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**FILED**

APR 08 2010

Jim Ruby, Executive Secretary  
Environmental Quality Council

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

In the Matter of: )  
Basin Electric Power Cooperative ) Docket No. 10-2802  
Air Quality Permit No. MD-6047 )  
BART Permit: Laramie River Station )

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**DEPARTMENT OF ENVIRONMENTAL QUALITY'S RESPONSE**

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Respondent, the Wyoming Department of Environmental Quality (DEQ)/Air Quality Division (AQD), by and through the Office of the Attorney General of the State of Wyoming, in response to Basin Electric Power Cooperative's (Basin Electric) Appeal and Petition for Review of Air Quality Permit No. MD-6047 for the Laramie River Station, responds as follows:

Basin Electric's introductory paragraph appears to be for descriptive purposes and does not contain factual allegations. Therefore, a response is not required. However, to the extent this paragraph is deemed to contain any factual allegations, the DEQ/AQD denies.

1. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted in paragraph 1 and therefore denies the same.
2. DEQ/AQD admits that on March 5, 2007, it received a letter from Basin Electric regarding presumptive Best Available Retrofit Technology (BART) for the

Laramie River Station (LRS), and on September 28, 2007, it received a BART permit application from Basin Electric for the LRS. DEQ/AQD also admits that during the permitting process, it received additional information from Basin Electric and others regarding Basin Electric's BART permit application for the LRS. DEQ/AQD further admits that it conducted a BART Application Analysis for the LRS dated May 28, 2009, which was put out for public comment on June 3, 2009. DEQ/AQD admits it held a public hearing on August 6, 2009, and received oral and written comments from Basin Electric and others and asserts that such comments speak for themselves. DEQ/AQD denies all other allegations contained in paragraph 2.

3. DEQ/AQD admits that on December 31, 2009, DEQ/AQD granted BART Air Quality Permit MD-6047 to Basin Electric for three existing coal-fired boilers at the LRS. DEQ/AQD admits that on January 5, 2010, it mailed a letter dated December 31, 2009, BART Air Quality Permit MD-6047, and DEQ/AQD's Decision document for the LRS BART Air Quality Permit MD-6047 to Basin Electric. DEQ/AQD is without sufficient knowledge or information to form a belief as to the truth of the matters asserted in the third sentence of paragraph 3 and therefore denies the same. The fourth sentence of paragraph 3 calls for a legal conclusion for which no response is required. DEQ/AQD denies all other allegations contained in paragraph 3.

4. The first sentence of paragraph 4 calls for a legal conclusion for which no response is required. In the second, third and fourth sentences of paragraph 4, Basin Electric purports to paraphrase the statute and a federal regulation. DEQ/AQD asserts that the statute and federal regulation speak for themselves and paraphrasing the statute

or federal regulation are not allegations of fact which require a response. DEQ/AQD denies all other allegations contained in paragraph 4.

5. In the first sentence of paragraph 5, DEQ/AQD admits that in a letter dated June 14, 2006, the DEQ/AQD notified Basin Electric that the LRS was “Subject to BART” and requested “an analysis of BART options[.]” DEQ/AQD admits that on the basis of representations made by Basin Electric, comments received during the public comment period and DEQ/AQD’s analysis of such information, the DEQ/AQD, as part of its determination, established BART emission limits for nitrogen oxides (NO<sub>x</sub>). The DEQ/AQD denies all other allegations contained in paragraph 5.

6. In paragraph 6, Basin Electric purports to paraphrase the LRS BART permit and LRS BART Application Analysis. DEQ/AQD asserts that such documents speak for themselves and are not allegations of fact which require a response. The DEQ/AQD denies all other allegations contained in paragraph 6.

7. DEQ/AQD denies the allegations in paragraph 7.

8. DEQ/AQD denies the allegations in paragraph 8.

9. In the first three sentences of paragraph 9, Basin Electric purports to paraphrase statutes, regulations and EPA guidelines. DEQ/AQD asserts that such statutes, regulations and EPA guidelines speak for themselves and are not allegations of fact which require a response. In the fourth sentence of paragraph 9, Basin Electric purports to paraphrase the LRS BART Permit and DEQ Application Analysis. DEQ/AQD asserts that paraphrasing the LRS BART Permit and the DEQ Application

Analysis are not allegations of fact which require a response as such documents speak for themselves. DEQ/AQD denies all other allegations contained in paragraph 9.

10. DEQ/AQD denies any allegations contained in paragraph 10.

11. DEQ/AQD denies any allegations contained in paragraph 11.

12. DEQ/AQD admits that Wyoming submitted a § 309 Regional Haze (RH) SIP to the EPA on December 29, 2003; a revised § 309 RH SIP on November 21, 2008, and held a RH SIP public hearing before the Air Quality Advisory Board (AQAB) on Wyoming's DRAFT State Implementation Plan for Regional Haze, dated August 25, 2009 (DRAFT RH SIP). DEQ/AQD also asserts that adoption of a RH SIP is not a prerequisite for granting a permit. DEQ/AQD denies all other allegations contained in paragraph 12.

13. The allegations in paragraph 13 call for a legal conclusion for which no response is required. To the extent a response is required, DEQ/AQD denies.

14. The allegations in paragraph 14 call for a legal conclusion for which no response is required. To the extent a response is required, DEQ/AQD denies.

15. In the first and third sentences of paragraph 15, Basin Electric purports to paraphrase the CFR, DEQ's Application Analysis and the LRS BART Permit Decision. DEQ/AQD asserts that paraphrasing the CFR, DEQ's Application Analysis and the Decision document are not allegations of fact which require a response. The fourth sentence of paragraph 15 calls for a legal conclusion for which no response is required. DEQ/AQD denies all other allegations contained in paragraph 15.

16. DEQ/AQD admits that Basin Electric conducted modeling for visibility impacts for the Class I areas in South Dakota and the DEQ/AQD conducted such modeling for some of the Class I areas in Colorado. In the second sentence of paragraph 16, Basin Electric purports to paraphrase the CFR. DEQ/AQD asserts that the CFR speaks for itself and paraphrasing the CFR is not an allegation of fact which requires a response. DEQ/AQD denies all other allegations contained in paragraph 16.

17. DEQ/AQD denies any allegations contained in paragraph 17.

18. In the first three sentences of paragraph 18, Basin Electric purports to paraphrase the CFR. DEQ/AQD asserts that the CFR speaks for itself and paraphrasing the CFR is not an allegation of fact which requires a response. DEQ/AQD denies all other allegations contained in paragraph 18.

19. DEQ/AQD denies any allegations contained in paragraph 19.

20. DEQ/AQD denies any allegations contained in paragraph 20.

21. DEQ/AQD denies any allegations in Basin Electric's requested relief and each and every allegation in Basin Electric's Appeal and Petition for Review not specifically admitted.

### **AFFIRMATIVE DEFENSES**

1. Basin Electric failed to raise the issues regarding Permit Condition 16 during the permitting process and therefore failed to preserve the issues for appeal.

2. Basin Electric has failed to state a claim upon which relief can be granted.

3. Basin Electric has not presented the requisite facts or evidence to warrant its requested relief.

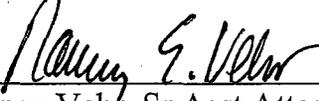
4. DEQ/AQD reserves the right to assert additional affirmative defenses after discovery is completed and as additional facts are learned.

5. DEQ/AQD did not violate the Wyoming Environmental Quality Act, Wyoming Air Quality Standards or Regulations, the Wyoming State Implementation Plan, the Clean Air Act, or any other law or regulation.

WHEREFORE, the DEQ/AQD respectfully requests this Council uphold DEQ/AQD's issuance of Permit MD-6047 to Basin Electric and deny Basin Electric's requested relief.

Respectfully submitted this 8<sup>th</sup> day of April, 2010.

FOR RESPONDENT DEQ:

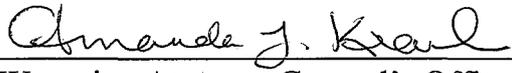
  
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## CERTIFICATE OF SERVICE

I hereby certify that on the 8<sup>th</sup> day of April, 2010, a true and correct copy of the foregoing *Department of Environmental Quality's Response* was served by placing the same in the United States mail, postage pre-paid, addressed to:

John Corra  
Department of Environmental Quality  
122 W. 25<sup>th</sup> St.  
Herschler Bldg., 2<sup>nd</sup> Floor East  
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Wyoming Attorney General's Office