

RESPONSE TO COMMENTS RECEIVED

R-35 PROPOSED RULEMAKING

**WYOMING DEPARTMENT OF
ENVIRONMENTAL QUALITY**

AIR QUALITY DIVISION

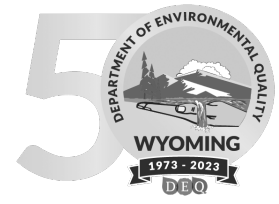
MARCH 18, 2024





Department of Environmental Quality

To protect, conserve and enhance the quality of Wyoming's environment for the benefit of current and future generations.



Mark Gordon, Governor

Todd Parfitt, Director

March 15, 2024

Derek Silbaugh
Director
Generation Engineering & Environmental Services
Black Hills Energy
PO Box 1400
Rapid City, SD 57709

RE: Comments on Proposed Air Quality Rule Revisions (EQC Docket #23-2101)

Dear Mr. Silbaugh:

The Wyoming Department of Environmental Quality (WDEQ) – Air Quality Division (AQD) appreciates your comment on its proposed R-35 rulemaking, which will go before the Environmental Quality Council on March 27, 2024. The AQD concurs with Black Hills Energy’s expressed understanding regarding the proposed removal of 40 CFR Part 60, subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units, from Chapter 5, Section 2 of the Wyoming Air Quality Standards and Regulations (WAQSR), on which Black Hills Energy commented the following:

BHE understands the proposed removal of 40 CFR Part 60, subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units, from the WAQSR will abdicate enforcement of this New Source Performance Standard to the U.S. Environmental Protection Agency.

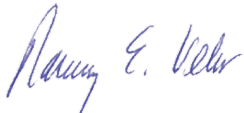
The AQD mistakenly proposed removal of this subpart and believes that subpart TTTT should remain unchanged in the WAQSR Chapter 5, Section 2. The AQD did not recognize this error until the public comment period for the March 27, 2024 Environmental Quality Council hearing had already been initiated.

The AQD stated in its Statement of Principal Reasons for Adoption that the basis for removing subpart TTTT was that it pertained to the Clean Power Plan, which was overruled by a 2022 U.S. Supreme Court decision, *West Virginia v. EPA*. However, the facility classification affected by the U.S. Supreme Court’s decision was only Existing Stationary Sources: Electric Utility Generating Units, which are regulated under Section 111(d) of the Clean Air Act (CAA), and not New, Modified, and Reconstructed Stationary Sources covered by subpart TTTT and regulated under Section 111(b) of the CAA. Although both rulemakings were finalized by EPA in the same Federal Register (Volume 80, Issue 205) on October 23, 2015, they applied to two different source categories of Electric Utility Generating Units – and the Clean Power Plan specifically set Carbon Pollution Emission Guidelines for Existing Stationary Sources, a CAA

111(d) classification. The Supreme Court's decision in *West Virginia v. EPA* did not affect subpart TTTT and, therefore, its regulations remain in effect. The AQD mistakenly proposed removal of the subpart.

The AQD appreciates Black Hills Energy's clarifying comment on this matter and will recommend to the EQC that subpart TTTT remain in and not be struck from the Wyoming Air Quality Standards and Regulations, Chapter 5, Section 2.

Sincerely,

A handwritten signature in blue ink that reads "Nancy E. Vehr". The signature is written in a cursive style.

Nancy Vehr
Administrator
Air Quality Division
Wyoming Department of Environmental Quality

cc: Amber Potts, Supervisor, SIP & Rule Development Section



Derek Silbaugh
Director Generation Engineering & Environmental Services

PO Box 1400
Rapid City, SD 57709

March 4, 2024

VIA EMAIL AND [HTTP://AQ.WYOMINGDEQ.COMMENTINPUT.COM/](http://AQ.WYOMINGDEQ.COMMENTINPUT.COM/)

Nancy E. Vehr
Administrator
Wyoming Department of Environmental Quality
Air Quality Division
200 West 17th Street Cheyenne, WY 82002
nancy.vehr1@wyo.gov

RE: Comments on Proposed Air Quality Rule Revisions (EQC Docket #23-2101)

Dear Ms. Vehr:

Black Hills Energy (BHE) is submitting comments on Wyoming Department of Environmental Quality, Air Quality Division's (AQD's) proposed changes to Wyoming Air Quality Standards and Regulations (WAQSR) Chapter 5, Section 2, as described in the Wyoming Environmental Quality Council (EQC) rulemaking Docket #23-2101 (R-35). BHE understands the proposed removal of 40 CFR Part 60, subpart TTTT, Standards of Performance for Greenhouse Gas Emissions for Electric Generating Units, from the WAQSR will abdicate enforcement of this New Source Performance Standard to the U.S. Environmental Protection Agency.

BHE currently holds Air Quality Construction Permit P0029888 that includes the requirements to comply with New Source Performance Standards subpart KKKK and subpart TTTT. If the proposed rule revision is approved, BHE will be subject to enforcement by two agencies for the same permit – AQD for subpart KKKK and EPA for subpart TTTT. BHE prefers to work with a single agency.

BHE has a long-standing history of working with AQD and respectively requests AQD and EQC retain subpart TTTT within WAQSR Chapter 5, Section 2. If you have questions, please do not hesitate to contact me or Cole Anderson, Environmental Manager.

Sincerely,

Derek Silbaugh

Derek Silbaugh
Director Generation Engineering & Environmental Services