

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

JUN 30 2010

In the Matter of the Appeal)
and Petition for Review of:)
BART Permit No. MD-6040)
(Jim Bridger Power Plant); and)
BART Permit No. MD-6042)
(Naughton Power Plant).)

Docket No. 10-2801 Jim Ruby, Executive Secretary
Environmental Quality Council

PETITIONER PACIFICORP'S MOTION FOR PARTIAL SUMMARY JUDGMENT

Petitioner, PacifiCorp, by and through its counsel of record, and pursuant to Wyo. R.Civ.P. 56 and the Environmental Quality Council Rules, Chapter 2, Section 3 and 14, hereby moves the Council for an Order Granting Partial Summary Judgment in favor of PacifiCorp on its claims that the Wyoming Department of Environmental Quality, Division of Air Quality ("DAQ") exceeded its authority and otherwise erred by including conditions 17 and 18 in PacifiCorp's BART Permit for its Jim Bridger Power Plant. In support of its Motion For Partial Summary Judgment, PacifiCorp respectfully states:

1. DAQ erred when it included non-BART elements of its draft "long-term strategy" ("LTS") (Conditions 17 and 18) in the Bridger BART Permit for Bridger Units 1 - 4. Neither Wyoming's BART or LTS regulations, nor Wyoming's draft (unapproved) Regional Haze SIP, support DAQ's inclusion of Conditions 17 and 18 in the Bridger BART Permit. Accordingly, PacifiCorp is entitled to judgment as a matter of law and Conditions 17 and 18 should be stricken from the permit.

2. Even if non-BART elements of a draft LTS are appropriate in a BART permit, DAQ erred by including within Conditions 17 and 18 the requirements that PacifiCorp must submit future air permit applications that would: (i) as to Bridger Units 3 and 4, require "the installation of selective catalytic reduction (SCR) . . . achieving 0.07 lb/MMBtu on a 30-day rolling average;" and (ii) as to Bridger Units 1 and 2, "address each add-on NOx control as a

system of continuous emissions reduction achieving the lowest viable NOx emission.” Neither state nor federal regulations require these controls or limits as part of a LTS. There are no applicable legal standards or criteria to identify or choose the “lowest viable” NOx emissions reduction system for Units 1 and 2. Accordingly, PacifiCorp is entitled to judgment as a matter of law for the additional reason that Conditions 17 and 18 are arbitrary and capricious.

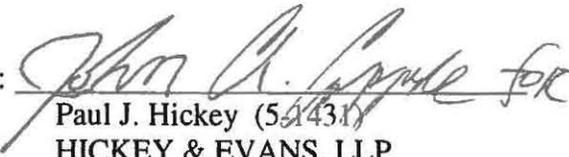
3. Even if non-BART elements of a draft LTS are appropriate in a BART permit, DAQ erred by requiring in Condition 18 as to Units 1 and 2 that PacifiCorp conduct an “objective” four factor analysis in the future while at the same time mandating what the outcome of that analysis will be (i.e., “a maximum NO_x emissions rate of 0.07 lb/MMBtu”). The four factor analysis is intended to reach an outcome determined by objectively applying each of the four factors. It is not intended to result in a pre-determined outcome. Accordingly, PacifiCorp is entitled to judgment as a matter of law that Condition 18 is arbitrary and capricious.

In support of this Motion for Partial Summary Judgment, PacifiCorp submits a Memorandum of Points And Authority setting out more fully the grounds for the relief requested, as well as its Rule 56.1 Statement of Undisputed Facts and Exhibits attached thereto.

WHEREFORE, PacifiCorp respectfully requests that the Council enter its Order Granting Partial Summary Judgment in favor of PacifiCorp and against DEQ regarding conditions 17 and 18 of PacifiCorp’s Bridger BART Permit, and for further and other relief as the Council may deem just and proper in the premises.

Respectfully submitted this 30th day of June 2010.

PACIFICORP

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30th day of June 2010 a true and correct copy of the foregoing PETITIONER PACIFICORP'S MOTION FOR PARTIAL SUMMARY JUDGMENT was served as follows:

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