

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

NOV 19 2010

Jim Ruby, Executive Secretary
Environmental Quality Council

Docket No. 10-2801

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).)

**ORDER DENYING PACIFICORP'S MOTION FOR PARTIAL SUMMARY
JUDGMENT**

This matter came before the Environmental Quality Council ("EQC") on September 9, 2010, for oral argument on a motion for partial summary judgment filed by Petitioner PacifiCorp ("PacifiCorp"). EQC members present at the motion hearing included Chairman Tim Flitner, Presiding Officer F. David Searle, Thomas Coverdale, Dennis Boal, John Morris (telephone), Cathy Guschewsky (videoconference) and Dr. Fred Ogden (videoconference). Jim Ruby, EQC Executive Secretary and Marion Yoder, Senior Assistant Attorney General were also present. PacifiCorp appeared by and through its counsel, E. Blaine Rawson. Respondent Department of Environmental Quality, Air Quality Division ("DEQ/AQD"), appeared by and through its counsel, Nancy Vehr, Senior Assistant Attorney General.

The EQC, having considered PacifiCorp's Motion for Partial Summary Judgment and the responses thereto, oral argument of the parties, and being otherwise fully advised in the premises, hereby finds and orders:

FINDINGS:

1. The EQC has jurisdiction over the subject matter and the parties to this proceeding pursuant to WYO. STAT. ANN. § 35-11-112 and Chapter I, Section 16 and Chapter II, Section 3 of the DEQ Rules of Practice and Procedure.

2. The Wyoming Rules of Civil Procedure apply to this proceeding pursuant to Chapter II, Section 14 of the DEQ Rules of Practice and Procedure.

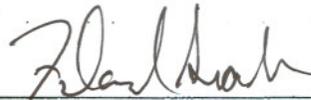
3. Rules 56 and 56.1 of the Wyoming Rules of Civil Procedure provide for summary judgment on motion where there is no genuine issue as to any material fact and the movant is entitled to a judgment as a matter of law.

4. PacifiCorp is not entitled to summary judgment as there are genuine issues of material fact.

ORDER:

It is hereby ordered that PacifiCorp's motion for partial summary judgment is DENIED.

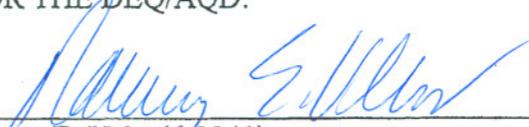
DATED this 18th day of November, 2010.



F. David Searle, Presiding Officer

APPROVAL AS TO FORM:

FOR THE DEQ/AQD:



Nancy E. Vehr (6-3341)
Sr. Asst. Attorney General
123 Capitol Building
Cheyenne, WY 82002
Attorney for DEQ/AQD

FOR PACIFICORP:



Paul Hickey (5-1431)
John Coppede (5-2485)
Hickey & Evans, LLP
1800 Carey Avenue, Suite 700
Cheyenne, WY 82001

 E. Blaine Rawson (pro hac vice)
Mark Benjamin Machlis (pro hac vice)
Holme Roberts & Owen LLP
299 South Main Street, Suite 1800
Salt Lake City, UT 84111

Attorneys for PacifiCorp

CERTIFICATE OF SERVICE

I, Kim Waring, certify that at Cheyenne, Wyoming, on the 19th day of November, 2010, I served a copy of the foregoing **ORDER DENYING PACIFICORP'S MOTION FOR PARTIAL SUMMARY JUDGMENT** by electronic mail to the following:

John Corra
Director, DEQ
jcorra@wyo.gov
307-777-7937

Chad Schlichtemeier
Acting Administrator
DEQ Air Quality Division
cschli@wyo.gov
307-777-5924

Affie Ellis
Asst. Attorney General
aellis@state.wy.us

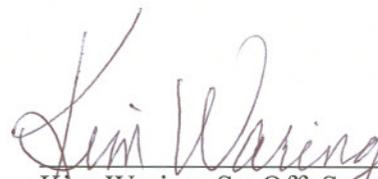
E. Blaine Rawson
Mark Benjamin Machlis
Holme Roberts & Owen, LLP
RawsonB@hro.com
Ben.machlis@hro.com

Nancy Vehr
Asst. Attorney General
nvehr@state.wy.us
307-777-7580

Paul Hickey
Hickey & Evans, LLP
phickey@hickeyevans.com
307-634-1525

Amanda Kroul
Attorney General's Office
akroul@state.wy.us

Michael Jenkins
PacifiCorp
Michael.Jenkins@PacifiCorp.com



Kim Waring, Sr. Off. Support Spec.
Environmental Quality Council
122 W. 25th, Rm. 1714
Herschler Bldg.
Cheyenne, WY 82002
Phone: 307-777-7170
FAX: 307-777-6134