in the Company's Application should the EPA impose the more aggressive emission limit of 0.05 lbs/MMBtu, and that the Company is already discussing this possibility with its potential contractors.<sup>25</sup> Therefore, the EPA ruling is unlikely to increase the projected costs from those the Company presents.

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<sup>23</sup> See Transcript of Pre-Hearing Conference at 17-18, dated February 6, 2013.

<sup>24</sup> Id. at 17, lines 24-25, and at 18, lines 1-6.

<sup>25</sup> See Transcript of Pre-Hearing Conference, February 6, 2013, at 25-28.

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Weighing these factors both for and against a stay, and considering ratepayer interests, the Commission denied Sierra Club's Motion and maintained the existing schedule for the continued filing of testimony and the scheduled hearing date of March 7.

However, we also found merit in UAE's proposal and concluded it reasonable to allow parties to file comments on the EPA March Re-proposal prior to our issuing the final order in this case. We concluded we could consider such comments and still issue this order before the mid-May deadline by which the Company testifies it must sign construction contracts in order to meet the Wyoming deadlines without paying higher project-related costs. Most parties supported this approach.

To accommodate the post-hearing comments, we stated in our February 6, 2013, oral ruling we would set dates for the receipt of comments on the EPA's March Re-proposal at the conclusion of the March 7, 2013, hearing. To accommodate this extended comment period we determined it to be in the public interest to further extend the date for a final decision in this case, beyond the 180-day statutory deadline, to mid-May 2013.

We noted at the time of the pre-hearing conference, there was no guarantee the EPA would complete its rulemaking process before September 27, 2013. Indeed, the deadline has now been further delayed. Additionally, the Wyoming SIP requirements have since been reaffirmed by the WDEQ.<sup>26</sup>

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<sup>26</sup> As noted in the March 7, 2013 hearing, the WDEQ has reaffirmed its January 4, 2013, decision declining to extend the BART Settlement Agreement deadlines applicable to the Bridger Plant. See Transcript of Hearing at 129, lines 10-21, dated March 7, 2013; *id.* at 131, lines 1-11. See also RMP Supplemental Exhibit CSW-5SR at 2, filed March 6, 2013, (stating ". . .the DEQ[] continues to stand by its January 4, 2013 decision declining to extend the Settlement Agreement deadlines applicable to Jim Bridger Units 3 and 4.").

### III. PARTIES' POSITIONS

#### A. Company

The Company requests the Commission issue an order approving the Company's resource decision to construct the Project. The Company testifies the basis for seeking this approval is three-fold:

First, Bridger Units 3 and 4 are critical components of the Company's generation fleet that serves Utah customers. The Company argues the baseload capacity and energy produced by the units are needed to provide adequate, safe, efficient, and reliable service to Utah customers.

Second, the Company states the Project is necessary to comply with Wyoming's applicable regional haze rules and with the EPA's proposed approval of the Wyoming SIP requiring immediate actions identified as BART. Specifically, the Company argues its BART permit for Bridger constitutes a legally binding settlement agreement between the Company and the WDEQ which requires the Company to install SCR or alternative add-on NOx control systems, and meet NOx emission limits of 0.07 pounds per million British thermal units ("lb/MMBtu"), on Unit 3 by 2015 and Unit 4 by 2016. The Wyoming SIP also includes these requirements. Because of the nature of these requirements, the Company asserts non-compliance is not an option; only the means of compliance are options.

Third, the Company concludes construction of the Project, estimated to cost [REDACTED] for the Company's share, together with the continued operation of Bridger Units 3 and 4 is the least-cost, risk-adjusted compliance strategy among a number of competing

alternatives. To arrive at this conclusion, the Company first considered the cost effectiveness of alternative compliance technologies by measuring capital cost on a cost per ton of pollutant removed, as part of Wyoming's BART determination process. Second, the Company compared the difference in the present value of the revenue requirement ("PVRR") of two system optimizer ("SO") model simulations to evaluate costs with and without the Project.

In the first simulation, the SO model assumes compliance is achieved through the Bridger SCR Project and continued operation of Bridger Units 3 and 4. In the second simulation, the Bridger SCR Project is not made and the SO model selects among other options to achieve compliance. Other options include early retirement of Bridger Units 3 and 4 and replacement of this power through other means, or conversion of the units to natural gas. The Company testifies the SO model selects natural gas conversion for Bridger Units 3 and 4 in the second simulation under a range of natural gas and carbon dioxide ("CO<sub>2</sub>") price assumptions. The Company provides the difference in the PVRR of the two simulations, expressed as PVRR(d), to show how favorable or unfavorable the Bridger SCR Project is in comparison to the next best alternative which is natural gas conversion under various alternative natural gas and CO<sub>2</sub> price assumptions.

The Company's initial results favor SCR investment in the base case and under four of the six alternative natural gas and CO<sub>2</sub> price cases. The Company's base case results favor the Project by [REDACTED] PVRR(d).

In its rebuttal testimony, the Company provides updated analysis to respond, in part, to parties' criticisms its initial analysis relied on outdated or erroneous data. Specifically, the Company corrected various modeling errors and updated its natural gas price assumptions to

its more recent September 2012 Official Forward Price Curve (“OFPC”), and updated its CO<sub>2</sub> price assumptions. The updated base case also updates coal costs, load forecasts, and mine capital and reclamation costs.

The Company argues the updated results continue to support SCR investment; its updated base case analysis yields a PVRR(d) [REDACTED] favorable to the Bridger Units 3 and 4 SCR investments as compared to the natural gas conversion alternative. According to the Company, six of the nine cases modeled in its updated analysis produce a PVRR(d) favorable to SCR investment. The Company argues updated PVRR(d) results are unfavorable to SCR investment only in cases that assume low natural gas prices, and asserts levelized natural gas prices would have to decrease by 15 percent from updated base case levels to reach a breakeven PVRR(d).

In addition, the Company provides two PVRR(d) sensitivity cases in its rebuttal testimony in response to parties’ concerns regarding Energy Gateway transmission assumptions and early unit retirement and resource replacement alternatives. To address the concern its initial analysis excluded consideration of avoiding or delaying Energy Gateway transmission investment, in one sensitivity case the Company removes Energy Gateway West and South segments and all incremental wind resources located in Wyoming. The Company states this sensitivity case improves the economics of the Project in comparison to the updated base case. In another sensitivity case, the Company forces the early retirement of Bridger Units 3 and 4. In this case, the SO simulation adds a combined cycle combustion turbine in 2017, and yields a PVRR(d) of [REDACTED] in favor of the Project.

Finally, should the EPA mandate a lower 0.05 lbs/MMBtu NOx emission limit, the Company argues all associated incremental cost implications could fit within the direct estimated SCR investment costs of [REDACTED]. The Company indicates the project scope capital cost modification to achieve 0.05 lbs/MMBtu for Bridger Units 3 and 4 ranges between [REDACTED] to [REDACTED]. Moreover, the Company testifies these costs are contained in the direct costs estimated and analyzed for the SCR systems as part of the Company's Application. Further, the Company argues increased operation and maintenance costs associated with meeting a 0.05 lbs/MMBtu requirement would have negligible impact on the Company's PVR(d) results.<sup>27</sup> Therefore, the Company argues it has positioned the Project to meet this more stringent potential requirement.

The Company notes emission-reduction projects such as the Bridger SCR Project are complicated, time consuming, and must be coordinated with other projects and planned maintenance outages to ensure service is not compromised and costs are minimized. Delaying commencement of the Project past mid May may cause the Company to miss the opportunity to carry out Project construction during planned outage windows for Units 3 and 4. Doing so would require deferring the planned outage.<sup>28</sup> According to the Company, the likely result would be failure to comply with the Wyoming SIP deadlines or increased Project-related costs, in part due to seasonal power replacement costs, or both. In sum, unless the Bridger SCR Project is carried out according to the Company's proposed schedule, the Company contends it risks noncompliance with required environmental regulations and higher Project costs.

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<sup>27</sup> See Confidential Transcript of Hearing, March 7, 2013, at 51, line 3 and at 74, line 25.

<sup>28</sup> See Direct Testimony, Chad A. Tetry, at 31, lines 686-697.

Given the time-sensitive nature of commencing and completing the Project, the Company states it has already begun the competitive procurement process for engineering, procurement, and construction (“EPC”) contracts. The Company testifies it intends to sign EPC contracts in mid-May 2013. Further, the Company provides additional supporting exhibits, specifically, correspondence with the WDEQ in which the WDEQ again confirms the 2015 and 2016 compliance deadlines for each unit specified in the Application.

The Company contends the decision to implement the Bridger SCR Project constitutes a “resource decision” this Commission should review under UCA § 54-17-402. The Company argues the significant cost involved in the Project, the uncertainty of future regulation of thermal generation emissions, and the likelihood of differing public opinion regarding the least-cost, least-risk options, make this an appropriate resource decision to review. Further, considering the Company’s Application in advance of construction will allow the Commission an opportunity to evaluate the Project contemporaneously with the decision to construct. Additionally, any necessary changes to the decision can be economically undertaken.

Regarding the change in expected dates for the EPA to issue re-proposed or final rulemaking on the Wyoming SIP, the Company takes the position the EPA has deferred its decision on several previous occasions, and there is no guarantee it will not do so again. The Company argues the Project is much too important, time-sensitive, and resource-intense for the Commission to defer action pending the EPA’s uncertain timetable. Based on the best information available as of today, the Company contends it cannot delay the Project to await further EPA action. To ignore the Wyoming deadlines while an EPA proposal is pending could,

according to the Company, result in condensed construction times and additional costs. If the Company delays the start of its efforts to comply with the Wyoming deadlines until the fall of 2013, the Company estimates additional costs of [REDACTED] to [REDACTED] percent, or between [REDACTED] and [REDACTED] dollars, could result.<sup>29</sup>

**B. Division**

The Division conditionally supports the Company's Application. At hearing, the Division stated that the Company's selected technology is appropriate and its estimated pricing is reasonable.<sup>30</sup> In its brief addressing the EPA March Re-proposal, the Division recommends approval of the resource decision with the following conditions:

1. The Company's fully executed EPC contract must be reviewed by the Commission to ensure the final costs negotiated (including escalation, if any) in the EPC contract are aligned with the costs currently filed in the Application.
2. Ratepayer protections must be included in the signed EPC contract or in the alternative, through other Company commitments. Specifically, ratepayers should be held exempt from any non-compliance costs imposed by Wyoming or the EPA due to the Company or contractor's failure to meet the December 31, 2015, and December 31, 2016, emission limit deadlines, or other later deadlines as may be included in the EPA's re-proposal.

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<sup>29</sup> See Transcript of Hearing, March 7, 2013, at 82, lines 24-25; 83, lines 1-3; and 84, lines 3-5 (testimony of Company witness, Chad Teply, responding to Chairman Clark's question about "the cost consequences to the Company or to the rate pa[yers] of the Company of delaying until . . . fall of this year...").

<sup>30</sup> See Transcript of Hearing, March 7, 2013, at 171, lines 23-25; and 172, lines 1-4 (testimony of Division witness Mark W. Crisp, responding to Mr. Michel's question about "what your recommendation would be for the Commission if it were to grant approval...").

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3. Any deviation between the SCR costs included in this case and the costs included in a future general rate case or major plant addition case should be explained by the Company. Such explanations should be provided with the Company's general rate case or major plant addition application.
4. The Commission should approve the decision to construct the SCR systems, not pre-approve whatever costs may be incurred under the SCR systems project. Actual SCR system costs or forecasted SCR system costs proposed to be included in a future general rate case or major plant addition case test year should be open for prudence review. For example, should imprudent Company actions during construction result in an increase in costs for a given component of the project, such costs should not be recovered from ratepayers regardless of whether the total project costs are less than or more than the costs included in this case.

In its brief, the Division supports the Company's Application but states approval is not absolute. It argues UCA 54-17-403 provides "the commission may disallow some or all costs incurred . . . if the . . . utility's actions in implementing an approved resource decision are not prudent because of new information or changed circumstances. . . ." Additionally, the Division argues the Company retains the duty to prudently implement the resource decision. In the Division's view, doing so may require deviation from the approved resource decision if circumstances diverge from those upon which approval was granted.

The Division states further that implementation of the resource decision is more than simply the construction of the Project. It also includes the choice to continue with

implementation in light of new or changed circumstances as the project progresses. The choice to continue with implementation is partially a planning issue when changed circumstances demand a change in course of action possibly requiring termination of implementation.

In its comments on the change in the deadline for the EPA re-proposal, the Division continues to support conditional approval of the Company's Application and states the EPA's inaction on the anticipated date does not warrant disapproval of the Application.

**C. Office**

The Office recommends the Commission deny the Company's Application. The Office maintains, "... the benefits to be derived from the resource must be clear or pre-approval must be denied."<sup>31</sup> The Office asserts denial of "pre-approval" still allows the Company the opportunity to request recovery of Project costs in a general rate case, which is a more traditional means of cost recovery.<sup>32</sup> The Office is satisfied the record relating to its modeling issues is sufficiently developed to enable the Commission to reach a reasoned conclusion on the Application.

The Office contends due to the high level of uncertainty related to future EPA action it is not possible for the Commission to determine if the Company is pursuing the least-cost option for compliance. Further, the Office believes this uncertainty also makes it impossible for the Commission to determine now the Company's Application for pre-approval is in the public interest.

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<sup>31</sup> Direct Testimony of Cheryl Murray, at 3, lines 52-53.

<sup>32</sup> While some parties use the term "pre-approval" in characterizing the Application, the statute authorizes the Commission to "approve all or part of a resource *decision*..." See UCA § 54-17-402 (emphasis added). Nothing in this order is intended to supplant or waive the cost recovery provisions set forth in UCA § 54-17-403.

The Office argues approval of the resource decision should only be granted if the Bridger SCR Project is clearly demonstrated to provide ratepayer benefits as the least-cost option for compliance with the EPA's regional haze implementation plan requirements. Further, the Office argues that due to the uncertainty associated with the delay in the EPA's re-proposed rulemaking, the Commission cannot determine the Company's proposal is a preferred course of action and therefore should not approve the Company's Application.

**D. WRA**

WRA agrees with the Office that for the statute governing the voluntary request for approval of a resource decision to be used appropriately, "preapproval must be based on a clear demonstration of benefits."<sup>33</sup> Otherwise the regulatory bargain is strained. WRA contends the Company is in effect requesting the Commission to make determinations that it is not best suited to make.

WRA states, given that the Company's analysis in this case is not clear-cut, has undergone extensive revisions, and is extremely sensitive to modeling assumptions, and given that certain critical pieces of information are still in flux, it appears that customer interests are best protected by denying the current voluntary request for pre-approval. WRA asserts several errors in the Company's analysis which WRA claims cause the case for SCRs to be overstated:

1. The capacity of the Bridger Units 3 and 4 is overstated and forecast unit availability does not conform to history.

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<sup>33</sup> Surrebuttal Testimony, Nancy Kelly, at 19, line 377.

2. Mine reclamation is assumed to begin in the gas conversion case prior to the date when SCRs would be installed.
3. The potential for avoided or delayed transmission is not incorporated into the analysis.
4. The Company's CO<sub>2</sub> price forecasts are unreasonably low, do not provide a reasonable range of values, and are inconsistent with past modeling efforts.
5. If the EPA requires higher reductions of NO<sub>x</sub> than included in the Company's retrofit plans, capacity could be further reduced and operation and maintenance costs over the life of the facility could be increased.

WRA also believes the Company is undervaluing the monetary and environmental benefits of the water used at Bridger Units 3 and 4. Although these benefits are difficult to quantify, WRA believes they are not zero, and should be considered by the Commission in this proceeding. While the annual cost of water is not likely to affect the Company's strategy for reducing pollution at the Bridger Plant, the monetary value of the water rights in addition to the environmental value of leaving the water in stream should weigh in the Commission's decision.

WRA testifies the revisions made by the Company in its rebuttal testimony weaken the economic case for the Project and underscore the sensitivity of the results to the underlying assumptions. WRA states the estimated benefit in the Company's base case declined significantly to the point to where the decline is larger than the remaining benefit. Three modeling updates contribute to the significant decline in the estimated benefit of the Project in the base case. Two of the three assumption updates are primarily responsible for the reduction in the estimated benefit of the Project, and demonstrate just how sensitive the results are to changes

in modeling assumptions. The update to the OFPC, coal cash cost, and mine capital costs are the primary sources of the decline in the estimated benefit.

WRA, through its legal counsel, also introduced at hearing an agreement between the EPA, Public Service Company of New Mexico, and the state of New Mexico regarding the installation of selective non-catalytic reduction technology on the San Juan Generation Station's ("SJGS") Units 1 and 4 and the retirement of SJGS Units 2 and 3. WRA questions whether a similar approach would be applicable to Bridger units and whether the parties had enough time to investigate this option in the analysis. No WRA witness offered testimony regarding this option.

WRA concludes the Commission does not have the information it would need to determine SCR is the least-cost outcome adjusted for risk and uncertainty. WRA recommends the Commission reject the Company's Application. WRA notes the Company has requested pre-approval of the costs of the Project under UCA § 54-17-402. The statute allows a utility to seek pre-approval of a resource acquisition decision before expending the funds. However, in WRA's view, the request is voluntary and denial of the voluntary request by the Commission does not restrain the Company's future actions.

**E. Sierra Club**

Sierra Club contends the Company's proposed Project is an unstable solution which is ultimately not in the public interest because the Company's analysis in support of the Project is inconclusive and deficient. According to Sierra Club, Commission pre-approval of the Project would create a substantial risk for ratepayers and would remove the incentive for the

Company to continue to scrutinize lower cost alternatives to the installation of SCR retrofits at the Bridger Plant. Sierra Club asserts the following four concerns regarding the Company's analysis:

1. The Company's coal remediation analysis biases the choice to retrofit Bridger Units 3 and 4 with SCR.
2. The Company's analysis does not show how the alternative of potential retirement of Bridger Units 3 and 4 would alleviate transmission build out requirements and would avoid components of the Company's proposed Energy Gateway West transmission project.
3. The Company's revised rebuttal analysis reducing forecasted CO<sub>2</sub> compliance costs is unsupported and the Company's supposition of a positive relationship between natural gas and CO<sub>2</sub> compliance costs is unfounded.
4. The Company failed to explore the opportunity to defer the costs of SCR until a federal mandate is in place.

Sierra Club contends the Company's analysis which compares the cost impact of retiring Bridger Units 3 and 4 as a compliance alternative to the Company's preferred SCR retrofit is biased by excessive costs the Company assumes would occur with the closure (or partial closure) and subsequent remediation of the adjacent Jim Bridger coal mine.<sup>34</sup>

Sierra Club asserts the Company's surface mine remediation plan, under an assumed two or three unit retirement option, accelerates the remediation process faster than

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<sup>34</sup> The Company has two-thirds interest in the Jim Bridger Mine under its affiliate, Bridger Coal Company.

Wyoming regulatory requirements dictate. As a result, according to Sierra Club, the net present value of the Company's Bridger coal mine remediation sinking fund withdrawals is overstated, thus making the costs of Bridger unit retirement unfavorable in comparison to the SCR retrofit option. Additionally, Sierra Club argues the Company's retirement analysis fails to properly account for underground coal mine remediation costs, further biasing the analysis in favor of the SCR retrofit option.

Sierra Club also claims the Company provides little evidence it will be forced to shut down surface mining operations due to its inability to sell coal, assuming potential retirement of Bridger Units 3 and 4. Sierra Club asserts the Company has not issued solicitations to sell coal to other parties and has not determined if there is a domestic market for this coal.

Sierra Club argues the Company did not adequately consider the opportunity to avoid transmission expenses by retiring some of the Bridger units and replacing them with generation resources closer to load centers or with demand side management options. Sierra Club states if one or more units at Bridger are retired in the next few years, several hundred megawatts of capacity would be opened on existing transmission lines connecting Bridger to the Company's Populus substation near Downey, Idaho. According to Sierra Club, this would allow the Company to defer expenditures on the proposed development of additional transmission lines connecting these two points, as included in the Company's Energy Gateway West transmission development plan. As an alternative, Sierra Club argues if potential replacement generation and capacity were developed and sited closer to Utah or Oregon load centers, the Company may be able to relieve other transmission constraints.

Sierra Club contends the Company's sensitivity case which removes certain segments of planned Energy Gateway transmission is inadequate because it fails to examine the opportunity to avoid transmission investments on the segment of Energy Gateway West connecting the Bridger Plant to Utah and Oregon load centers. Sierra Club concludes the Company has not demonstrated the links in the proposed Energy Gateway West transmission project westward of the Bridger plant are unavoidable and argues the Company therefore denies ratepayers the opportunity to avoid unnecessary transmission infrastructure development costs, thereby biasing the Company's analysis against a potential unit retirement decision.

In its direct testimony, Sierra Club argues the Company's CO<sub>2</sub> price forecasts are unreasonably low, further biasing the analysis. Sierra Club claims it reviewed over 60 CO<sub>2</sub> price forecasts from approximately 25 publicly available IRP and utility planning dockets filed since 2009 and determined the Company's CO<sub>2</sub> forecast used in the SCR analysis is lower than similar forecasts used by other utilities and industry groups. For example, Sierra Club claims the Company's high CO<sub>2</sub> forecast is closer to what some other utilities and parties consider a mid-range forecast.

Sierra Club contends the Company's choice of what the Sierra Club considers to be a very low base CO<sub>2</sub> price forecast suggests the Company is "casting particularly long odds on any form of climate regulation or legislation relative to its counterparts."<sup>35</sup> Sierra Club argues this is an "outlier position" that is neither prudent nor safe, and exposes ratepayers to significant risk.

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<sup>35</sup> See Sierra Club, Rebuttal Testimony of Jeremy Fisher, at.23.

In its surrebuttal testimony, Sierra Club addresses the Company's assertion of a positive natural gas and CO<sub>2</sub> price relationship. Sierra Club does not necessarily reject the direct relationship between natural gas and CO<sub>2</sub> prices, and agrees there may be some coal-to-gas switching with low CO<sub>2</sub> and gas prices in the short term. In the long run, however, Sierra Club argues that continuously rising CO<sub>2</sub> prices may incent power providers to choose not to build gas generation resources because such resources would also be subject to payment of CO<sub>2</sub> prices. Under such conditions, according to Sierra Club, power providers may opt to develop other low emissions sources such as renewable or even nuclear energy.

Sierra Club states the net interaction between gas prices and CO<sub>2</sub> prices involves a complex interplay of factors potentially leading to numerous outcomes. Sierra Club contends the Company's assumed natural gas CO<sub>2</sub> price relationship is unfounded and is overemphasized, thereby biasing the analysis regarding reasonable generation replacement portfolios.

Sierra Club also asserts it is not necessary for the Company to meet the requirement for the proposed SCR retrofit until 2018. Sierra Club claims there is no reason for the Company to move forward with construction of the proposed project right now. Sierra Club contends the EPA's December 2012 extension delaying a final determination prevents the Commission and other parties from considering the additional economic impacts that could result once the final rule is made. With final determination, according to Sierra Club, all four Bridger Units now become subject to BART, an outcome affecting the entire plant, not just Units 3 and 4. Compliance with the EPA's final determination could include potential acceleration of installation of SCR on Bridger Units 1 and 2, increased capital and operational costs necessary to

meet potentially more aggressive emissions limits, or the impact of installing SCR on all four Jim Bridger units within a five-year window.

According to Sierra Club, if the final promulgation of the EPA's final determination takes place on September 27, 2013, the new compliance deadline for the installation and operation of BART would occur no earlier than September 27, 2018, giving the Company nearly three additional years to complete the installation of BART emissions controls or to implement another alternative. Additionally, Sierra Club contends the BART Settlement Agreement can be modified if the final determination results in changed circumstances. Therefore, Sierra Club argues the Company should, for the benefit of its ratepayers, seek to amend the BART Settlement Agreement (and the EQC order) and delay the Project.

Sierra Club argues the Company is requesting pre-approval to proceed with a massive capital project to comply with federal law before the specific federal requirement is finalized. It contends Wyoming's proposed 2015/2016 compliance dates will be irrelevant if the EPA disapproves the proposed Wyoming SIP. Further, given the most recent extension of the EPA's proposed rule, Sierra Club argues that neither the Company nor the Commission will know what the actual compliance emission limits and dates will be until after the Company proposes to begin construction of the Project. Sierra Club notes without knowing the final environmental requirements for the Bridger facility, the Commission cannot determine at this time whether the proposed resource decision is prudent, and therefore the Commission must deny the Company's Application.

**IV. DISCUSSION, FINDINGS, AND CONCLUSIONS**

This is the first voluntary request for approval of a resource decision filed with the Commission pursuant to UCA § 54-17-402 and UAC R746-440-1. Under UCA § 54-17-402, the Commission has the authority to hear voluntary requests to approve all or part of a proposed resource decision by a public utility before the utility implements the resource decision. Resource decisions include those relating to “an energy utility’s acquisition, management, or operation of energy production, processing, transmission, or distribution facilities or processes . . . .” UCA § 54-17-401(2)(a).

When considering a voluntary request to approve a resource decision, UCA § 54-17-402(3)(b) requires the Commission to determine whether the 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;
  - (ii) long-term and short-term impacts;
  - (iii) risk;
  - (iv) reliability;
  - (v) financial impacts on the energy utility; and
  - (vi) other factors determined by the commission to be relevant.

In the event the Commission approves a resource decision under this statute, UCA § 54-17-402(7) requires the Commission to include in its order:

- (a) findings as to the approved projected costs of a resource decision; and
- (b) the basis upon which the [projected costs] are made.

Three of the seven intervening parties in this case, the Office, WRA, and Sierra Club, recommend the Commission deny the Company’s request for approval of its Application.

To some extent, these parties argue it is impossible to determine whether the Project is least cost because the EPA has yet to issue its final rulemaking regarding the Wyoming SIP and therefore it is unknown when the Company must comply, and what the Company must do in order to comply, with EPA's final rulemaking. The Office argues too much uncertainty exists for the Commission to determine the Company's Application is in the public interest. Essentially, these parties place little weight, if any, on the Wyoming process and the determinations made therein. The Company and Division, on the other hand, place substantial weight on the legally binding Wyoming requirements. Based on the record in this case, we agree with the Company and Division that the Wyoming SIP requirements warrant our consideration now of the reasonableness of the Company's resource decision.

The Company filed correspondence from the WDEQ, dated March 6, 2013, stating the Company is required to meet the Wyoming SIP, including the emissions limits and deadlines for Bridger Units 3 and 4. Further, as noted by the Company in its April 19, 2013, reply brief, should the EPA issue a federal implementation plan ("FIP"), the State of Wyoming may take various steps to cure and implement the SIP, rather than implement the FIP.<sup>36</sup> It is uncontroverted that Wyoming law currently requires the reduction of NOx emissions at Bridger Units 3 and 4 by 2015 and 2016, respectively.

It is also undisputed the proposed SCR technology is a compliant technology to meet the Wyoming emission limit of 0.07 lbs/MMBtu, as well as the more stringent limit of 0.05

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<sup>36</sup> See Rocky Mountain Power Reply Comments Relating to EPA Action, dated April 19, 2013, at 3.

lbs/MMBtu, should the EPA impose the more stringent limit as it has done elsewhere.<sup>37</sup> The Company's unrebutted testimony states this more stringent emissions limit can be achieved within the scope of Project costs presented in the Application. No party provides evidence the EPA has unilaterally imposed any more stringent requirement on an electric utility to satisfy regional haze requirements. Thus, in considering the current mandates of the Wyoming SIP, we conclude it is reasonable at this juncture to presume the EPA will issue a final rulemaking requiring technologies and emission limits consistent with the mandates underlying the Application.

Further, the EPA is now expected to issue its notice of re-proposed rulemaking on May 23, 2013. Should the EPA re-propose a solution that is outside the presumed mandates, UCA § 54-17-404 provides a process for the Company to request Commission review and determination of whether to proceed with implementation of the approved resource decision. Moreover, UCA § 54-17-403(2) places on the Company the burden to respond prudently to new information and changed circumstances or risk the Commission finding the Company's responsive actions to be imprudent and inconsistent with the public interest. Clearly, the Company is now aware the EPA may issue its notice of re-proposed rulemaking within weeks of this order. Therefore, we conclude while it is appropriate for the Company to begin to implement its resource decision now, it must do so in a manner that preserves its flexibility to respond appropriately to final EPA action that is outside the bounds of the assumptions on which its Application rests.

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<sup>37</sup> See Transcript of Pre-Hearing Conference, February 6, 2013, at 26, lines 6-15; See also Matt Croft Surrebuttal Testimony at 4-6, lines 54-117.

WRA and Sierra Club further argue the Commission should deny the Company's Application because the Company has failed to prove the Project is least cost. WRA and Sierra Club contend the Company's economic analysis of alternative compliance strategies overstates the cases supporting the Project, and therefore the Application should be denied.

Specifically, WRA and Sierra Club argue the Company does not properly account for the costs of certain Energy Gateway transmission investment which, they claim, would be avoided if Bridger Units 3 and 4 were retired. We find the Company's sensitivity case which retires Bridger Units 3 and 4 and cancels certain Energy Gateway transmission investment, and consequential wind resource investment, shows this alternative would be higher cost than the Project. We are not persuaded by WRA or Sierra Club this sensitivity analysis is flawed because it removes more of the Energy Gateway project than they consider appropriate for the scenario. Based on the Company's testimony, we are neither persuaded the Company may cancel select portions of transmission segments as suggested by WRA and Sierra Club; nor are we convinced if it did, the savings would outweigh the higher cost of the required replacement power. We conclude the evidence in this case does not support a conclusion that cost savings from avoiding segments of Energy Gateway transmission outweigh the benefits of the Project.

WRA and Sierra Club both argue the Company's estimates for possible future "taxes" on CO<sub>2</sub> emissions are too low and thus overstate the advantages of the Project. The Company counters its estimates are recent and consistent with its 2013 IRP. Further, the Company testifies CO<sub>2</sub> levelized costs for the period 2016 through 2030 would have to exceed \$30 per ton to achieve breakeven results between natural gas conversion and the Project. Based

on the Company's testimony, we are not persuaded reasonable CO<sub>2</sub> cost adjustments would shift the analysis in favor of natural gas conversion or retirement. Rather, we find the Company's assumptions reasonably reflect the uncertainties of future CO<sub>2</sub> compliance costs. Sierra Club also questions the Company's assumption regarding the assumed positive relationship between natural gas price and CO<sub>2</sub> price. We agree with the Company, and the variety of forecasting firms cited in testimony by the Company, such a trend is plausible if not likely and more likely than the case in which the two prices are expected to be independent of one another.

Finally, both WRA and Sierra Club argue the Company's economic analysis overstates mine closure and remediation costs in the event of unit retirement or conversion to gas. WRA and Sierra Club question the timing of remediation costs in the various alternatives and argue the Company's assumptions inappropriately burden the natural gas conversion case. We are persuaded by the Company response that it cannot alter mine reclamation without considering mining operations plans. Sierra Club's analysis does not consider this fact.

Sierra Club also challenges the Company's assumption coal costs would increase for Bridger Units 1 and 2 if Units 3 and 4 are converted to natural gas. Rather, Sierra Club argues, the Company could continue to mine the coal as before and sell it to offset remediation cost. However, Sierra Club provides no evidence the coal can be sold or shipped off the site. The Company, on the other hand, provides evidence additional loading and rail infrastructure would be required and the coal may be difficult to sell due to its composition. While WRA also asserts the Company has assumed incorrect capacities and availabilities for Bridger Units 3 and 4, thus favoring the Project, WRA provides no indication of the impact of this alleged error.

We are not persuaded by Sierra Club or WRA that further adjustments to address the foregoing issues are reasonable or would cause the results of the Company's economic analysis to swing in favor of natural gas conversion or early retirement. We note the Company's economic analysis not only demonstrates the Project is favored in six of nine cases, but substantially so. We find no compelling evidence, arguments, or analysis shifting the economics to favor to an alternative strategy to comply with the Wyoming SIP requirements.

Finally, we acknowledge the Division's recommendation that our approval of the Application include certain conditions (summarized in Section III. B., above). We conclude the conditions we impose below appropriately address the Division's recommendation.

Based on the foregoing discussion and the evidence presented in this case, we approve the Company's resource decision to construct SCR systems to achieve 0.07 lbs/MMBtu limits at Bridger Unit 3 by 2015, and Unit 4 by 2016, as described in the Application. We find the Company has 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. We also find 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 possible additional outages. Coordinating the timing of the Project with the four-year maintenance schedules of the Bridger Plant also will manage costs and risks associated with potential replacement power cost while the Project is implemented. Importantly, this timing will also ensure the Project is completed in time to meet the Wyoming SIP deadlines.

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We approve [REDACTED] as the reasonable projected cost of the resource decision to implement SCR systems designed to meet the proposed NOx limit of 0.07 lbs/MMBtu. We base this finding on the Company's testimony that achieving 0.05 lbs/MMBtu is expected to cost between [REDACTED] and [REDACTED] and that this amount is contained within the estimated Project cost of [REDACTED] for the SCR systems. Accordingly, we have removed [REDACTED] of the Project cost required to meet the 0.07 lbs/MMBtu NOx emission limit from the requested [REDACTED] to reflect the Company's testimony.

Approval of the [REDACTED] projected cost is conditioned upon our future review of the final EPC contract(s) for the SCR systems. If the EPC contract(s) to achieve 0.07 lbs/MMBtu NOx emission limits total less than this amount, the EPC amount shall replace the [REDACTED] as the approved projected costs of the resource decision required pursuant to UCA § 54-17-402(7)(a). Pursuant to UCA § 54-17-403, any increase from this projected cost is subject to Commission review as part of a rate hearing under UCA § 54-7-12, except to the extent the Commission issues an order under UCA § 54-17-404.

We also approve [REDACTED] as the reasonable projected cost of the resource decision to meet a NOx limit of 0.05 lbs/MMBtu. This projected cost is approved conditioned on a final EPA rule specifying this lower limit. The [REDACTED] projected cost to achieve a limit of 0.05 lbs/MMBtu is also conditioned upon our future review of the final EPC contract(s) for the SCR systems. If the EPC contract(s) to achieve 0.05 lbs/MMBtu emission limits total less than this amount, the EPC contracts(s) amount shall replace the [REDACTED] as the

approved projected cost of the resource decision required pursuant to UCA § 54-17-402(7)(a). And again, pursuant to UCA § 54-17-403, any increase from this projected cost is subject to Commission review as part of a rate hearing under UCA § 54-7-12, except to the extent the Commission issues an order under UCA § 54-17-404.

**V. ORDER**

Pursuant to the foregoing discussion, findings and conclusions made herein, we

**ORDER:**

1. The Company's resource decision to construct SCR systems on Bridger Units 3 and 4 is approved.
2. The approved projected cost of the Project is [REDACTED], conditioned upon our review of the executed EPC contract(s) as discussed herein.
3. In the event the EPA issues a final rule imposing a 0.05 lbs/MMBtu NOx emissions limit, the approved projected cost of the Project is [REDACTED], conditioned upon our review of the executed EPC contract(s) as discussed herein.
4. The Company shall file the executed EPC contract(s) for the Project as soon as practicable.
5. In light of the current uncertainties pertaining to future EPA actions regarding the Wyoming SIP and pursuant to UCA § 54-17-403(2), the approval of resource decision projected costs in this Order is conditioned on the Company acting prudently when responding to potential new information and changed conditions.

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DATED at Salt Lake City, Utah, this 10<sup>th</sup> day of May, 2013.

/s/ Ron Allen, Chairman

/s/ David R. Clark, Commissioner

/s/ Thad LeVar, Commissioner

Attest:

/s/ Gary L. Widerburg  
Commission Secretary  
D#244314

Notice of Opportunity for Agency Review or Rehearing

Pursuant to §§ 63G-4-301 and 54-7-15 of the Utah Code, an aggrieved party may request agency review or rehearing of this Order by filing a written request with the Commission within 30 days after the issuance of this Order. Responses to a request for agency review or rehearing must be filed within 15 days of the filing of the request for review or rehearing. If the Commission does not grant a request for review or rehearing within 20 days after the filing of the request, it is deemed denied. Judicial review of the Commission's final agency action may be obtained by filing a petition for review with the Utah Supreme Court within 30 days after final agency action. Any petition for review must comply with the requirements of §§ 63G-4-401 and 63G-4-403 of the Utah Code and Utah Rules of Appellate Procedure.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 30<sup>th</sup> day of May, 2013, a true and correct copy of the foregoing REDACTED REPORT AND ORDER was served upon the following as indicated below:

By Electronic-Mail:

David L. Taylor ([dave.taylor@pacificorp.com](mailto:dave.taylor@pacificorp.com))  
Mark C. Moench ([mark.moench@pacificorp.com](mailto:mark.moench@pacificorp.com))  
Daniel E. Solander ([daniel.solander@pacificorp.com](mailto:daniel.solander@pacificorp.com))  
Rocky Mountain Power

D. Matthew Moscon ([dmmoscon@stoel.com](mailto:dmmoscon@stoel.com))  
Mark E. Hindley ([mehindley@stoel.com](mailto:mehindley@stoel.com))  
Stoel Rives LLP

Steven S. Michel ([stevensmichel@comcast.net](mailto:stevensmichel@comcast.net))  
Nancy Kelly ([nkelly@westernresources.org](mailto:nkelly@westernresources.org))  
Charles R. Dubuc ([rdubuc@westernresources.org](mailto:rdubuc@westernresources.org))  
Western Resource Advocates

William J. Evans ([bevans@parsonsbehle.com](mailto:bevans@parsonsbehle.com))  
Vicki M. Baldwin ([vbaldwin@parsonsbehle.com](mailto:vbaldwin@parsonsbehle.com))  
Elizabeth L. Silvestrini ([esilvestrini@parsonsbehle.com](mailto:esilvestrini@parsonsbehle.com))  
Parsons Behle & Latimer

Gary A. Dodge ([gdodge@hjdllaw.com](mailto:gdodge@hjdllaw.com))  
Hatch, James & Dodge

Kevin Higgins ([khiggins@energystrat.com](mailto:khiggins@energystrat.com))  
Neal Townsend ([ntownsend@energystrat.com](mailto:ntownsend@energystrat.com))  
Energy Strategies

Travis Ritchie ([travis.ritchie@sierraclub.org](mailto:travis.ritchie@sierraclub.org))  
Gloria Smith ([gloria.smith@sierraclub.org](mailto:gloria.smith@sierraclub.org))  
Sierra Club

By Hand-Delivery:

Division of Public Utilities  
160 East 300 South, 4<sup>th</sup> Floor  
Salt Lake City, Utah 84111

Office of Consumer Services  
160 East 300 South, 2<sup>nd</sup> Floor  
Salt Lake City, Utah 84111

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Administrative Assistant

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-13-16**

**IDAHO POWER COMPANY**

**ATTACHMENT 3  
WYOMING ORDER**

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)

APPEARANCES

For the Applicant Rocky Mountain Power (RMP or the Company):  
PAUL HICKEY, Attorney at Law, Cheyenne, Wyoming.

For the Intervenor Office of Consumer Advocate (OCA):  
IVAN H. WILLIAMS, Senior Counsel, Cheyenne, Wyoming.

For the Intervenor, Wyoming Industrial Energy Consumers (WIEC):  
ROBERT M. POMEROY, Jr., and SARA K. RUNDELL  
of Holland & Hart, Greenwood Village, Colorado.

For the Intervenor Sierra Club:  
TRAVIS RITCHIE, Attorney at Law, San Francisco, California.  
ELLEN MEDLIN, Attorney at Law, San Francisco, California.

For the Intervenor Powder River Basin Resource Council (PRBRC):  
SHANNON ANDERSON, Attorney at Law, Sheridan, Wyoming.

HEARD BEFORE

Chairman ALAN B. MINIER  
Commissioner WILLIAM F. RUSSELL

STEVE MINK, Assistant Secretary,  
Presiding pursuant to a *Special Order* of the Commission

Hearing held March 26, 2013

MEMORANDUM OPINION, FINDINGS AND ORDER GRANTING  
APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
(Issued May 29, 2013)

This matter is before the Wyoming Public Service Commission (Commission) upon the application (Application) of RMP seeking a Certificate of Public Convenience and Necessity

(CPCN) for the construction of selective catalytic reduction systems (SCR) on Jim Bridger Units 3 and 4 located near Point of Rocks, Wyoming; and the interventions of OCA, WIEC, Sierra Club and the PRBRC.

The Commission, having reviewed the Application, attached exhibits, and the evidence adduced at the public hearing, its files regarding RMP, applicable Wyoming utility law, and otherwise being fully advised in the premises, FINDS and CONCLUDES:

#### Introduction

1. On August 7, 2012, RMP filed its Application with the Commission. PacifiCorp provides retail electricity service as RMP in Wyoming, Utah, and Idaho, and as Pacific Power in the states of Oregon, Washington, and California. RMP is a public utility as defined in W.S. § 37-1-101(a)(vi)(C), subject to the jurisdiction of the Commission under W.S. § 37-2-112.

2. The Application, in compliance with the Stipulation and Agreement approved in Docket No. 20000-384-ER-10 (the Stipulation), seeks an *Order* granting a CPCN to construct two major environmental projects as provided in ¶13b of the Stipulation. The projects would add SCR systems to Units 3 and 4 of the Jim Bridger electric steam plant located in Sweetwater County, Wyoming. (Application pp. 1-2). RMP supported the Application with the written testimony of Chad A. Teply, together with attachments CAT-1, 1-1, 1-2, 1-3, 2, 2-1, 2-3, 3, 3-1, 3-2, 3-3, 3-4, 4, 4-1, 4-2, 4-3, 4-5, 5, 6, 7 (Exhibit 1) and the written testimony of Rick T. Link together with attachments RTL 1-7. (Exhibit 2.)

3. On August 13, 2012, WIEC filed its *Petition for Leave to Intervene (Petition)*. The *Petition* was granted by *Order* issued October 9, 2012. WIEC is an unincorporated association whose members are corporations duly authorized to transact business in Wyoming. WIEC members are Wyoming ratepayers who operate facilities within the service territory of RMP. (Stipulated Facts ¶5.)

4. On August 27, 2012, the Commission issued its *Notice of Application* containing a protest deadline of September 27, 2012. The notice was duly published in newspapers and broadcast on radio stations in RMP's service territory. (Composite Exhibit A.)

5. On September 5, 2013, PRBRC filed its *Petition for Leave to Intervene*. The *Petition* was granted by an *Order* issued October 9, 2012. PRBRC is membership-based organization headquartered in Sheridan, Wyoming. PRBRC members purchase utility services from RMP. (Stipulated Facts ¶6.)

6. On September 25, 2012, Sierra Club filed its *Petition for Leave to Intervene*. The *Petition* was granted by *Order* issued October 9, 2012. Sierra Club is a national environmental and conservation organization incorporated as a nonprofit public benefit corporation under the laws of California. Sierra Club members purchase utility services from RMP. (*Id.* at ¶7.)

7. On September 24, 2012, pursuant to W.S. § 37-4-402(a)(i), the OCA intervened in the case. The OCA is an independent division within the Commission, charged by statute with

representing the interests of Wyoming citizens and all classes of utility customers in matters involving public utilities. (*Id.* at ¶4.)

8. On October 30, 2012 the Commission issued its *Order Setting Procedural Schedule* which set, *inter alia*, a public hearing commencing on March 4, 2013. (*Id.* at ¶18.)

9. On December 21, 2012, Sierra Club filed its *Motion for a Stay or Continuance Pending Final EPA Action*. Pursuant to action taken at its January 17, 2013, open meeting, the Commission entered its *Order Denying Motion for a Stay or Continuance Pending Final EPA Action* on February 4, 2013. (*Id.* at ¶¶20-23.)

10. On January 31, 2013, the Commission entered its *Order Vacating and Resetting Hearing*, which, *inter alia*, vacated the scheduled hearing date and reset the hearing for March 26, 2013. Notice of the new hearing date was duly published in newspapers and broadcast on radio. (Composite Exhibit A.)

11. On February 1, 2013, the intervenors pre-filed direct testimony together with the following exhibits:

WIEC: confidential direct testimony of Randall J. Falkenberg and attachments RJF 1-3 (Exhibit 100).

OCA: direct testimony of Leo H. Stander (Exhibit 201) and Bryce J. Freeman (Exhibit 202), Appendix A (Exhibit 202.1), Confidential OCA Data Request Response 3.16 (Exhibit 202.2), Confidential Continued Coal Operation to Gas (Exhibit 202.3), Confidential Continued Coal Operation to Gas (Exhibit 202.4), Confidential Continued Coal Operation to Gas (Exhibit 202.5), Confidential Continued Coal Operation to Gas (Exhibit 202.6), Confidential Continued Coal Operation to Gas CCCT (Exhibit 202.7), Confidential Continued Coal Operation to Gas CCCT (Exhibit 202.8), Confidential Continued Coal Operation to Gas CCCT (Exhibit 202.9), Confidential Continued Coal Operation to Gas CCCT (Exhibit 202.9), Confidential Continued Coal Operation to Gas CCCT (Exhibit 202.10), Confidential RMP Cost of Capital (Exhibit 202.11), Redacted Testimony of Bryce J. Freeman (Exhibit 203).

Sierra Club: direct testimony Jeremy Fisher (Exhibit 300), Jeremy Fisher Curriculum Vitae (Exhibit 301), WIEC 14.3 CONF – PVRRT Tables (Exhibit 302), Information Request Responses WIEC 1.115 (Exhibit 303), Synapse 2012 Carbon Dioxide Price Forecast (Exhibit 304), CO2 Price Forecasts used by Various Utilities In Planning (Exhibit 305), CO2 Price Forecast from PacifiCorp Synapse EEI (Exhibit 306), EEI Potential Impacts of Environmental Regulation (Exhibit 307), EPRI Preliminary Analysis of Waxman-Markey (Exhibit 308), Gateway West Transmission Line Project Overview Map (Exhibit 309), WECC Path Reports, 10-Year Regional Transmission Plan (Exhibit 310), Gateway West Comprehensive Progress Report (Exhibit 311), Gateway West Transmission Line Draft EIS Section 1 (Exhibit 312), Attach WIEC 1.4 -1 CONF (Exhibit 313), Attach WIEC 1.4 -2 CONF (Exhibit 314), Response to WIEC 13.2 (Exhibit 315), Response to WIEC 13.4 (Exhibit 316), Response to WIEC 1.83 (Exhibit 317), GTM V 2.0 Method Assumptions (Exhibit 318), Response to WIEC 6.8 (Exhibit 319), Attach WIEC 14.3 CONF - Coal Adjustments (Exhibit 320a), Attach WIEC 14.3 CONF -

Mine Capital Adjustments (Exhibit 320b), Response to WIEC 8.25 (Exhibit 321), Delivered Cost of Coal to PacifiCorp Plants CONF (Exhibit 322), CapEx\_TransmissionOptions CONF (Exhibit 323), CapEx\_TieCapacity CONF (Exhibit 324), and Attach WIEC 1.22 -1 CONF (Exhibit 325).

PRBRC did not pre-file any exhibits.

12. On March 4, 2013, RMP filed rebuttal testimony of Rick Link with attachments RTL 1-7 (Exhibit 2; the Company filed Link's direct and rebuttal testimony under the same Exhibit number), rebuttal testimony of Cindy A. Crane (Exhibit 3), and rebuttal testimony of Cathy S. Woollums with attachments CSW-1R-3R (Exhibit 4). The OCA filed cross-answer testimony of Bryce Freeman (Exhibit 204). WIEC filed non-confidential and confidential cross-answer testimony of Randall Falkenberg together with attachments RJF 3-6 (Exhibits 102 and 103 respectively). Sierra Club filed cross-answer testimony of Jeremy Fisher (Exhibit 326), The Brattle Group, "Potential Coal Plant Retirements: 2012 Update (Exhibit 327), UT 12-035-92 Response to Sierra Club Data Request 5.13(a) (Exhibit 328), and UT 12-035-92 Response to Sierra Club Data Request 5.15(d) (Exhibit 329).

13. On March 5, 2013, RMP filed correspondence from Cathy S. Woollums, MidAmerican Energy Holdings Company to Nancy E. Vehr and Steven A. Dietrich, Wyoming Department of Environmental Quality, Air Quality Division (Exhibit 5).

14. On March 6, 2013, RMP filed correspondence from Steven A. Dietrich, Wyoming Department of Environmental Quality, Air Quality Division to Cathy S. Woollums, MidAmerican Energy Holdings Company (Exhibit 6).

15. On March 19, 2013, WIEC filed OCA Answers to WIEC's Fourth Set of Data Requests (Exhibit 104), Letters to and from the Wyoming Department of Environmental Quality (Exhibit 105) and rebuttal testimony of Chad Teply in Docket No. 20000-400-EA-11 (Exhibit 106).

16. On March 20, 2013, PRBRC filed RMP's response to PRBRC data request 1.2 (Exhibit 400), EPA, *Coal Combustion Residuals – Key Differences Between Subtitle C and Subtitle D Options* (Exhibit 401) and Evan Lehmann and Tiffany Strecker, *Utilities Prepare for Carbon Rules on Operating Power Plant*, E&E Publishing (Exhibit 402). Sierra Club filed Excerpt of UT 12-035-92 Hearing Transcript (3-7-13), Pages 1-7, 29-127 CONF (Exhibit 330), Excerpt of June 4, 2012 EPA Proposed Rule, Sec. VII(A)(4), 77 Fed. Reg. 33022-23, 33053-54 (Exhibit 331), July 12, 2012 Comments from PacifiCorp (Exhibit 332) and Oregon Final Decision, Docket UE 246 (Exhibit 333). RMP filed Sierra Club Web Page, *The Sierra Club Beyond Coal Campaign*, ([www.sierraclub.org/coal](http://www.sierraclub.org/coal)) (Exhibit 7), March 1, 2013 article from Bloomberg by Mark Drajem, *Sierra Club Says 142 Coal-Fired Plants Shut During Drive* (Exhibit 8), Synapse Energy Economics, Inc., *Benefits of Beyond BAU, Human, Social, and Environmental Damages Avoided through the Retirement of the US Coal Fleet*, by Jeremy Fisher, PhD; Rachel Wilson; Nicole Hughes; Matthew Wittenstein; Bruce Biewald, January 25, 2011 (Exhibit 9), Sierra Club, Docket ID No. EPA-R08- OAR-2012-0026, comments on EPA Proposed Approval, Disapproval, and Promulgation of Implementation Plans; State of Wyoming; Regional Haze State Implementation Plan; Federal Implementation Plan for Regional

Haze (Exhibit 10), Synapse Energy Economics, Inc., *Synapse 2008 CO2 Price Forecasts*, dated July 2008 (Exhibit 11), and Synapse Energy Economics, Inc., *Synapse 2008 CO2 Price Forecasts*, dated July 2008 (Exhibit 12).

17. On March 21, 2013, WIEC filed RMP responses to WIEC's 27<sup>th</sup> set of data requests (Exhibit 107).

18. Pursuant to the orders of the Commission and due notice, the public hearing in this matter was held on March 26-27, 2013, in Cheyenne. Following the receipt of the parties' post hearing briefs, the Commission held public deliberations pursuant to W.S. § 16-4-403, on April 10, 2013, and directed the preparation of an order consistent with its decision.

#### Summary of Decision

19. The Commission approves RMP's Application, as filed, for a CPCN to construct selective catalytic reduction systems on Jim Bridger Units 3 and 4.

#### Contentions of the Parties and Resulting Issues

20. RMP contends the present and future public convenience and necessity require installation of SCR systems at Jim Bridger Units 3 and 4. Extensive cost modeling with its System Optimizer model has shown a present value revenue requirement which favors SCRs over alternative investments, including conversion to natural gas. RMP urged prompt action because a settlement agreement with the Wyoming Department of Environmental Quality (DEQ) and subsequent Order from the Wyoming Environmental Quality Council (EQC) has established compliance deadlines which can be met most economically by commencing the SCR projects in the coming months. These state deadlines remain in effect even though there may be uncertainty about pertinent regulatory decisions to be made by the United States Environmental Protection Agency (EPA). Delays in commencing the projects are likely to increase costs to ratepayers and may ultimately render the project critical path unachievable. In response to critiques of other parties, RMP contended its Bridger surface coal mine cannot operate economically if Units 3 and 4 are closed. RMP also contended that the SCR project remains the economically superior alternative even if its proposed Gateway West and South segments do not go forward.

21. WIEC's position at hearing was that it did not object to the issuance of a CPCN for the SCRs, so long as several conditions were imposed on the Company at the time of the Commission's approval. First, WIEC contended the Commission should expressly retain and incorporate into its CPCN *Order* the ratepayer protections adopted in the Stipulation approved in Docket No. 20000-384-EA-10. Second, WIEC requested that the Commission direct the Company to perform more transparent and better documented analyses in future CPCN proceedings. In future cases the Company should be required to file its most recently updated long-term avoided cost GRID model together with calculations demonstrating the incremental fixed costs of the competing alternatives, including any special adjustments. Lastly, WIEC contended the Company should be directed to thoroughly analyze the interrelationship and interdependence of extraordinary transmission expenditures with major generation expenditures in all future CPCN applications for major generation or transmission investments.

22. Sierra Club contended that the Commission should deny RMP's application for a CPCN as premature because the EPA has not yet issued its final decision on the Wyoming State Implementation Plan and the environmental controls that will be required at the Bridger Plant. Sierra Club asserted the Application should address all four units of the Bridger Plant after all of the requirements of the federal Best Available Retrofit Technology ("BART") determinations under the Regional Haze Rule are finally known. Lastly, Sierra Club asserted that the deadlines associated with the Company's state obligations could change once the EPA takes final action, with the possible result that no immediate action on the part of the Company would be required.

23. While PRBRC did not file or otherwise offer testimony, it did provide a summary of contentions. PRBRC asserted that because the EPA had yet to issue a final decision on the environmental controls that will be required at the Bridger Plant, RMP was proceeding unwisely with the installation of SCR. PRBRC also stated that RMP had ignored long term liabilities at the plant related to carbon costs and coal combustion waste remediation costs.

24. OCA supported RMP's decision to retrofit Bridger Units 3 and 4 with SCR in order to comply with emission limits and permit requirements established under state law by DEQ and EQC. OCA concluded that making the SCR investments and continuing to fire the units with coal is the least cost alternative for Wyoming ratepayers.

#### Findings of Fact

25. At hearing it became clear that some of the parties' witnesses were confused about the scope of the CPCN determination that would be made by the Commission. Accordingly, we begin by describing the decision before us.

26. A Wyoming public utility must obtain a CPCN from the Commission before it begins "construction of a line, plant or system." W.S. § 37-2-205(a). The Commission is authorized to grant or refuse a certificate after a hearing "involving the financial ability and good faith of the applicant and the necessity for additional service in the community." W.S. § 37-2-205(c). By rule, the Commission has established requirements for information to support an application for a CPCN. We find RMP met those filing requirements.

27. This proceeding goes beyond the normal application for a CPCN. RMP has been upgrading and expanding its system for more than a decade. As a result of its investments, the Company has been filing annual rate cases since 2003. WIEC and OCA have been consistent participants in those rate cases. Both had developed a concern that the economic prudence of alternative system improvements were not being reviewed until, in a general rate case, RMP sought to include assets in rate base. Accordingly, they sought a mechanism to review alternatives before millions of dollars of capital had already been committed.

28. In the face of prospective expenditures [i] on pollution control equipment for its fleet of coal-fired plants and [ii] on system transmission assets crossing state boundaries, WIEC, OCA, and PRBRC sought a settlement of RMP's 2010 general rate case that would provide for pre-investment review of RMP's alternatives. For this purpose, they proposed to supplement

established CPCN procedures with innovative rate making methods authorized by W.S. § 37-1-121.

29. In RMP's 2010 general rate case, the Commission approved the Stipulation, including a stipulated ¶13 which addressed those concerns. ¶13 of the Stipulation has two subparts. Subpart (a) addresses the Energy Gateway Transmission Project. Subpart (b) addresses new environmental projects associated with its coal-fired power plants. These pollution control projects were specifically listed, and are generally those with a total project cost of more than \$25 million.

30. ¶13b of the Stipulation obligates RMP to file "one or more applications for a CPCN under W.S. § 37-2-205 in Wyoming seeking approval of the public convenience and necessity of each project before the Company begins construction." The CPCN application must include specified information (see Confidential Exhibit 1, CAT 4) which goes beyond that required by the Commission's Rules, including cost modeling information and an "estimate of the cost to construct and operate" the proposed project. The express intent of the parties was "to expand the historical CPCN analysis and the analysis historically done in rate cases." The Commission is to determine "whether the proposed expenditures are reasonable and in the public interest." Should the Commission grant a CPCN:

the Parties agree that they will not challenge the Company's prudence or recovery of the costs associated with that facility in any future Wyoming rate case except to the extent that (1) the cost of the environmental project exceeds the estimated costs or (2) there is evidence of mismanagement. If such circumstances ever exist, any challenge to the environmental project will be limited to the prudence of the construction costs in excess of the estimated costs or the impact of the mismanagement.

31. Nothing in ¶13b of the Stipulation purports to affect the Commission's own power to review the prudence of RMP's investment at the time of the general rate case, nor does ¶13b purport to affect the rights of future intervenors who were not party to the settlement in the 2010 general rate case. In approving the Stipulation, the Commission did not grant any form of preapproval or rate case guarantee. (¶¶86, 87, 128, *Order* of September 22, 2011.) While ¶13b creates a review process similar to a prudency determination, prudence remains a subject for a later rate case. If the Commission grants a CPCN, the effect is at most to limit the scope of the participation of the settling parties in that later rate case.

32. Since the origins of ¶13b of the Stipulation are in a rate case, it is likely that our decision will be referenced in RMP's next general rate case. The Commission did so with respect to the CPCN/¶13b filing which preceded this one. RMP filed a CPCN application for its coal-fired Naughton Unit 3. After extensive exchange of discovery between the parties, including updated information, the Company's present value analysis changed by about \$400 million (Tr., pp. 213-214), prompting the Company to conclude that conversion to natural gas would be preferable to installation of pollution controls. RMP withdrew its application. (*Motion to Withdraw*, May 11, 2012.) Details with ratemaking implications remained. These details were addressed in ¶18 of a settlement stipulation settling RMP's 2011 general rate case in

Docket No. 20000-405-ER-11 and specifically addressed in ¶45 and ¶83 of the *Memorandum Opinion, Findings and Order Approving Stipulation* issued on October 8, 2012, approving the settlement.

33. When an evidentiary standard is not specifically stated in our statutes, an applicant is bound by the “preponderance of the evidence” standard customarily used in civil cases. *Willadsen v. Christopulos*, 1987 WY 5 at ¶13, 731 P.2d 1181, 1184 (Wyo. 1987). This standard accordingly applies in a CPCN proceeding. We note that some of the witnesses who appeared before us were mistaken with respect to our evidentiary standard, the standard for determination in a CPCN proceeding, and the standard for determination under ¶13b. For example, the Sierra Club’s expert, Jeremy Fisher, testified that:

Despite volumes of discovery and [a] significantly modified model, PacifiCorp has not shown that these retrofits are *decisively in the interest of ratepayers* and certainly not to the extent that this Commission should advance any *guarantee of a full rate recovery* to the company. (Tr., p. 269). (Emphasis supplied).

34. We will not consider the evidence in this case through the lens of a decisive showing, and we reject the assumption that the result of this proceeding may be a preapproval or a guarantee of recovery.

35. While we acknowledge the voluminous testimony from Company witnesses describing the environmental project at issue, OCA’s expert Leo Stander provided a helpful and credible summary of how the project fits in its regulatory context. Stander is an engineer employed by the EPA for thirty years. (Tr., pp. 314-315.) According to Stander, the Company is required by law to install air pollution control devices to reduce emission of nitrogen oxides produced during combustion. (Tr., p. 316.) The device on Bridger Unit 3 must be in operation by December 31, 2015; the device on Bridger Unit 4 must be in operation by December 31, 2016. (Tr., p. 316).

36. The underlying federal regulatory standards require states which have national parks and federal wilderness areas to develop state implementation plans to make reasonable progress toward remedying existing visibility impairment to these protected areas. (Tr., p. 317). Wyoming has been working on its state implementation program for more than a decade. (Tr., p. 318). At this time, EPA has partially approved the state plan. (Tr., p. 318).

37. The controls on Bridger Units 3 and 4 stem from a determination that these units must use BART as part of the State’s plan. (Tr., pp. 318-319). The technology proposed in this case, SCR, was chosen following a lengthy and complex process of analysis. (Tr., p. 319). Stander concluded that the State and the Company followed the guidelines for this process “to the letter.” (Tr., p. 319).

38. The State determined that SCRs would be required and issued a construction permit on December 31, 2009. (Tr., p. 320). The Company suggested alternative, lower cost measures, and appealed the permit. (Tr., pp. 320-321). This dispute was settled in November 2010. (Tr., p. 320). Stander concluded that “The State of Wyoming has done all the heavy lifting with respect to negotiations...[for] Units 3 and 4, and it’s not likely...that EPA will

change the requirements they made.” (Tr., p. 323). He also notes that the existing 2015 and 2016 deadlines were originally five years from the date negotiations were concluded, a time frame the State considered as expeditious as possible. (Tr., p. 326).

39. Stander credibly explained that SCR is the best technology available for Bridger Units 3 and 4, in the sense that there is no other superior technology to address nitrogen oxide emissions. (Tr., pp. 331-332.) This supports the testimony of Chad Teply, who credibly explained that should EPA insist on a more stringent control standard, the Company would still meet the more stringent standard by use of the SCR technology. (Tr., pp. 63-65).

40. The two principal alternatives to installation of the SCR investments were converting Bridger Units 3 and 4 to natural gas, or retiring them early and replacing their capacity with alternative resource options. (Tr., pp. 136-137). The Company analyzed the problem using its System Optimizer model. (Tr., p. 136). The model’s output is a present-value revenue requirement differential (PVRRD) which compares the selected alternatives. (Tr., p. 137). To compare two alternatives, the model is run twice, once with the SCR investments being made, and once without. (Tr., p. 317). In the run without SCR investments, the model selects an alternative to replace the existing generation resource. (Tr., p. 317). The results are then tested by running the model again with a range of different market price assumptions. (Tr., p. 318).

41. Company witness Rick Link explained the result favored the SCR project, which has substantial present-value benefits compared to the next best alternative, gas conversion. (Tr., p. 138). Early retirement was, by far, the least desirable option. (Tr., p. 140). Link further found the benefits of the SCR investment prevailed over a range of different prices for natural gas and carbon dioxide. (Tr., p. 138). The carbon dioxide price, expressed in dollars per ton, is a surrogate for regulation of greenhouse gases; it is treated in the model as a direct cost of burning fuel. (Tr., p. 178).

42. There is a transparency problem with the System Optimizer model. It is a proprietary model, expensive to license and demanding to operate. (Tr., p. 348). WIEC’s witness Randall Falkenberg relied on another Company model, GRID, to determine whether the Company’s System Optimizer analysis fairly and accurately examined the costs and benefits of the proposed investments. (Tr., pp. 214-215). Link had explained that System Optimizer and GRID are both production cost models. (Tr., p. 171). They are similar in trying to generate and dispatch energy across the Company’s system, on a least cost basis, to meet ongoing load requirements across time. (Tr., p. 171). System Optimizer selects new resource alternatives to meet changing loads over time. (Tr., p. 71). This feature helps explain why System Optimizer is used to prepare the Company’s integrated resource plan, a long-term planning document updated every other year. (Tr., p. 135).

43. In contrast, GRID does not add new resources. The addition and location of new resources is an input. (Tr., pp. 171-172). The advantage of GRID is that it has more detailed unit commitment and dispatch logic, providing greater granularity for hourly dispatch patterns. (Tr., p. 172). For someone with Faulkenberg’s expertise (Tr., pp. 213-214), the GRID model is useful because it is “well understood.” (Tr., p. 215).

44. The simple bottom line of Falkenberg's analysis is that his results ultimately demonstrated close agreement with the Company's results. (Tr., p. 216). The results of Falkenberg's labors were impressive; his analysis generated many millions of dollars of changes to the Company's initial results, some of which favored the SCRs, some of which did not. (Tr., pp. 216, 239). Nonetheless, Falkenberg's end result was within \$6 million of the Company's end result. (Tr., p. 232).

45. Only the Company and Falkenberg pursued the complex tasks associated with cost modeling. We accord their conclusions more weight than the remaining parties, who did not.

46. Bryce Freeman of the OCA undertook a "high-level analysis" of his own to reach the conclusion that the SCRs are the most cost-effective alternative. (Tr., p. 335). His conclusion relies in part on a literature survey; he found no indication that the Bridger units were good candidates for retirement. (Tr., p. 336). He also reviewed the Company's analysis and was persuaded that the System Optimizer model "is the appropriate model for the Commission to base its decision on in this case." (Tr., p. 336). He favors the System Optimizer model's linkage to the Company's integrated resource plan. (Tr., p. 336). Finally, he did a rough cost analysis of his own that supports selection of the SCRs. (Tr., pp. 337-338). We find these views credible, although not entitled to the weight of the cost modeling.

47. The Sierra Club's witness Jeremy Fisher raised four main points questioning the adequacy of the Company's overall analysis. First, he contended that the Company had inappropriately assigned the costs of closing the Bridger Coal Company's surface mine to all options but installation of SCRs. (Tr., p. 270). In Fisher's view, this front-loads and compresses mine remediation costs, thereby placing a disproportionate present value on near-remediation when compared to remediation if Bridger's underground and surface mines are closed together at the end of the useful life of the entire four-unit plant. (Tr., pp. 271, 292). He is suspicious about the difference between the extended period of mine closure at the end of the plant life and the shorter closure period for Bridger Units 3 and 4 alone.

48. Fisher's first contention rests on uninvestigated assumptions about the Company's control over the regulatory requirements governing mine closures (Tr., pp. 295-296), and about the dimensions of the future closures, which will find the mine complex some 50% larger. (Tr., p. 292). We find Fisher unpersuasive on this issue.

49. Fisher raised other arguments regarding coal mining and marketing, all of which appear to have been addressed by RMP witness Cindy Crane (Tr., p. 120 et seq). Fisher acknowledged that he would take her at her word on these subjects (Tr., p. 305), but hadn't seen "decisive evidence" from the Company. He acknowledged the absence of his own specific knowledge about such matters as rail transportation in southwestern Wyoming. (Tr., p. 306). As we have already noted, decisive evidence is not the standard in this case, and in any event, Crane's superior knowledge is persuasive.

50. Second, Fisher argues that the Company failed and refused to examine the opportunity to avoid imminent transmission expenditures if Bridger Units 3 and 4 were retired. (Tr., p. 271). Since the Jim Bridger site lies directly in the path of the proposed Gateway

Transmission system, Fisher believes the Company could “avoid massive capital expenditures associated with building segments of this line.” (Tr., p. 271). He acknowledges that his view is not supported by financial or production cost analysis of his own. (Tr., p. 309).

51. Fisher glosses over the fact that the other parties have not ignored transmission. Significantly, WIEC’s Falkenberg analyzed the problem, and concluded “it would take something like a six-year delay in the Gateway project in order to overcome the advantage of the SCR over the combined cycle option.” (Tr., p. 226). RMP’s Link conducted a sensitivity analysis removing all Gateway transmission investments other than those in southern Utah, and found that “the present value benefits that we calculated for our customers do not deteriorate in any way.” (Tr., p. 139). As already noted, we put more weight on the testimony of witnesses who have actually done calculations, and do not find Fisher persuasive.

52. As important, ¶13a of the 2010 RMP general rate case Stipulation specifically provided for separate procedures to address the Gateway Project. We see no reason to rewrite the bargain struck in that proceeding. Nothing in our statute or regulations would require the Company to otherwise address the effects of or on Gateway in a CPCN application for the project before us.

53. Third, Fisher asserts that RMP “underestimated the risk associated with greenhouse gas regulation or legislation.” (Tr., pp. 271-272). The Commission discussed the practical aspects of greenhouse gas prices at length with both Link (Tr., pp. 187-190) and Fisher. (Tr., pp. 296-305). Fisher conceded that it was speculative to pick a specific date when there will be substantial price for carbon dioxide. (Tr., pp. 304-305). The further in the future that date is, the less adverse impact it will have on the analysis favoring SCR installation. (Tr., pp. 303-304). We also note that Link supported the probability that natural gas prices will rise over time through the Company’s reliance on a forward price curve, that is, by reference to market transactions already occurring for future delivery of natural gas. (Tr., pp. 190-193). Rising natural gas prices generally favor SCR installation.

54. Fourth, Fisher asserts that the Company biased its gas pricing by linking carbon dioxide prices and natural gas prices. (Tr., p. 272). Fisher acknowledged that the linkage is “entirely fair” “if we can conclusively show and if the evidence and the experts across the board really do agree...” (Tr., p. 288). Link testified that the Company relied on forecasts of the US Department of Energy’s Energy Information Administration that “clearly show, when they assume a CO2 price signal is in place, demand for natural gas in the electric sector goes up, and their price forecasts for natural gas under those scenarios rise with it.” (Tr., pp. 168-169). The EIA is a credible source. Link also relied on a third-party forecasting source making a similar assumption. (Tr., pp. 169). We find Link’s rationale credible and reasonable; Fisher’s insistence on unanimity among forecasters is not, nor is his demand for a conclusive showing.

55. Taking into account the testimony of all the witnesses, we find that RMP has carried its burdens of proof and persuasion to demonstrate that SCR installation is the most preferable option.

56. Fisher (Tr., pp. 272-273), the Sierra Club and PRBRC raise a different objection to our approval, namely, that the EPA has yet to make a final determination on the state implementation plan. The general circumstance is employed to develop a variety of arguments for delaying our decision.

57. For example, Fisher suggests the EPA determination may mean a delay in implementing the deadlines for Jim Bridger Units 3 and 4 established by state litigation. (Tr., p. 273). Stander, who has considerable experience within EPA, more credibly concludes that “when a state has made a decision on this, EPA is not likely to go back on that decision if it meets [the standard of] as expeditiously as practicable.” (Tr., p. 325). Cathy Woollums, who can also claim considerable experience, likewise does not think that EPA will backtrack on the controls currently required. (Tr., pp. 207-208). Elsewhere, the Sierra Club has stressed the significance of a five-year time to meet standards (E.g., Tr., p. 256), yet Stander has explained that the existing deadlines are already five years after reaching agreement. (*Supra*).

58. There are other potential EPA actions. One is to increase the stringency of the nitrogen oxide emission standards. As already discussed, the SCRs are the ultimate technology available for this purpose, and when installed they can be adjusted to achieve the more stringent standards which are anticipated.

59. Another possibility is to accelerate the deadlines for installation of environmental controls in Units 1 and 2. Here, Teply explained a practical concern. For both Bridger Units 3 and 4, the construction is scheduled for a spring outage. The spring outage reduces replacement power costs for ratepayers, and allows a safer cushion of time to react to “initial operational challenges.” (Tr., pp. 88-89). Woollums went on to point out that if the deadlines for Units 1 and 2 are accelerated, then it becomes even more important to proceed with Bridger Units 3 and 4, to avoid stresses including system reliability concerns. (Tr., p. 208). As a practical matter, it will be imperative to stagger the construction of the four units both to minimize costs to ratepayers and maintain system integrity.

60. Although some interveners suggest that the acceleration of deadlines for Units 1 and 2 should lead to submission of a four-unit analysis, we disagree. A four-unit analysis is not required by our statute and Rules, or by the terms of ¶13b of the Stipulation, which allow the Company latitude to file “one or more applications for a CPCN...for each project before the Company begins construction.”

61. As a more general practical matter, Teply testified that the Company might be able to reach the established deadlines with a delayed start and a compressed schedule, “but it would not be at the most cost-effective means for the customer.” (Tr., pp. 91-95, at 95). We find this testimony credible.

62. The Sierra Club’s closing brief raises many more possibilities suggesting we disregard or devalue the practical potential for increased ratepayer costs in favor of delay. Woollums has persuasively testified that the EPA’s pending decision does not “change the company’s compliance obligations to install controls at Bridger Units 3 and 4 by December 31, 2015 and 2016.” The Wyoming DEQ’s commitment to these deadlines was reiterated in a letter

dated March 6, 2013. (RMP Exhibit 6). We are obliged to decide this matter on the record before us. The existence of myriad possibilities is insufficient grounds to disregard the clear terms of the settlement in reaching a decision on the CPCN. With this, it is inescapable that the Company's course of action, taken in the context of increased ratepayer costs associated with delay, is reasonable.

63. Like Section 204(e) of the Commission's Rules, ¶13b of the Stipulation requires RMP to provide an estimate of the cost to construct the project. Estimated costs carry over into the first exemption from the agreement not to challenge the Company's prudence or recovery if the CPCN is granted.

64. There is only one capital cost estimate in the record. That estimate is stated in Confidential Exhibit CAT 1-2, attached to RMP Exhibit 1, which is the pre-filed testimony of Chad Teply. (Tr., pp. 69-70). The total figures for Bridger Units 3 and 4 are found on the first and third pages of the exhibit. (Tr., p. 70). OCA's witness, Stander, who has extensive regulatory experience with similar facilities, testified that the Company's "projected costs appear to be reasonable." (Tr., pp. 321-322).

65. The Company does not propose to modify its estimate even if EPA ultimately decides to require a more stringent emission rate for nitrogen oxides. (Tr., pp. 65, 73). This is so despite additional costs associated with dropping from a .07 standard to a .05 standard. (Tr., p. 64). Teply explained that accommodating a more stringent emissions rate would be only one piece of the overall project, which itself has not been fully scoped. (Tr., pp. 71-72). In its best estimate of a fair overall project cost, the Company has treated the emissions rate as one contingency among many. (Tr., pp. 72-73).

66. In its closing brief, WIEC requests a substantial and specific dollar reduction to the estimated costs in the event that the emissions standard is not reduced from .07 to .05. We reject this request. First and foremost, WIEC did not identify this issue in its final Updated Summary of Contentions or its Summary of Remaining Issues. Neither RMP nor the Commission itself was on notice that the details of the estimates were in dispute before the evidence in the case was closed. There are factual assertions in the closing brief to which RMP could have responded, and which the Commission could have explored. Fundamental fairness requires that this request be foreclosed as untimely.

67. Second, no party produced a witness to testify that the Company's *method* of preparing a cost estimate was unreasonable or in any way contrary to customary practice. We also agree with Teply's observation that the subsequent prudence review by the Commission acts as a check on any tendency the Company might have to inflate its cost estimates in this proceeding. (Tr., pp. 113-114).

68. Overall, the establishment of a cost estimate is central to the bargain reflected in ¶13b of the Stipulation. We agree with Freeman's view that the cost estimate should be "put to bed when we leave the CPCN proceeding so that we don't have to worry about it at a future time." (Tr., p. 344). There can be no doubt that the quality of the estimate would improve as the project progresses and firm contractual commitments are made, but the fairest reading of our

obligation under ¶13b of the Stipulation is to make a present determination on the record before us.

69. Jeffrey Larsen, Vice-President of Regulation and Government Affairs for PacifiCorp and RMP, affirmed the Company's commitment to abide by the terms of ¶13b of the Stipulation, which include the right to challenge the Company's prudence or recovery of the costs in a future Wyoming rate case "to the extent that [i] the cost of the environmental project exceeds the estimated costs or [ii] there is evidence of mismanagement." (Tr., pp. 351, 355).

70. In future CPCN applications under ¶13b of the Stipulation, Larsen committed the Company to file, along with its application, its most recently updated long-term avoided cost model or the then-currently used model. (Tr., p. 356). In future CPCN applications under ¶13b of the Stipulation, Larsen further committed the Company to file, along with its application, and insofar as gas conversion is an alternative to the prospective environmental investments, a calculation showing incremental fixed costs for the gas conversion, including any special adjustments for that option. (Tr., p. 357). These fixed cost inputs will be for a natural-gas-fired resource alternative that is of similar size to the asset that would be retired and replaced. The fixed cost inputs will pertain to the base case analysis. (Tr., pp. 357-358). We will direct the Company to make these filings as initial discovery responses to be served on persons or entities which were parties to the Stipulation, rather than part of the application. Interveners not party to the Stipulation may request the same materials in discovery.

71. We find that the Company has carried its burdens of proof and persuasion with respect to establishing a cost estimate. That is the estimate found in Confidential Exhibit CAT 1-2.

#### Principles of Law

72. Wyoming statutes and Wyoming Supreme Court decisions establish the basis of and decisional parameters for our consideration of applications for certificates of public convenience and necessity. *Supra*, ¶26. W.S. § 37-2-205(a) states, in part:

No public utility shall begin construction of a line, plant or system, or of any extension of a line, plant or system without having first obtained from the commission a certificate that the present or future public convenience and necessity require or will require such construction. . . .

73. W.S. § 37-2-205(c) states the criteria for the Commission's action on an application:

Before any certificate may issue, under this section, a certified copy of its articles of incorporation or charter, if the applicant be a corporation, shall be filed in the office of the commission. *The commission shall have power, after hearing involving the financial ability and good faith of the applicant and the necessity of additional service in the community, to issue said certificate, as prayed for, or to refuse to issue the same, or to issue to it for the construction of a portion only of the contemplated line, plant, or system,*

or of a portion only, of the contemplated line, plant, system or extension thereof, or for the partial exercise only of said right or privilege, and may attach to the exercise of the rights granted by said certificate such terms and conditions as in its judgment the public convenience and necessity may require. [Emphasis added.]

74. The Wyoming Supreme Court has described this as “the three-part standard by which the PSC is to decide applications for certificates.” *Williston Basin Interstate Pipeline Co. v. Wyoming PSC*, 2000 WY 16, ¶10, 996 P.2d 663, 667 (Wyo. 2000). The financial ability standard may be met through evidence of “corporate financial records and the testimony of corporate officers.” (*Id.*, ¶11, 996 P.2d at 668.) The good faith standard may be met by reference to established definitions of good faith, including “an honest intention to abstain from taking any unconscientious advantage of another, even through the forms or technicalities of law together with an absence of all information or belief of facts which would render the transaction unconscientious.” (*Id.*, ¶13, 996 P.2d at 668.) The necessity of additional service may be met by evidence that the proposed facility “was not duplicative and was in the best interest of the community.” (*Id.*, ¶16, 996 P.2d at 669.)

75. Commission Rule § 203(a) requires the filing of an application for “construction of major utility facilities where a Certificate of Public Convenience and Necessity is required.”

76. Commission Rule § 204 sets out a list of the basic requirements for information to be included in an application for a CPCN, which, in pertinent part, are:

- (a) The name and address of the applicant;
- (b) The type of plant, property or facility proposed to be constructed;
- (c) A complete description of the facilities proposed to be constructed, including preliminary engineering specifications in sufficient detail to properly describe the principal systems and components; and final and complete engineering specifications when they become available;
- (d) List the rates, if any, proposed to be charged for the service that will be rendered because of the proposed construction;
- (e) State the estimated total cost of the proposed construction;
- (f) State the manner by which the proposed construction will be financed;
- (g) State the financial condition of the applicant;
- (h) State the estimated annual operating revenues and expenses that are expected to accrue from the proposed construction;
- (i) State the estimated starting and completion date of the proposed construction;

\* \* \*

77. Our basic and overriding standard in this case is the public interest and the desires of the utility are secondary to it. In *PacifiCorp v. Public Service Commission of Wyoming*, 2004 WY 164, 103 P.3d 862 (2004), the Wyoming Supreme Court, 2004 WY 164 at ¶13, quoted with favor *Sinclair Oil Corp. v. Wyoming Public Service Comm'n*, 2003 WY 22, at ¶9, 63 P.3d at 887 (Wyo. 2003):

Speaking specifically of PSC, we have said that PSC is required to give paramount consideration to the public interest in exercising its statutory powers to regulate and supervise public utilities. The desires of the utility are secondary. [Citation omitted.]

78. W.S. § 37-2-121 authorizes public utilities to initiate proceedings to employ innovative ratemaking methods:

. . . Any public utility may apply to the commission for its consent to use innovative, incentive or nontraditional rate making methods. In conducting any investigation and holding any hearing in response thereto, the commission may consider and approve proposals which include any rate, service regulation, rate setting concept, economic development rate, service concept, nondiscriminatory revenue sharing or profit-sharing form of regulation and policy, including policies for the encouragement of the development of public utility infrastructure, services, facilities or plant within the state, which can be shown by substantial evidence to support and be consistent with the public interest.

79. The Wyoming Administrative Procedure Act, at W.S. § 16-3-107, establishes general procedures in Commission cases, including the giving of reasonable notice. In accord are W.S. §§ 37-2-201, 37-2-202, and 37-3-106. (*See also*, Commission Rule §§ 106 and 115.)

#### Conclusions of Law

80. RMP is a public utility as defined by W.S. § 37-1-101(a)(vi)(C). Under W.S. § 37-2-112, the Commission has the general and exclusive jurisdiction to regulate RMP as a public utility in Wyoming. The Commission has duly authorized RMP to provide retail electric public utility service in its Wyoming service territory under CPCNs previously issued, and from time to time amended, by the Commission.

81. The Company was obligated by the Stipulation approved in RMP's 2010 general rate case to file a CPCN application that would comply with W.S. § 37-2-205(a) and our Rules. Pursuant to the Stipulation the Company was also required to produce information beyond the requirements of our Rules. Based on the record made by the parties, we conclude that the Company has met the filing requirements of the Commission Rules and the Stipulation.

82. We conclude RMP has the financial ability to proceed with the successful construction and operation of the proposed environmental upgrades based upon our Findings, which are supported by evidence including corporate financial records and the testimony of corporate officers.

83. We conclude that the good faith standard of W.S. § 37-2-205(c) is satisfied based upon our findings that include disclosures required by the Commission's Rules, our favorable assessment of the credibility of the witnesses appearing on behalf of the Company, as well as the adjustments made by the Company based on the input of other parties.

84. We conclude there is need for additional service which warrants construction of the proposed SCR upgrades to Bridger Units 3 and 4 based upon our findings, which are supported by the testimony of the intervenors as well as the Application and testimony and exhibits of RMP.

85. We conclude that: [i] the proposed expenditures are reasonable and in the public interest, [ii] the present and future public convenience and necessity require the construction and operation of SCR upgrades to Bridger Units 3 and 4, and [iii] a CPCN should be issued in this case. RMP has carried its burdens of proof and persuasion. It is in the public interest that the certificate be issued.

86. The showing necessary to sustain the issuance of the CPCN rests on the record, including the specific matters addressed in our Findings. It does not and cannot rest on the limited focus of the matters some parties have chosen to address.

87. Proper legal notice of this proceeding was given in accordance with the Wyoming Administrative Procedure Act, W.S. § 37-2-203, and the Commission's Rules, especially Section 106 thereof. The public hearing was held and conducted pursuant to W.S. §§ 16-3-107, 16-3-108, 37-2-203, and applicable sections of the Commission's Rules. The intervenor, OCA, was a party to the case for all purposes.

88. Public deliberations were held in compliance with W.S. § 16-4-403.

89. Based upon the record as discussed in the Findings of Fact, the Principles of Law, and our Conclusions of Law; approval of the following is just and reasonable, supported by the preponderance of the evidence and in the public interest:

a. The application of RMP for a CPCN to construct, operate and maintain the SCR upgrades to Bridger Units 3 and 4, all as described more fully herein and in the application and supporting documentation, should be granted;

b. That RMP should file with the Commission all construction reports pursuant to Commission Rule § 229.

**IT IS THEREFORE ORDERED:**

1. The Application of Rocky Mountain Power for 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, all as described more fully herein and in the application and supporting documentation, is hereby granted;

2. Rocky Mountain Power shall comply with Section 229 of the Commission's Rules regarding construction reports; and

3. Rocky Mountain Power will file all required permits when issued.

4. In future CPCN applications under ¶13b of the Stipulation approved in Docket No. 20000-384-ER-10, Rocky Mountain Power will comply with the filing requirements to which Jeffrey Larsen has agreed, as set forth in ¶70 of this *Order*.

5. This *Order* is effective immediately.

MADE and ENTERED at Cheyenne, Wyoming, on May 29, 2013.

PUBLIC SERVICE COMMISSION OF WYOMING

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ALAN B. MINIER, Chairman

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WILLIAM F. RUSSELL, Commissioner

(SEAL)

Attest:

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STEVE MINK, Assistant Secretary

**BEFORE THE  
IDAHO PUBLIC UTILITIES COMMISSION  
CASE NO. IPC-E-13-16**

**IDAHO POWER COMPANY**

**ATTACHMENT 4  
2013 INTEGRATED RESOURCE PLAN**