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**ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

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ATTORNEYS FOR PETITIONER

**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING**

In the Matter of:)
Basin Electric Power Cooperative) Docket No. _____
2024 Title V Assessed Fees)
)

PETITION FOR REVIEW

Basin Electric Power Cooperative (“Basin Electric”) appeals the notice of Title V emissions fee increase for 2024 applicable to Basin Electric’s Title V sources, issued by the Wyoming Department of Environmental Quality (“DEQ”), Air Quality Division (“AQD”), on December 18, 2024. Basin Electric petitions the Wyoming Environmental Quality Council (the “Council”) to review the DEQ’s change in assessed dollar-per-ton fee assessment for 2024 emissions. AQD acted arbitrarily and capriciously and created an unreasonable burden on Basin Electric by increasing its 2024 annual fee by 53 percent above the originally assessed fees and 109 percent above the 2022 and 2023 assessed dollar-per-ton fee assessment. The assessment contravenes the statutory requirements for annual fees to cover solely the “reasonable costs” of

the permitting program based on incremental annual increases. A copy of the notification sent by DEQ is attached to this Petition as **Exhibit A**. In compliance with the DEQ's Rules and Regulations, Practice and Procedure, Chapter 2, Section 4, Basin sets forth the following in this Petition:

STATEMENT OF FACTS

1. Basin Electric is a not-for-profit generation and transmission cooperative owned by 140-member cooperative systems. Basin Electric provides wholesale power to its members in nine states, with electric generation facilities in North Dakota, South Dakota, Wyoming, Montana, and Iowa, serving approximately 3 million customers.

2. Though Basin Electric has several Wyoming facilities subject to Title V permitting, three facilities in particular emit at levels necessary to pay Title V annual emissions fees: Laramie River Station in Wheatland, Wyoming, where Basin Electric is part owner, manager, and operator of the electric generating facility made up of three subbituminous coal-fired boilers; Dry Fork Station, a subbituminous coal-fired generating unit in Gillette, Wyoming; and the Frannie Lime Plant, in Frannie, Wyoming, which is owned by Wyoming Lime Producers, a division of Basin Electric's Dakota Coal Company, and converts limestone to lime that is used in Basin Electric's coal-fired generators for stack emission scrubbers.

3. Because these Basin Electric facilities are subject to the Clean Air Act's Title V operating permit program, they are required to pay annual fees sufficient to cover the reasonable costs of the program implementation. These fees are based on a dollar-per-ton value that is multiplied by each ton of emissions of a regulated pollutant emitted by the source.

4. Basin Electric has a history of full compliance with payment of the Title V annual emissions fees assessed in prior years. In 2022, Basin Electric paid a total of \$426,139.26 based

on an annual fee of \$34.50 per ton. In 2023, Basin paid a total of \$444,232.84 on an annual fee of \$34.50 per ton.

5. On December 18, 2024, the Wyoming AQD Administrator sent a notice to all Title V operating permit program sources in the state, including Basin Electric, imposing an increase from the previously communicated assessment of \$47 per ton for the 2024 calendar year to \$72.07 per ton. This new fee reflects a *53.34 percent* increase from Wyoming’s original 2024 assessment, and a *108.9 percent* increase from Wyoming’s Title V assessments for 2022 and 2023, which was \$34.50 per ton.

6. Based on the increased 2024 fee assessment, Basin Electric would be expected to pay an estimated \$927,995.94 for CY 2024 emissions. See table below for comparison.

Year	Dry Fork Station	Laramie River Station	Frannie Lime Plant
2022	\$53,578.91	\$372,560.35	Unknown at this time
2023	\$60,052.61	\$374,203.96	\$9,976.27
2024 Planned (Estimated)*	\$81,810.81	\$509,785.10	\$13,590.85
2024 New (Estimated)*	\$125,449.04	\$781,706.64	\$20,840.26

* 2024 emissions have not yet been finalized. Estimations are based on 2023 emissions.

ARGUMENT

Wyoming AQD’s 53% increase in assessed Title V operating permit fees to \$72.07 per ton runs contrary to the statutory requirement for the annual fee to merely cover the “reasonable costs” of administering the permit program and creates an unreasonable burden on industry.

42 U.S.C.S. § 7661a(b)(3)(A) describes the Title V emissions fee as “an annual fee... sufficient to cover all reasonable (direct and indirect) costs required to develop and administer the permit program.” Federal regulations clarify that “any fee required by this section will be

used solely for permit program costs.” 40 C.F.R. § 70.9(a). The state permitting agency must provide a “demonstration” of “how required fee revenues are used solely to cover the costs of meeting the various functions of the permitting program[.]” *Id* at (d). The annual amount should be calculated based only on the needs of the program, which will differ from state to state “depending on many factors associated with the particular permitting authority.”¹

Consistent with those requirements, Wyo. Stat. Ann. § 35-11-211 authorizes DEQ to “implement a permit fee system and schedule of fees adequate to cover all *reasonable* direct and indirect costs....” Wyo. Stat. § 35-11-211(a) (emphasis added). Wyoming Administrative Rules, Chapter 6, Section 3(f)(iii)(A) similarly explains that fees are designed to cover only “reasonable” program costs. Accordingly, AQD’s fee determination is directly correlated to its annual projected costs. WAQSR Chapter 6, Section 3(f)(iv)(B). The annual program review contemplates incremental increases to account for inflation and adjustments necessary to account for reasonable costs of implementing the program while preventing drastic increases that create an unreasonable burden on industry.

The drastic increase in fees assessed by AQD—two weeks before the end of the year—is excessive and unreasonable. AQD does not explain why a 53% increase in the assessed fees (and a 109% increase from the 2022 and 2023 assessed fees) is appropriate to support the reasonable costs of Title V operating permit program implementation, other than to state in conclusory fashion that emissions are declining and operating permit program costs are increasing. The last-minute change in approach without explanation of how a 53% increase would support the reasonable costs of program implementation is arbitrary and capricious.

¹ EPA, Title V Fee Demonstration And Additional Fee Demonstration Guidance, 1993, <https://www.epa.gov/sites/default/files/2015-08/documents/feedemon.pdf>.

Wyo. Stat. Ann. § 35-11-211(d) allows an operator to appeal the amount of fees to be assessed when that assessment is excessive. Because the increase to \$72.07 per ton is excessive and unreasonable, Basin Electric respectfully requests the Council remand the assessed fees to AQD for reconsideration and further explanation.

RELIEF REQUESTED

Basin Electric respectfully requests that the Council review the AQD's notice of increased Title V emission fee amount for 2024, issued on December 18, 2024, and remand the assessed fees to AQD for reconsideration. Basin Electric further reserves the right to amend this Petition, clarify, and/or supplement additional grounds for review.

Dated January 7, 2025.

/s/ Macrina M. Sharpe

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 7th day of January, 2025, in accordance with the requirements of Chapter 2, Section 4(a) of the Department of Environmental Quality Rules of Practice and Procedure, this Petition for Review and Request for Hearing, was filed via hand delivery on:

Chairman of the Environmental Quality Council
2300 Capitol Ave.
Hathaway Bldg. 1st, Room 136
Cheyenne, WY 82002

and served via certified mail, return receipt requested, on the following, and delivered by hand as well:

Todd Parfitt
Director of the Department of Environmental Quality
200 West 17th Street
Cheyenne, WY 82002

Nancy E. Vehr
Administrator of the Air Quality Division
Department of Environmental Quality
200 West 17th Street
Cheyenne, WY 82002

David DeWald
Deputy Attorney General State of Wyoming
109 State Capitol
Cheyenne, WY 82002

/s/ Macrina M. Sharpe

EXHIBIT A



Mark Gordon, Governor

Department of Environmental Quality

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



Todd Parfitt, Director

December 18, 2024

To: All Title V Operating Permit Program Sources
From: Nancy Vehr, AQD Administrator
Re: 2024 Title V Emissions Fee Increase

Title V of the federal Clean Air Act requires that states impose fees to cover all Title V Operating Permit Program (Program) costs. As such, Title V sources must submit annual emission inventories for fee assessments. As we have discussed with the legislature over the last several years, Wyoming's Title V sources have reduced air emissions over the years. Some sources have reduced emissions to the point that they are no longer in the Program. The combined effect of a reduction in the number of Title V sources and a reduction in emissions has meant that eventually emissions fees would need to be raised.

Last year, we estimated that an emissions fee of \$47/ton would be sufficient to cover Program costs. However, following a recent assessment of new and more updated information, it became apparent that due to the rate and pace of declining emissions and increased Program costs associated with EPA's recent regulatory expansion, the estimated fee is insufficient to cover Program costs. As a result, the AQD has reached the conclusion that the emissions fee must increase.

This letter is to notify you of the Title V Program emission fee schedule change applicable to CY 2024 emissions. The AQD, using the legislatively approved fee structure, has reached the difficult decision that the emissions fee must be increased to \$72.07/ton applicable to CY2024 emissions. This means that in order to comply with federal and state laws governing the Program, the AQD will be assessing emissions at \$72.07/ton for operations occurring January 1, 2024 through December 31, 2024.

The AQD understands this is short notice for an unanticipated change. If you should have any questions concerning this matter, please contact me (307-777-3746 or Nancy.Vehr1@wyo.gov).

Sincerely,

Nancy Vehr
AQD Administrator

cc: DEQ Director – Todd Parfitt
Governor's Office - Nolan Rap
Joint Mineral Co-chairs Rep. Burkhart and Sen. Dockstader
Joint Appropriation Co-chairs Rep. Nicholas and Sen. Kinskey

