

**FILED**

**FEB 04 2008**

Terri A. Lorenzon, Director  
Environmental Quality Council

Patrick R. Day, P.C.  
Mark R. Ruppert  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175

ATTORNEYS FOR BASIN ELECTRIC  
POWER COOPERATIVE

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

In the Matter of: )  
Basin Electric Power Cooperative ) Docket No. 07-2801  
Dry Fork Station, )  
Air Permit CT – 4631 )

---

**MOTION FOR ENTRY OF PROTECTIVE ORDERS**

---

**I. Introduction**

Basin Electric Power Cooperative (Basin Electric) respectfully moves the Council to enter the Proposed Protective Orders attached as Exhibit A and Exhibit B to this Motion. The Order attached as Exhibit A provides that discovery not be had on Basin Electric's confidential contracts and payments with its Dry Fork Station third party vendors, documents that have no relevance whatsoever to this appeal. The Order attached as Exhibit B would govern the confidentiality and disclosure of other confidential information of Basin Electric that may be produced.

Protestants have filed discovery requests targeted at highly sensitive commercial information belonging to third party vendors that have no bearing whatsoever in this appeal. These vendors vigorously object to having their proprietary information produced to Protestants

and potentially made available to the public. Serious commercial damage could occur. For example, the Protestants seek production of the manufacturing and sales contracts for the boilers, turbines and other major components of the Dry Fork Station. These contracts have no conceivable bearing on the Department's permit decision on appeal, are the product of extensive negotiation, and contain highly proprietary pricing and commercial information.

Protestant's broad fishing expedition into the proprietary materials of third parties is symptomatic of the problems a case of this magnitude presents when it does not belong before the Council in the first instance. A *de novo* contested case review of a final permit decision improperly threatens to open the door to material that is both proprietary and irrelevant as a matter of law. Basin Electric will soon be filing a motion to dismiss this appeal as lacking in statutory authority, and this discovery dispute speaks directly to the reasons why the Legislature never contemplated a situation where a final air permit would lead to wide-open discovery of unrelated and highly proprietary information.

## II. Argument

Under Wyoming Statute § 16-3-108, applicable to contested case proceedings, "irrelevant" and "immaterial" evidence "shall" be excluded. This is a mandatory statutory directive. Wyoming Rule of Civil Procedure 26(b)(1)(a) governing discovery contemplates discovery into matters "reasonably calculated" to lead to the discovery of relevant evidence. However, this broad standard is not a license to conduct fishing expeditions:

[T]his often intoned legal tenet should not be *misapplied so as to allow fishing expeditions in discovery*. Some threshold showing of relevance must be made before the parties are required to open wide the doors of discovery and to produce a variety of *information which does not reasonably bear upon the issues in the case*.

*Hofer v. Mack Trucks, Inc.*, 981 F.2d 377 (C.A. 8, 1992)(emphasis added)(finding no abuse of discretion in denying discovery under identical Federal Rule of Civil Procedure). This requirement is particularly true where, as here, Wyoming statutes absolutely prohibit the use and introduction of irrelevant and immaterial evidence in an administrative hearing. When discovery requests are served which violate these standards, the party served with this request may seek a protective order directing that the discovery not be allowed. Wyoming Rule of Civil Procedure 26(c) provides that:

Upon motion by a party or by the person from whom discovery is sought, and for good cause shown, the court in which the action is pending ... may make any order which justice requires to protect a party or person from annoyance, embarrassment, oppression, or undue burden or expense ...[including an order that] *discovery not be had*.....

*Id.* Since the discovery sought in this case by Protestants is immaterial and irrelevant, and because it seeks highly confidential and proprietary information, Basin Electric seeks entry of the attached protective orders.

**A. Virtually all of the Discovery Requests Seek Irrelevant and Immaterial Information**

On January 3, 2008, Earthjustice counsel, on behalf of just one of the Protestants (Powder River Basin Resource Council) served a “First Set of Interrogatories and Requests for Production of Documents” on Basin Electric (attached as Exhibit H). Each and every discovery request sought information and documents entirely irrelevant to the issues in this permit appeal. For example, Interrogatory #4 requests Basin Electric to:

[I]dentify and describe any contracts or agreements Basin Electric has entered into or expects to enter into with any person or entity related to the planning, design, construction, purchase of equipment, and/or operation of the Dry Fork Station.

*Id.* Not stopping there, Request for Production of Documents #1 and #2 then request:

[A]ny document that was used to answer any of the above Interrogatories [and] any document that contains information responsive to any of the above Interrogatories.

*Id.* Thus, *every* vendor contract for the work on Dry Fork Station is requested. Basin Electric has provided a list of 150 vendors and identification of their contracts (Exhibit G, Basin Electric responses to PRBRC's discovery requests at Exhibit 1 to Interrogatory #3). The list of contracts reveals just how ludicrous the request is: for example, several line items relate to support infrastructure, such as line items 134-140 for hotel room contracts and many other line items having absolutely nothing to do with the construction permit. Contrast this request with the issues in the Protest: the issues – *framed by Protestants* – focus on *emission limits* set by DEQ in the permit. Most of the contracts listed at Exhibit 1 to Interrogatory #3 have nothing to do with any air emissions, even for some major components of the plant such as the Steam Turbine Generator (line 63) that create no air emissions (see letter at Exhibit C).

Protestants disagree with the permit terms and permit emission limits. Such disagreement has nothing to do with the actual construction of Dry Fork Station to meet those emission limits, even for the few contracts out of the list of 150 existing contracts that may have anything to do with air emissions (for example, line 66 for air quality control systems equipment). If there were an issue (and Protestants have not raised it) that the emission limits set by DEQ are not *achievable* based on problems or uncertainties regarding construction of or equipment in the Dry Fork Station, those contracts for such construction and equipment might conceivably be relevant. Again however, those are not the issues.

Similarly, Interrogatory #3 requests Basin Electric to:

[I]dentify and describe any payments made or anticipated to be made by Basin Electric to any other person or entity for planning, design, construction, equipment and/or operation of the Dry Fork Station, [including the all inclusive requests for documents regarding this Interrogatory].

Again, the cost of construction of and equipment used in the Dry Fork Station, absent any issue relating to this construction or equipment (and again, Protestants have raised none), has no relevance to the emission limit issues raised by the Protest. Perhaps the *overall* payments or costs for the Dry Fork Station, which Basin Electric has provided to Protestant (Exhibit G, Response to Interrogatory #3), has some relevance when considering the magnitude of severe economic harm to Basin Electric from a stay of the project, but prying into highly sensitive commercial and proprietary individual vendor costs and payments has no relevance to any issue in the permit protest.

As framed in the Protest, this is an appeal of a construction permit issued by the Department of Environmental Quality (DEQ). Besides the DEQ decision to issue that permit and the emission limits contained in that permit, there are no other issues in this appeal. Each Interrogatory and Request for Production sought information which is well beyond the scope of the issues in this appeal of whether the DEQ abused its discretion or made an error of law in issuing the permit with certain emissions limits. Nothing requested by Protestant from Basin Electric has anything to do with these issues raised in the Protest regarding the challenged permit. In its responses to this discovery (Exhibit G), Basin Electric objected to the Protestant abusing discovery in this permit appeal to make burdensome, oppressive and harassing demands for information and documents that are not at all relevant to DEQ's decision to issue a permit. However, before being forced to ask the Council for Protective Orders, Basin Electric did much

more than just consider the complete absence of any relevance or materiality of Protestant's discovery.

**B. Not Only is the Discovery Irrelevant and Immaterial, it Also Seeks Highly Confidential and Proprietary Information of Non-Parties, who Strenuously Object.**

Basin Electric contacted its vendors whose contracts and cost/payment information are sought by this discovery, and several have expressed strong objections to any disclosure of their confidential information in contracts and payments regarding the Dry Fork Station. Attached are letters from some of the vendors vigorously expressing their serious concerns with the disclosure of their confidential contracts and payment information, further expressing their concern about the risks that such information, even if covered by a confidentiality order, outweigh any benefit of producing these documents having no relevance to the contested permit issues (see Exhibits C, D, E and F).

Basin Electric's vendors' letters articulate that the consequences of even an inadvertent disclosure (e.g., the "ability to compete and conduct business would be severely harmed for years to come") require a heavy weighing of that risk against the benefit of disclosure, even if attempts are made to control such disclosure. Basin Electric balanced this serious risk and its consequences against the benefit, and found any benefit to the limited issues in this permit appeal lacking. Since the disclosure of this confidential information resisted by Basin Electric's vendors does not relate to information relevant to the issues in this permit appeal, then the risk of harm clearly outweighs the nonexistent benefit.

Basin Electric is bound by confidentiality provisions in several contracts with its vendors to resist discovery and produce only if ordered to do so (see, e.g., letter at Exhibit E). As much

as Basin Electric wants to cooperate in discovery, it may have to go so far as to take the issue of production to a court to protect confidential information having nothing to do with the issues in this permit appeal from discovery.

Thus, despite its desire to cooperate with Protestant's discovery, Basin Electric has no choice, after conferring with its vendors who have contractual rights and after asking Protestants to withdraw certain discovery requests related to contracts and payments,<sup>1</sup> but to refuse and object to discovery related to its vendors' contracts and payments and seek a protective order from the Council from this abusive and commercially high-risk discovery.

### **C. Basin Electric's Financing Documents**

Basin Electric remains willing to produce some of the documentation requested by Protestant limited to Basin Electric's Dry Fork Station financing documents that do not involve confidentiality rights and concerns of vendors. To be able to produce these documents, Basin Electric needs a Protective Order to govern disclosure and use of this confidential information related to the financing of the Dry Fork Station. Protestant would not agree to the form Basin Electric proposed, instead proposing an unacceptable substitute. Thus, Basin Electric moves for the attached form at Exhibit B, pursuant to Wyoming Rules of Civil Procedure 26(c)(1)(G). This form is typically used by Basin Electric's counsel in other Wyoming administrative agency cases.

---

<sup>1</sup> Protestant's counsel did ask on February 4, 2008 for clarification of what vendor information Basin Electric would be willing to provide, and Basin Electric responded that the most accurate response to that question would be to review Basin Electric's discovery responses served on Protestant simultaneously with the filing of this motion.

**D. Propriety of Basin Electric's Moving for Protective Orders Now**

Basin Electric could have simply filed objections and resisted all of Protestant's discovery as inappropriate. For several reasons, Basin Electric would rather advance the resolution of these important issues sooner rather than waiting for Protestant to file a motion to compel.

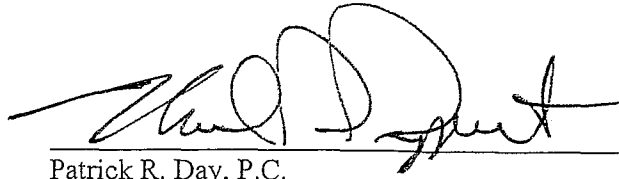
First, Basin Electric wants this appeal to move forward and not become bogged down in needless discovery disputes – and Basin Electric wants to cooperate in discovery to the extent it reasonably can. Second, resolution is critically important to interested third party vendors whose confidential information is on the line – if their rights and concerns can be resolved short of court intervention. Finally, it is instructive at this early juncture of the case for the Council to understand how the Protestants in this case intend to transform a simple permit appeal into a broad campaign to attack global warming and coal fired electricity generation – the Council has the early opportunity to limit the scope of this appeal, assuming Protestants even have the statutory authority to burden the Council with this appeal (which Basin Electric's motion to dismiss will prove they do not).

**III. Relief Requested**

WHEREFORE, Basin Electric respectfully requests that the Council enter the Protective Orders attached as Exhibit A and Exhibit B.



DATED February 4, 2008.

A handwritten signature in black ink, appearing to read "Patrick R. Day", written over a horizontal line.

Patrick R. Day, P.C.

Mark R. Ruppert

HOLLAND & HART LLP

2515 Warren Avenue, Suite 450

P.O. Box 1347

Cheyenne, WY 82003-1347

Telephone: (307) 778-4200

Facsimile: (307) 778-8175

[pday@hollandhart.com](mailto:pday@hollandhart.com)

[mruppert@hollandhart.com](mailto:mruppert@hollandhart.com)

ATTORNEYS FOR BASIN ELECTRIC POWER  
COOPERATIVE

## CERTIFICATE OF SERVICE

I hereby certify that on February 4, 2008, I served the foregoing Motion for Entry of Protective Orders by electronic service and by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

James S. Angell  
Robin Cooley  
Andrea Zaccardi  
Earthjustice  
1400 Glenarm Place, #300  
Denver, CO 80202  
[rcooley@earthjustice.org](mailto:rcooley@earthjustice.org)  
[azaccardi@earthjustice.org](mailto:azaccardi@earthjustice.org)  
[jangell@earthjustice.org](mailto:jangell@earthjustice.org)

Jay A. Jerde  
Deputy Attorney General  
Nancy E. Vehr  
Senior Assistant Attorney General  
Kristen A. Dolan  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, WY 82002  
[NVEHR@state.wy.us](mailto:NVEHR@state.wy.us)  
[jjerde@state.wy.us](mailto:jjerde@state.wy.us)  
[kdolan@state.wy.us](mailto:kdolan@state.wy.us)



---

# Exhibit

# A

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

In the Matter of: )  
Basin Electric Power Cooperative ) Docket No. 07-2801  
Dry Fork Station, )  
Air Permit CT – 4631 )

---

**PROTECTIVE ORDER RELATING TO THIRD PARTY VENDORS**

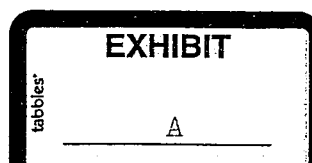
---

Basin Electric Power Cooperative (Basin Electric) moved the Environmental Quality Council (Council) to enter an Order preventing the discovery of its third party vendor documents. The Council being fully advised, **HEREBY ORDERS** as follows:

**ORDER**

1. This Order is entered to prevent discovery of documents and information regarding Basin Electric's contracts with and payments to its Dry Fork Station third party vendors, as those documents contain confidential commercial and proprietary information that have no relevance to this appeal.

2. Protestant Powder River Basin Resource Council (PRBRC) filed discovery requests targeted at highly sensitive commercial information belonging to third party vendors that have no bearing on the issues in this permit appeal. Some of Basin Electric's vendors vigorously object to having their proprietary information produced to Protestants and potentially made available to the public, even if a confidentiality order covers this information. Letters from Basin Electric's vendors demonstrate that serious commercial damage could occur from the



disclosure, inadvertent or otherwise, of Basin Electric's contracts with and payments to its Dry Fork Station vendors.

3. The information and documents regarding contracts with and payments to vendors are irrelevant to the issues in this permit appeal. The Protest takes issue with permit terms and permit emission limits set by DEQ, and these issues have nothing to do with the actual construction of Dry Fork Station to meet those emission limits.

4. Since the disclosure of this confidential information resisted by Basin Electric and its vendors does not relate to information relevant or material to the issues in this permit appeal, the risk of harm from disclosure of this confidential information, even if covered by a confidentiality order, clearly outweighs the lack of benefit of such discovery.

The Council, therefore, finding good cause, ORDERS as follows:

Basin Electric shall not be required to respond or object to any discovery requests, including Protestant PRBRC's First Set of Interrogatories and Requests for Production, regarding information or documents relating to its contracts and agreements with and payments to its third party vendors for the Dry Fork Station. Discovery shall not be had on these subjects due to their lack of relevance and materiality to the issues in this proceeding.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Hearing Examiner  
Wyoming Environmental Quality Council

Exhibit

B

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

In the Matter of: )  
Basin Electric Power Cooperative ) Docket No. 07-2801  
Dry Fork Station, )  
Air Permit CT – 4631 )

---

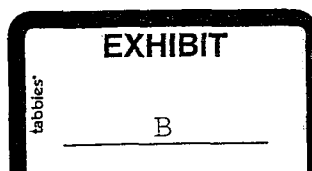
**PROTECTIVE ORDER RELATING TO CONFIDENTIAL INFORMATION**

---

Basin Electric Power Cooperative (Basin Electric) moved the Environmental Quality Council (Council) to enter an Order governing the production and use of certain confidential information, testimony and exhibits. The Council being fully advised, **HEREBY ORDERS** as follows:

**ORDER**

1. This Order is entered solely to govern the review and disclosure of confidential and/or proprietary information in connection with the Council's examination into the allegations of Protestants Sierra Club, Powder River Basin Resource Council (PRBRC), and Wyoming Outdoor Council (WOC) in this proceeding. This Order is not intended to alter, amend, expand, restrict or in any fashion affect the respective rights, if any, of Basin Electric, the Department of Environmental Quality (DEQ), the Council, Protestants, or other non-Parties in or to Basin Electric's or other non-Parties' proprietary and commercial information in other proceedings now or in the future. Basin Electric's and other non-Parties' legal, equitable and/or statutory rights to protect the confidentiality of its commercial or proprietary data in such other proceedings shall not be affected by this Order, and no person, entity or party hereto shall be



entitled to claim the right to use Basin Electric's or other non-Parties' commercial or proprietary data in other proceedings solely because such information was obtained in this proceeding. Similarly, the rights of Protestants and the DEQ, if any, to have access to Basin Electric's or other non-Parties' commercial and proprietary data in other proceedings shall not be affected in any fashion by this Order. This Order is intended only to govern the use and disclosure of confidential, commercial, or proprietary data in connection with the investigation and hearings before the Council in this Proceeding currently set in the EQC's Scheduling Conference Order dated January 11, 2008.

2. All Confidential Information reviewed, created, maintained or submitted by Basin Electric and/or the DEQ in connection with the proceedings to be conducted pursuant to the EQC's Scheduling Conference Order shall be protected from public disclosure in accordance with the terms of this Order and WYO. STAT. § 16-4-203(d)(v).

3. For purposes of this Order, "Confidential Information" shall include:

a. Any commercial and proprietary information of Basin Electric presented in discovery, presented in a report to the EQC and/or the parties, or presented at the hearings by the parties. Such information includes, but is not limited to, Basin Electric's financials for planning, design, construction, equipment and/or operation of the Dry Fork Station, including, but not limited to, financing, funding, loans, monetary contributions, the source of that financing;

b. Any written reports or portions thereof submitted by the DEQ, Basin Electric, or Protestants, and presented to the EQC or the parties in connection with the any hearing or pursuant to the EQC's Scheduling Conference Order, which contain or refer to commercial and proprietary information of Basin Electric or which set forth Basin Electric's



financial condition or which contain financial information from third parties to Basin Electric, including, but not limited to, financing, funding, loans, monetary contributions, the source of that financing, payments made or to be made by Basin Electric to any person or entity;

c. Any oral or written testimony which contains commercial and proprietary information of Basin Electric, including Basin Electric's financials for planning, design, construction, equipment and/or operation of the Dry Fork Station, including, but not limited to, financing, funding, loans, monetary contributions, the source of that financing, payments made or to be made by Basin Electric to any person or entity;

d. Any questions submitted by the parties or asked by the EQC at any hearing which contain commercial and proprietary information of Basin Electric, including, but not limited to financing, funding, loans, monetary contributions, the source of that financing; and

e. Any and all cost, pricing, commercial, proprietary and/or contract terms, technical and design data associated with and/or provided by Basin Electric's vendors and contractors, to the extent that such information not already governed by another Protective Order that discovery of such information not be had in this proceeding.

f. Notwithstanding the above, the term "Confidential Information" shall not include information, data, knowledge, and know-how, as shown by written records, that (a) is in the EQC's or a party's possession prior to disclosure to the EQC or a party, (b) is in the public domain prior to disclosure in this proceeding, or (c) lawfully enters the public domain through no violation of this Order after disclosure to the party or the EQC. Any confidentiality agreements, orders, or other legal or statutory restrictions governing the prior use and/or receipt of

confidential or proprietary information of Basin Electric shall not be affected in any fashion by this Order.

4. Confidential Information as defined in this Order may only be used and/or disclosed as follows:

a. Except as provided in paragraphs 6 and 10, and in subparagraphs (b) and (c), below, Confidential Information, may only be disclosed to, and reviewed by, the Protestants (but only such persons employed by, or other members or representatives of, any Protestant, who are directly involved in the prosecution of the Petition and who have a compelling need for access to such information for purposes of providing such assistance), the DEQ, and the EQC, counsel of record and their staff, and expert consultants, expert witnesses, and others employed by parties if request for access to confidential information is made and granted under paragraph 10;

b. Any written reports prepared by the DEQ for the EQC and submitted to the EQC in connection with the inquiries set forth in the EQC's Scheduling Conference Order may be disclosed to Basin Electric, the EQC, Protestants, counsel of record and their staff, and expert consultants, expert witnesses, and others employed by parties if request for access to confidential information is made and granted under paragraph 10; and

c. Subject to paragraph 5, Confidential Information may be orally disclosed at the scheduled hearings in the presence of Basin Electric, the DEQ, the EQC, and/or Protestants.

5. Pursuant to WYO. STAT. § 16-4-405(a)(ix), any portion of the hearings in this matter, during which Confidential Information is or may be disclosed, will be conducted as an executive session not open to the public.

6. Confidential Information may also be disclosed:

- a. To attorneys and staff of the EQC, if necessary in connection with the EQC's examination, and provided such persons are bound by the terms of this Order;
- b. In its original form, to the authors or recipients of such information; and
- c. To court reporters retained to transcribe any hearing at which Confidential Information is disclosed, provided such persons are bound by the terms of this Order.

7. Confidential Information:

a. Shall be used solely for purposes of the EQC's examination, and shall not be used or offered for use in connection with any other litigation or proceeding of any kind, or for any business, commercial or other purpose. Nothing in this Order, however, shall prohibit any person or entity owning rights in or to Confidential Information from using such information in any manner consistent with such ownership rights, including, for example, the use of Confidential Information maintained by Basin Electric in the ordinary course of Basin Electric's business.

b. May be used by a party in any motion, affidavit, brief, memorandum of law, or other paper filed in this litigation, subject to the terms of this Order. All material filed by any party with the EQC designated as Confidential shall be filed under seal and designated as subject to this Order, to be opened only by personnel authorized by the Council. Such Confidential Information shall not be placed on the EQC website. In the event a Confidential

document is attached as an exhibit to a deposition, the deposition exhibit shall be sealed upon the request of the producing party.

8. This Order shall continue to be binding throughout and after the conclusion of this administrative examination, and any appeal thereof. However, this Order is entered for the purpose of facilitating the analyses required by the EQC and for the purpose of facilitating the hearings presently scheduled. If, after such hearings, additional investigative proceedings are conducted or ordered by the EQC, the EQC will revisit issues of disclosure and access to Confidential Information, if necessary, upon advance notice with an opportunity to be heard by Basin Electric, DEQ, and Protestants.

9. Except as provided otherwise in paragraphs 4, 6, 7, and 10, no person, corporation, governmental entity or agency receiving any Confidential Information shall disclose it or its contents to persons or entities not bound by the terms of this Order. This prohibition includes, but is not limited to, placing of any Confidential Information on any internet website.

10. To the extent any person, corporation, governmental entity or agency subject to the terms of this Order decides that to understand or evaluate any Confidential Information the assistance of any additional person(s) not identified in paragraph 4 is needed to understand or evaluate any Confidential Information, that person, corporation, governmental entity or agency must request permission of Basin Electric to show such information to the specifically identified additional person(s). Basin Electric shall respond to the request promptly. If permission is granted, the Confidential Information may be shown to the additional person(s), subject to the requirement that such person(s) agree to be bound by the terms of this Order. Any disclosure of Confidential Information under this paragraph shall not result in a waiver or termination of any

of the rights and obligations to any other party or person under this Order. If permission is denied, the requesting party may file an application *in camera* and under seal with the EQC referencing the Confidential Information to be disclosed and, where appropriate, stating with particularity the reason or reasons assistance is needed, and naming the person to whom the Confidential Information is to be disclosed to obtain assistance. Each person to whom Confidential Information is ultimately provided shall be informed of and agree to abide by the terms of this Order as set forth in paragraph 9 above.

11. No marking of documents as “Confidential” shall be required, although any document marked, stamped or designated as “Confidential,” on all pages, by any person or entity shall be treated as Confidential Information under this Order.

12. These provisions, and such other reasonable measures as are necessary and appropriate, shall also apply to protect Confidential Information from public record or disclosure during the course of any appeal which may arise out of this proceeding.

13. The restrictions on disclosure and use of Confidential Information set forth herein shall not continue to apply to information, which, at the time of disclosure, or thereafter, becomes a part of the public domain by publication or otherwise, other than as a result of a wrongful act or failure to act on the part of the party claiming this exclusion. However, the restrictions shall continue to apply if such publication or other disclosure results from criminal, tortious or otherwise unlawful acts or omissions.

14. This Order shall not be construed as requiring any party to produce information or documents which are privileged or otherwise protected from discovery by statute or the Wyoming Rules of Civil Procedure.

15. The persons to whom Confidential Information is disclosed shall at all times conduct themselves in a manner calculated to preserve the confidentiality of the information to which this Order applies.

16. At the conclusion of this proceeding and any related appeal(s), all parties shall retrieve all Confidential Information in their possession and/or control that was produced by any party and: (1) destroy such material; or (2) return such materials to the producing party. Counsel for each party shall provide certification of such efforts within thirty (30) days of the conclusion of this proceeding and any related appeal(s). This requirement shall not apply to the Environmental Quality Council whose administrative record shall be governed by this order and WYO. STAT. § 16-4-203.

17. This Order may be enforced by a claim of specific performance before a court of competent jurisdiction, or an action for damages, except as pertains to the Wyoming Department of Environmental Quality and the Environmental Quality Council which retain their sovereign immunity from suit for damages, by the undersigned parties and by any non-Party who is a party to any contract or communication relating to Basin Electric's Dry Fork Station. Such non-Parties, however, may only seek such relief as it relates to their own Confidential Information.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Hearing Examiner  
Wyoming Environmental Quality Council

# Exhibit C



Mitsubishi Power Systems, Inc. • 100 Colonial Center Parkway • Lake Mary, Florida 32746 USA • Tel 1-407-688-6100 • Fax 1-407-688-6480

February 1, 2008

Mark R. Ruppert, Esq.  
Holland & Hart LLP  
2515 Warren Ave., Suite 450  
Cheyenne WY 82003-1347

Re: Basin Electric Power Cooperative  
Dry Fork Station

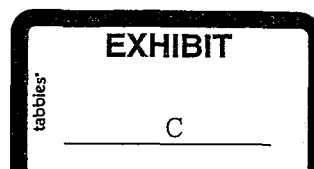
Subject: Protest Concerning Air Permit  
Request for Production of Documents

Dear Mr. Ruppert:

We understand that a protest has been filed by certain environmental groups with the Wyoming Environmental Quality Council concerning the issuance of an Air Permit for the Dry Fork Station by the Wyoming Department of Environmental Quality. As part of that protest, we also understand that the protesting parties have served a request for the production of documents on Basin Electric Power Cooperative ("BEPC") which, among other things, requests a copy of the contract between BEPC and Mitsubishi Power Systems Americas, Inc. (MPSA) for the supply of the steam turbine generator (the "Steam Turbine Generator Contract") and other documents which pertain to the Steam Turbine Generator Contract (such as payment documents).

At the outset, it is very important to understand that the steam turbine is a component which receives steam produced by a boiler (not furnished by MPSA). The steam causes the blades within the turbine to spin, which in turn also causes the generator to spin and produce electricity. No emissions are generated or released into the air by the steam turbine generator. Thus, the Steam Turbine Generator Contract and other documents which pertain to the Steam Turbine Generator Contract would have no relevance to the air permit.

Needless to say, the Steam Turbine Generator Contract is comprised of commercial and technical terms and conditions which contain very sensitive proprietary information and which MPSA needs to protect and maintain confidential. Such terms and conditions include pricing information, payment terms, design and arrangement information, bills of material, performance and schedule guarantees, financial exposure information, as well as other proprietary data related to the capabilities of our equipment. Likewise, the other requested documentation which pertains to the Steam Turbine Generator Contract also contains such sensitive proprietary commercial and/or technical information. As you can imagine, the protection of our proprietary information is critical in maintaining our ability to conduct business in the marketplace. If MPSA's commercial and/or technical confidential information were to fall into the hands of our competitors, other current or





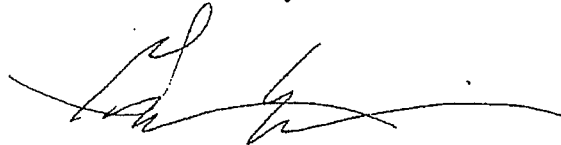
potential customers, vendors, or others, our ability to compete and conduct business would be severely harmed for years to come.

In light of the fact that the Steam Turbine Generator Contract and the other requested documents which pertain to the Steam Turbine Generator Contract (such as payment documents) bear no relevance to the air permit, and recognizing the magnitude of the harm that would be caused to MPSA if our sensitive proprietary information is released into the public domain through the production of these documents to the protesting parties, we respectfully request that the Steam Turbine Generator Contract and the other requested documents which pertain to the Steam Turbine Generator Contract (such as payment documents) be excluded from the discovery process.

It should be further noted that, because the Steam Turbine Generator Contract and the other requested documents which pertain to the Steam Turbine Generator Contract (such as payment documents) bear no relevance to the air permit in question, even if a protective order were to be issued, the Steam Turbine Generator Contract should still be excluded from the discovery process because the magnitude of the harm to MPSA, in the event of a mistaken or inadvertent disclosure of MPSA's sensitive proprietary information, far outweighs any de minimis benefit that may be gleaned from the irrelevant Steam Turbine Generator Contract or other requested documents which pertain to the Steam Turbine Generator Contract.

We thank you for your kind attention and continued efforts to ensure the continued protection of MPSA's proprietary and confidential information.

Respectfully Submitted,  
Mitsubishi Power Systems Americas, Inc.

A handwritten signature in black ink, appearing to read 'George Mulligan', written over a horizontal line.

George Mulligan  
Project Manager

Exhibit  
D

February 4, 2008

*Via EMAIL, FACSIMILE and REGULAR MAIL*

Mark R. Ruppert, Esq.  
Patrick R. Day, Esq.  
Holland & Hart LLP  
2515 Warren Avenue, Suite 450  
Cheyenne, WY 82003-1347

Re: Basin Electric Power Cooperative, Dry Fork Station, Air Permit CT – 4631, Docket No. 07-2801  
Before the Environmental Quality Council, State of Wyoming

Dear Messrs. Ruppert and Day:

I represent Babcock & Wilcox Power Generation Group, Inc. (B&W). It is my understanding that Protestants seeks discovery relating to my client's contracts with and invoices to Basin Electric Power Cooperative (Basin Electric), as well as design and technical data relating to its equipment. The following sets forth the reasons my client has serious concerns about the production of its confidential and proprietary information in this matter that we understand is limited to the appeal of an air quality permit.

B&W has made substantial investments of time and money in basic and applied research involving industrial and utility power generation systems and environmental equipment. The benefits of such investments are reflected in the proprietary engineering standards, drawings, know-how, computer programs, data, and trade secrets that B&W brings to the market to provide reliable, quality products and services as well as innovative solutions to situations encountered by customers. B&W's investments allow B&W to utilize the technology developed to realize both a competitive advantage in the marketplace and receive a return on the investment made.

B&W's competitive advantage and return on investment can only be realized if dissemination of proprietary drawings and other B&W proprietary technical and/or non-technical information is limited and, where B&W's proprietary drawings are disseminated, the proprietary information appearing on same is limited to avoid non-essential disclosure of technical information.

B&W's business is also one where the commercial terms of its contracts are highly confidential and proprietary for competitive reasons. The release of this confidential information to B&W's competitors in the market would give them a significant competitive advantage in the market and on numerous projects unrelated to the Basin Electric project. Similarly, B&W considers the detailed design and technical information for each of its equipment installations to be highly confidential and proprietary. The release to B&W's competitors in the market of the detailed design and technical data relating to the Basin Electric project would significantly impact B&W with respect to other current and future projects.

Mike.Currie@ThompsonHine.com Phone 614.469.3241 Fax 614.469.3361

rv 569217.1

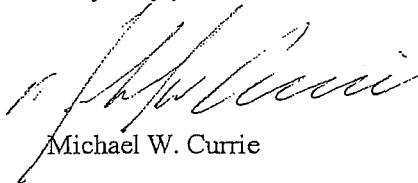
February 4, 2008  
Page 2

We understand that the current proceedings relate to an air permit appeal. We see no possible argument that B&W's contract with Basin Electric, or the commercial terms relating to it, would be relevant in an air permit appeal and would expect that this information not be released at all. We further are of the opinion that only limited technical data relating to B&W's equipment would be relevant in this appeal. For this reason, we would similarly expect that the only design or technical data that would be released is that which the Protestants can establish to the satisfaction of the Council is truly relevant.

In regard to the production of any information relating to the equipment that B&W is to supply for the Basin Electric project, including specifically the design and technical information, and the contract or commercial terms thereof, we request on behalf of B&W that B&W be notified of any such information that any party proposes to produce, that B&W be given an opportunity to evaluate the information and that it be given an opportunity to object and be heard with respect to such production. Obviously, this means that we will agree to submit to the jurisdiction of the Council for the purpose of the protection of our confidential and proprietary information.

We appreciate the opportunity to provide this letter to you and look forward to your keeping us apprised of how these issues progress.

Very truly yours,



Michael W. Currie

cc: Mr. Michael J. Gingo

---

Exhibit

E



CHOATE HALL & STEWART LLP

Laura C. Glynn  
(617) 248-5048  
lglynn@choate.com

February 4, 2008

Mark R. Ruppert  
Patrick R. Day  
Holland & Hart LLP  
2515 Warren Avenue, Suite 450  
P. O. Box 1347 (82003)  
Cheyenne, WY 82001

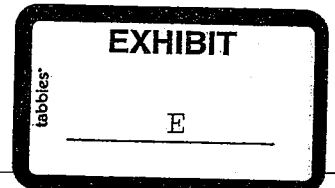
RE: Basin Electric Power Cooperative, Dry Fork Station, Air Permit CT – 4631,  
Docket No. 07-2801 Before the Environmental Quality Council, State of  
Wyoming

Dear Messrs. Ruppert and Day:

We represent Tyco Valves & Controls L.P. (“Tyco”). It is our understanding that Protestants seek discovery relating to our client’s contract with Basin Electric Power Cooperative (“Basin Electric”). You have advised us that the Protestants served discovery requests upon Basin Electric that are due February 4, 2008. You have further advised that Basin Electric has been unable to reach agreement with the Protestants concerning the protection of confidential information and documents of Tyco and other suppliers, and that you intend to file today a Motion Objecting to the Production of Supplier Contracts, including the Tyco Contract. Tyco concurs with your decision to file the Motion.

By submitting this letter, Tyco does not waive any of its rights to intervene in this action or to take such other action that it deems necessary to protect its interests. Based upon the limited information provided to Tyco concerning the matter, there appears to be no reason why the Environmental Quality Council would need Tyco’s confidential pricing and other information to evaluate, consider or take action on an Air Permit for the Dry Fork Station. Thus, the Protestants’ request for such information is not material or relevant to the decision process. Tyco hereby objects to the production of any of its confidential information.

The following sets forth the reasons why our client has serious concerns about the production of its confidential and proprietary information in this matter:



The contract between Tyco and Basin Electric contains Tyco's bid proposal, including confidential pricing information, and the terms and conditions of the contract that have been accepted by Tyco, the disclosure of which could have a material adverse effect on Tyco's business and ability to compete.

Pricing. Tyco would be at a competitive disadvantage if its competitors have access to specific pricing information on Tyco products. Tyco's competitors could submit competing bids for future contracts with specific knowledge of Tyco's price points. In addition, Tyco's competitors can use this information to undercut Tyco prices and damage Tyco's business. An insignificant price differential can have a disproportionate impact on Tyco and its customers, especially those customers who are required to award, or have a policy of awarding, the contract to the lowest priced qualified vendor. In addition, Tyco's relations with its existing customers may be damaged if they compare the pricing in their contracts with those offered Basin Electric, not appreciating that different contract terms and specifications can affect Tyco pricing. Prospective customers may not request a proposal from Tyco if they think they know in advance what Tyco's pricing will be, thereby excluding Tyco from a competitive bidding opportunity.

Non-Price Terms. Tyco would also be disadvantaged if its competitors, existing customers or prospective customers have access to the non-price terms and conditions in the Basin Electric contract. Tyco's bid proposal which is included in the contract sets out which non-price terms Tyco accepted and which it required be modified as part of its bid. Contracts of these kinds contain key terms and conditions between vendor and buyer, including payment terms, termination rights and consequences, warranty, indemnity, ownership of intellectual property, liquidated damages, limitations on damages and force majeure. These terms allocate significant risks between the parties and can vary among customers. Tyco's relations with its existing customers may be damaged if they compare their terms with Tyco with those terms agreed to by Tyco with Basin Electric, which were negotiated under a confidentiality provision. Competitors may also use knowledge of Tyco's agreed-to non-price terms to Tyco's detriment, especially in the bid submittal phase.

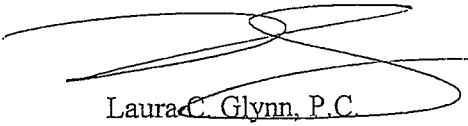
Tyco's contract with Basin Electric requires Basin Electric to maintain the confidentiality of Tyco's confidential and proprietary information and affords Tyco specific rights with respect to disclosures mandated by law. Tyco requires such provisions in its contracts because of its concern over public disclosure of such information and that once the information is released, even under a protective order, there are no guarantees that such information will remain confidential and protected.

Tyco objects to Basin Electric's production of its contract to the Protestants. Tyco's request to have the production of documents in this matter limited to those documents relevant to the present inquiry, which would not include Tyco's contract, represents Tyco's fundamental business concern over public disclosure of its pricing, bid proposals and commercial contract terms.

Page 3

Tyco's specific price and non-price terms are of no apparent relevance to the matter in dispute. By contrast, the risk to Tyco's business from disclosure is quite real, even if a protective order would be entered.

Sincerely,

A handwritten signature in black ink, appearing to read "Laura C. Glynn". The signature is fluid and somewhat stylized, with a large loop at the end.

Laura C. Glynn, P.C.

cc: E. Macey Russell, Esq.



Exhibit

F

# McDermott Will & Emery

Boston Brussels Chicago Düsseldorf London Los Angeles Miami Munich  
New York Orange County Rome San Diego Silicon Valley Washington, D.C.  
Strategic alliance with MWE China Law Offices (Shanghai)

Derek J. Meyer  
Attorney at Law  
dmeyer@mwe.com  
312.984.7724

February 4, 2008

## VIA ELECTRONIC MAIL

Mark R. Ruppert, Esq.  
Patrick R. Day, Esq.,  
Holland & Hart LLP  
2515 Warren Avenue  
Suite 450  
P. O. Box 1347 (82003)  
Cheyenne, Wyoming 82001

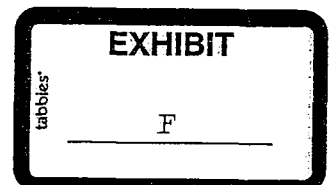
RE: Basin Electric Power Cooperative, Dry Fork Station, Air Permit CT – 4631,  
Docket No. 07-2801 Before the Environmental Quality Council, State of Wyoming

Dear Messrs Ruppert and Day:

As you know, I represent Sargent & Lundy, L.L.C. (“Sargent & Lundy”). Based on our discussions, it is my understanding that Protestants are seeking discovery relating to my client’s contracts with Basin Electric Power Cooperative (“Basin Electric”) and the related payments and invoices. I am writing to address several concerns we have in connection with this discovery.

As a threshold matter, Sargent & Lundy has serious questions regarding why our contracts and invoices, as well as any related payments, are even relevant to the above-referenced proceeding, which we understand is limited to the appeal of an air quality permit. Indeed, we have seen nothing to suggest that our contract, invoices and payments relate in any way to the matters at issue and are requesting that these materials not be produced. If that is not an option, we ask in the alternative that only those portions of the materials for which Protestants can make a showing are relevant be produced, with all remaining materials either withheld or redacted.

Moreover, to the extent any materials are produced, we request that the production be deferred until after the entry of a protective order which fully protects from unnecessary disclosure Sargent & Lundy’s confidential commercial and proprietary information. In particular, the materials sought by Protestants relating to Sargent & Lundy’s contracts and invoices contain highly sensitive commercial and proprietary information regarding Sargent & Lundy’s pricing, rates and staffing strategies. If produced without any restrictions and protections, this information could easily fall into the hands of Sargent & Lundy’s competitors. Thus, there is a strong need for a protective order with real teeth to minimize the risk of unauthorized disclosure. We should also note here that Sargent & Lundy reserves all rights and remedies in the event any



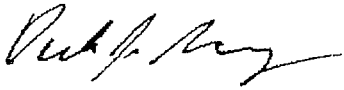
Mark R. Ruppert, Esq.  
Patrick R. Day, Esq.  
February 4, 2008  
Page 2

person or entity makes unauthorized use of any materials relating to Sargent & Lundy that are ultimately produced, if any.

We would also like to emphasize how critical we consider the substantive terms of any protective order that might be entered. We appreciate the courtesy you extended us by allowing us to review the draft protective order you plan to submit for entry. Sargent & Lundy has no objection to the terms of the order we understand Basin Electric is proposing. In contrast, we oppose any order which does not contain the safeguards memorialized in your draft letter because a watered-down protective order offers no real protections. To be clear, however, this is a different issue from the issue of relevancy, the issue which we believe should end the inquiry given the fact that the materials sought relating to Sargent & Lundy simply are not relevant and there is no basis to request such information in this appeal of an air quality permit.

Thank you for your consideration of these important issues. If you have any addition questions, please do not hesitate to call me.

Sincerely,



Derek J. Meyer

DJM/sh

CHI99 4937704-1.075596.0012

# Exhibit G

Patrick R. Day, P.C.  
Mark R. Ruppert  
HOLLAND & HART LLP  
2515 Warren Avenue, Suite 450  
P.O. Box 1347  
Cheyenne, WY 82003-1347  
Telephone: (307) 778-4200  
Facsimile: (307) 778-8175

ATTORNEYS FOR BASIN ELECTRIC  
POWER COOPERATIVE

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

In the Matter of: )  
Basin Electric Power Cooperative ) Docket No. 07-2801  
Dry Fork Station, )  
Air Permit CT – 4631 )

---

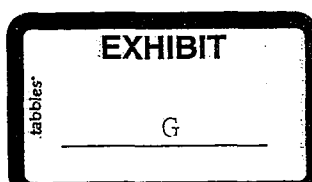
**BASIN ELECTRIC POWER COOPERATIVE'S RESPONSES AND OBJECTIONS  
TO PROTESTANT'S FIRST SET OF INTERROGATORIES AND  
REQUESTS FOR PRODUCTION OF DOCUMENTS SERVED ON  
BASIN ELECTRIC POWER COOPERATIVE**

---

Basin Electric Power Cooperative ("Basin Electric") responds to Protestant's (Powder River Basin Resources Council) First Set of Interrogatories and Requests for Production of Documents served on Basin Electric as follows:

**GENERAL OBJECTIONS**

Basin Electric objects to each interrogatory to the extent that Protestant seeks communications, information or tangible things protected by the attorney-client privilege or the work-product doctrine. Basin Electric further objects to the interrogatories to the extent that Protestant actually elicits, through inadvertence or error, any communications, information, documents or tangible things subject to the foregoing objections.



## DETAILED OBJECTIONS

Basin Electric makes the following Objections that apply to all of Protestant's Interrogatories and Requests for Production of Documents:

1. As framed in the Protest, this is an appeal of a construction permit issued by the Department of Environmental Quality (DEQ). Besides the DEQ decision to issue that permit and the limits contained in that permit, there are no other issues in this appeal. However, all of the discovery requested by Protestant from Basin Electric has nothing to do with the issues raised in the Protest regarding the challenged permit. Basin Electric objects to the Protestant abusing discovery in this permit appeal to make burdensome, oppressive and harassing demands for information and documents that are not relevant to DEQ's decision to issue a permit.

2. Basin Electric objects to each Interrogatory and Request for Production as each seeks information that is neither relevant nor calculated to lead to the discovery of admissible evidence in this air permit appeal. For purposes of this construction permit appeal and the only issues in this appeal that are related to DEQ's decision to grant that permit, Basin Electric's financing, construction activities, construction progress, contracts and agreements regarding the Dry Fork Station power plant, communications with the U.S. Department of Agriculture, and any other information requested by Protestant simply have nothing to do with the permit decision being challenged.

3. Protestant's discovery requests far exceed the Wyoming Rules of Civil Procedure and attempt to burden this proceeding with issues unrelated to the only real issue in this matter: whether DEQ's final agency action to granting this permit was an abuse of discretion and lawful.

4. Basin Electric objects to each Interrogatory and Request for Production as each is unduly burdensome, particularly considering the lack of relevance of each Interrogatory and Request for Production to the issues in this appeal.

5. Basin Electric objects to each Interrogatory and Request for Production as each is overbroad. Each Interrogatory and Request for Production seeks information which is well beyond the scope of the issues in this appeal of whether the DEQ abused its discretion or made an error of law in issuing the permit.

6. Basin Electric objects to each Interrogatory and Request for Production as each is designed to harass Basin Electric. Each Interrogatory and Request for Production seeks information which is well beyond the scope of the issues in this appeal of whether the DEQ abused its discretion or made an error of law in issuing the permit.

7. Basin Electric objects to each Interrogatory and Request for Production to the extent it seeks in any way information regarding the matters and affairs of any other entity, including, but not limited to, the Rural Utilities Service (RUS), rather than that of Basin Electric.

8. Basin Electric objects to each Interrogatory and Request for Production as each request is a fishing expedition designed to retrieve information completely irrelevant to the issues in this proceeding – including, but not limited to, information such as RUS documents – and seeks through the guise of discovery in this matter information which is sought only for all Protestants' use in other potential proceedings.

9. Basin Electric objects to Protestant's definition of "Basin Electric" to the extent it seeks information from "member cooperative[s]." Basin Electric has no ability or right to control its member cooperatives, and each Interrogatory and Request for Production is, therefore,

overbroad, harassing and is neither relevant nor calculated to lead to the discovery of admissible evidence.

10. Basin Electric objects to Protestant's Instructions and Definitions to the extent each is assigned to all Interrogatories and Requests for Production as the Instructions and Definitions are designed to discover or obtain information from Basin Electric outside the scope of that which is provided by the Wyoming Rules of Civil Procedure.

11. Basin Electric will voluntarily agree to answer some of the Interrogatories and to provide some of the requested documents in response to Requests for Production because Basin Electric wants to cooperate to the extent it reasonably can, despite the unreasonableness of and undue burden imposed by Protestant's broad, unlimited requests and lack of relevance of those requests to any issues in this protest of the DEQ permit. Basin Electric has retrieved and copied documents to be delivered to Protestant as soon as an acceptable Protective Order covering the confidentiality of these documents is entered by the Council. By responding to the irrelevant and overbroad discovery requests, Basin Electric does not waive any objections to the use of this discovery during this Protest or to any future discovery based on what Basin Electric agrees to voluntarily and cooperatively provide at this time.



## INTERROGATORIES

**INTERROGATORY NO. 1:** Identify and describe the source and amount of any financing, funding, loans, or monetary contribution of any kind that Basin Electric has requested or received from any source for planning, design, construction, equipment, and/or operation of the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 1:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Basin Electric Power Cooperative and CoBank, ACB entered into a Loan Agreement dated December 1, 2005. The purpose of the loans is to finance the construction of the Dry Fork Station and for general corporate purposes.

Basin Electric Power Cooperative and CoBank, ACB entered into a Revolving Credit Agreement and a Loan Agreement dated November 1, 2007. The purpose of the loans is to finance the construction of the Dry Fork Station and for general corporate purposes.

Despite their lack of any relevance, these documents will be produced when the Council enters a Protective Order acceptable to Basin Electric governing the use of this confidential information.

**INTERROGATORY NO. 2:** Identify and describe the source and amount of any financing, funding, loans, or monetary contribution of any kind that Basin Electric anticipates requesting or receiving from any source for planning, design, construction, equipment, and/or operation of the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 2:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Basin Electric Power Cooperative plans to initiate a commercial paper program sometime during the Spring of 2008.

Despite its lack of any relevance, a Credit Agreement will be produced when the Council enters a Protective Order acceptable to Basin Electric governing the use of this confidential information.

**INTERROGATORY NO. 3:** Identify and describe any payments made or anticipated to be made by Basin Electric to any other person or entity for planning, design, construction, equipment, and/or operation of the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 3:**

See Detailed Objections above. Precise amounts paid or anticipated to each of Basin Electric's vendors contains sensitive confidential commercial and proprietary information that will not be produced because of its lack of relevance. Basin Electric is moving separately for a protective order regarding this discovery based in part on its vendors' concerns. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Despite the lack of relevance, all vendors and nature of work for planning, design, construction, and equipment have been listed in Exhibit #1 to Interrogatory #3 (Bate No. DFS EQC 0021493). The total amount of payments to these vendors to date has been approximately \$117,213,544; the total amount of anticipated payments to these vendors is approximately \$527,218,000; and the total payments made or anticipated to these vendors is approximately \$644,431,544.

No payments have been made for the operation of Dry Fork Station.

**INTERROGATORY NO. 4:** Identify and describe any contracts or agreements Basin Electric has entered into or expects to enter into with any person or entity related to the planning, design, construction, purchase of equipment, and/or operation of the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 4:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Despite their lack of relevance, for existing contracts, see Exhibit #1 to Interrogatory #3. For anticipated contracts, see listing in Exhibit #2 to Interrogatory #4 (Bate Nos. DFS EQC 0021494-0021497).

**INTERROGATORY NO. 5:** Identify and describe the construction schedule, including the anticipated dates for each step of construction, for the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 5:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Schedule attached as Exhibit #1 to Interrogatory #5 (Bate Nos. DFS EQC 0020282-0020284).

**INTERROGATORY NO. 6:** Identify and describe any work completed at the site of the Dry Fork Station to prepare for its construction, including surveying, clearing, foundation analysis, grading, compacting, or building.

**ANSWER TO INTERROGATORY NO. 6:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

The question is unclear and ambiguous, and Basin Electric interprets the question as calling for all work completed at the site to date. No work that was not allowed by the permit to construct was done at the site before the permit to construct was issued by the Wyoming DEQ.

In preparation for Dry Fork Station construction, and prior to receiving the Wyoming DEQ's permit to construct, the following items were done:

Water:

- A temporary road access permit for the exploratory well was applied for and received from the Wyoming Department of Transportation. The road was then put in.
- A deep test well (#1) in addition to a shallow well was drilled, pumps were installed, and pumping tests were run.
- 33 borings and 21 scoria test pits were done for geotechnical purposes (this also included seismic testing).
- Applied for and received permits for all water wells on the site.

Landfill:

- Put in groundwater monitoring wells.
- Geotechnical borings.

Surveying:

- Established one central point on the site.
- Established DFS network – a total of seven points – six of these were existing government points.
- Cadastral Survey was completed.
- Various staking was performed for borings.
- Established property corners around the whole site boundary.

Other:

- Land swap between Rawhide and Dry Fork Mine to square up the construction site property before purchase by Basin Electric.
- Resistivity testing was performed.

After the Wyoming DEQ's permit to construct was issued, the following items were done:

Site Preparation:

- Installed temporary diesel generator to operate deep well #1.
- Installed erosion control fence – 11,000 lineal feet.
- Dirt cut and fill moved 887,243 cubic yards.
- Top soil stripped and stockpiled – 79,635 cubic yards.
- Water consumed for compaction and dust control – 8,730,000 gallons.
- Storm water pipe installed 2,402 lineal feet.
- Storm water manholes installed – 16 each.
- Installed and paved two highway approaches off of Highway 59.
- Crushed and stockpiled scoria for roads and construction lay down – 70,000 cubic yards.
- Installed Grade L crushed limestone on Highway 59 approaches and access roads – 4,900 cubic yards.
- Installed a temporary water storage pond from Lance Fox Hills well #1.
- Installed six permanent survey control monuments.

- Tested compaction of fill areas to meet specifications.
- “H” piles delivered to site – 3,931 each or 238,360 lineal feet.
- “H” piles installed – 55,831 lineal feet.
- Sanitary sewer pipes on site – 5,520 lineal feet.
- Potable water pipe on site – 10,500 lineal feet.
- Fire protection pipe on site – 5,400 lineal feet.
- HDPE pipe on site – 2,100 lineal feet.
- Sewer pipe on site – 4,600 lineal feet.
- Conduit on site – 70,700 lineal feet.
- Ground cable installed – 100 lineal feet.
- Ground cable on site – 98,500 lineal feet.
- Construction power cable on site --- 48,000 lineal feet.
- Construction power cable installed – 17,928 lineal feet.
- Reinforcing steel (rebar) on site – 354 tons.
- Reinforcing steel installed – 154 tons.
- Stripped topsoil, leveled site and surfaced with scoria for temporary office trailers.
- Installed five temporary office trailers.
- Installed power and communication for temporary office trailers.
- Installed temporary lighting for temporary office trailers.
- Installed and wired a guard house.
- Installed temporary security fencing and gates.
- Began erection of 69 kV to 24.9 kV construction power substation.

**INTERROGATORY NO. 7:** Identify and describe the cost and source of funding for any work described in Response to Interrogatory #6.

**ANSWER TO INTERROGATORY NO. 7:**

See Detailed Objections above and Objections to Interrogatory #3. Subject to and without waiving any of its objections, Basin Electric answers as follows:

See Answer to Interrogatories #1 and #3.

**INTERROGATORY NO. 8:** Identify and describe any payments made or anticipated to be made by Basin Electric to any other person or entity for any work described in Response to Interrogatory #6.

**ANSWER TO INTERROGATORY NO. 8:**

See Detailed Objections above and Objections to Interrogatory #3. Subject to and without waiving any of its objections, Basin Electric answers as follows:

See Answer to Interrogatory #3.

**INTERROGATORY NO. 9:** Identify and describe any contracts or agreements Basin has entered into or expects to enter into with any person or entity related to any work described in Response to Interrogatory #6.

**ANSWER TO INTERROGATORY NO. 9:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

See Answer to Interrogatory #4.

**INTERROGATORY NO. 10:** Other than Air Permit CT-4631, identify and describe any steps taken or anticipated to be taken by Basin Electric to obtain any state or federal permits in connection with construction and operation of the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 10:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Other than Air Permit CT-4631, Basin Electric has taken steps or anticipates taking steps to obtain the state and federal permits to operate and construct the Dry Fork Station listed in attached Exhibit #1 to Interrogatory #10 (Bate Nos. DFS EQC 0021498-0021499).

**INTERROGATORY NO. 11:** Identify and describe any existing memorandum of understanding, contract, indenture, loan, loan guarantee, or other agreement between Basin Electric and the Department of Agriculture Rural Utilities Service, the National Rural Utilities

Cooperative Finance Corporation, or CoBank, ACB for the Dry Fork Station or any other proposed or existing facility.

**ANSWER TO INTERROGATORY NO. 11:**

See Detailed Objections above. Basin Electric also objects to the request as to “any other proposed or existing facility” as not relevant. Subject to and without waiving any of its objections, Basin Electric answers as follows:

Other than the Agreements with CoBank, ACB addressed in Interrogatory #1, there are no existing memorandums of understanding, contracts, indentures, loan guarantees, or other agreements between Basin Electric Power Cooperative and the Department of Agriculture Rural Utilities Service, the National Rural Utilities Cooperative Finance Corporation, or CoBank, ACB for the Dry Fork Station.

**INTERROGATORY NO. 12:** Identify and describe any communication between Basin Electric and the U.S. Department of Agriculture and any of its agencies, employees, or agents regarding Basin Electric’s decision to withdraw its request to the Rural Development, Utilities Programs for a loan guarantee for the Dry Fork Station.

**ANSWER TO INTERROGATORY NO. 12:**

See Detailed Objections above.

**INTERROGATORY NO. 13:** Identify all persons who assisted with the responses to these Interrogatories and Requests for Production.

**ANSWER TO INTERROGATORY NO. 13:**

See Detailed Objections above. Subject to and without waiving any of its objections, Basin Electric answers as follows:

- Clifton T. Hudgins, Sr. Vice President & CFO
- Steve Johnson, Manager Treasury Services
- Deborah Levchak, Staff Counsel

- Shawn Deisz, Manager of Accounting
- Craig Laub, Supervisor of Capital Assets
- Pat Meidinger, Supervisor of Accounts Payable
- Gail Keator, Business Systems Analyst
- Cindy Lee-Feist, Sr. Business Systems Analyst
- Derrick Hohbein, Accountant I
- Della Mastel, Accounting Analyst II
- Val Weigel, Accounting Analyst I
- Paige Wahl, Accounting Analyst I
- Jennifer Feigitsch, Accountant II
- Jim Huncovsky, Manager of Procurement
- Ron Schneider, Contracts Administrator
- Mike Massey, Sr. Contract Administrator
- Deb Grueneich, Business Systems Analyst
- Marcy Lickteig, Procurement Assistant
- Lyle Witham, Manager of Environmental Services
- Jerry Menge, Air Quality Program Coordinator
- Curt Pearson, Project Coordinator Representative
- Bob Boettcher, Manager of Construction
- Matt Weekes, Lead Surveyor
- Jim Berg, NEPA/Water Quality & Waste Management Coordinator
- Dave Erickson, Sr. Civil Engineer II
- Tammy DeWitt, Administrative Records Coordinator
- Cheryl Neumiller, Records Management Supervisor
- Toni Daede, Records Coordinator III
- Kathy Vetter, Records Coordinator III
- Colette Weber, Records Coordinator III
- Amber Joyce, Records Coordinator III
- Karla Huncovsky, Records Coordinator III
- Billie Jo Brown, Records Coordinator II
- Lori Martin, Records Coordinator II
- Jesse Schuette, Records Coordinator II
- Bernice Johnson, Office Services Coordinator
- Robert Williams, Dry Forks Station Project Engineer
- Tom Stalcup, Dry Fork Station Construction Manager

By answering this interrogatory, Basin Electric does not waive its continuing objections to further discovery attempts including the notices of taking the deposition of any of the above persons.



## REQUEST FOR PRODUCTION OF DOCUMENTS

**REQUEST FOR PRODUCTION NO. 1:** Provide a copy of any document that was used to answer any of the above Interrogatories.

### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

See Detailed Objections above. Basin Electric's contracts with its vendors contain sensitive confidential commercial and proprietary information that will not be produced because of its lack of relevance. Basin Electric is moving separately for a protective order regarding this discovery based in part on its vendors concerns. Subject to and without waiving any of its objections, Basin Electric responds as follows:

Despite the lack of relevance of the request, Basin Electric will voluntarily agree to provide some of the requested documents regarding Interrogatories #1 and #2 because Basin Electric wants to cooperate to the extent it reasonably can, despite the unreasonableness of and undue burden imposed by Protestant's broad, unlimited requests and lack of relevance of those requests to any issues in this protest of the DEQ permit. Despite their lack of any relevance, these documents will be produced when the Council enters a Protective Order acceptable to Basin Electric governing the use of this confidential information. By responding to the irrelevant and overbroad discovery requests, Basin Electric does not waive any objections to the use of this discovery during this Protest or to any future discovery based on what Basin Electric agrees to voluntarily and cooperatively provide at this time.

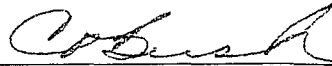
**REQUEST FOR PRODUCTION NO. 2:** Provide a copy of any document that contains information responsive to any of the above Interrogatories.

### **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

See Detailed Objections above. See Objections and Response to Request for Production No. 1.

DATED this 31 day of Jan, 2008.

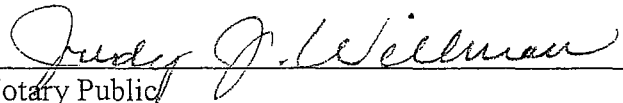
AS TO ANSWERS TO INTERROGATORIES:



Clyde T. Bush, Jr.  
Project Manager, Dry Fork Station

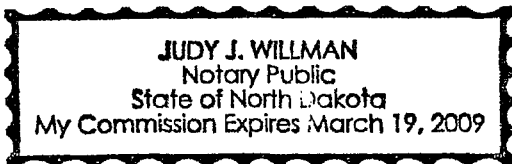
STATE OF NORTH DAKOTA     )  
  )ss.  
COUNTY OF BURLEIGH     )

The foregoing instrument was subscribed and sworn to before me by Clyde T. Bush, Jr.  
this 31 day of January, 2008.



Notary Public

My commission expires:



AS TO OBJECTIONS AND RESPONSES TO  
REQUESTS FOR PRODUCTION OF  
DOCUMENTS

A handwritten signature in black ink, appearing to read 'Patrick R. Day', is written over a horizontal line.

Patrick R. Day, P.C.

Mark R. Ruppert

HOLLAND & HART LLP

2515 Warren Avenue, Suite 450

P.O. Box 1347

Cheyenne, WY 82003-1347

Telephone: (307) 778-4200

Facsimile: (307) 778-8175

[pday@hollandhart.com](mailto:pday@hollandhart.com)

[mruppert@hollandhart.com](mailto:mruppert@hollandhart.com)

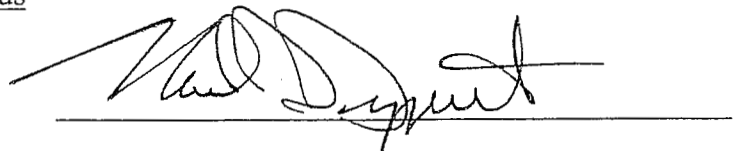
ATTORNEYS FOR BASIN ELECTRIC POWER  
COOPERATIVE

## CERTIFICATE OF SERVICE

I hereby certify that on this 4<sup>th</sup> day of February, 2008, I served the foregoing **Basin Electric Power Cooperative's Response to Protestant's First Set of Interrogatories and Requests for Production of Documents Served on Basin Electric Power Cooperative** by electronic service and by placing a true and correct copy thereof in the United States mail, postage prepaid and properly addressed to the following:

James S. Angell  
Robin Cooley  
Andrea Zaccardi  
Earthjustice  
1400 Glenarm Place, #300  
Denver, CO 80202  
[rcooley@earthjustice.org](mailto:rcooley@earthjustice.org)  
[azaccardi@earthjustice.org](mailto:azaccardi@earthjustice.org)  
[jangell@earthjustice.org](mailto:jangell@earthjustice.org)

Jay A. Jerde  
Deputy Attorney General  
Nancy E. Vehr  
Senior Assistant Attorney General  
Kristen A. Dolan  
Assistant Attorney General  
123 Capitol Building  
Cheyenne, WY 82002  
[NVEHR@state.wy.us](mailto:NVEHR@state.wy.us)  
[jjerde@state.wy.us](mailto:jjerde@state.wy.us)  
[kdolan@state.wy.us](mailto:kdolan@state.wy.us)



A handwritten signature in black ink, appearing to read "Paul D. Sargent", is written over a horizontal line.

Answer  
to Interrogatory  
#3

	A	B
1		<b>DryFork Station - Unit 1</b>
2		
3		
4	<b>COMPANY</b>	<b>CONTRACT TITLE</b>
5	HETTINGER WELDING LLC	DFS CONSTRUCTION - PRELIMINARY SITE WORK
6	BORDER STATES ELECTRIC SUPPLY	MATERIAL
7	NORTHLAND INDUSTRIAL SPECIALTIES LLC	DFS CONSTRUCTION PORTABLE GENERATOR
8	POWDER RIVER OFFICE SUPPLY	OFFICE SUPPLIES
9	BIG D SANITATION	PORTABLE TOILET SERVICE AT CONSTRUCTION SITE
10	RYAN EQUIPMENT COMPANY	TRASH DISPOSAL AND CONTAINERS
11	RYAN EQUIPMENT COMPANY	PROSPECTOR VILLAGE TRASH CONTAINERS AND COLLECTION SERVICE
12	HILLCREST PURE MOUNTAIN SPRING WATER	WATER COOLERS & WEEKLY WATER DELIVERY & COFFEE SERVICE
13	WATER SYSTEM DRILLING INC	DFS WATER WELL MOTOR & PUMP INSTALLATION
14	THUNDER BASIN FORD	DFS CONSTRUCTION VEHICLE
15	TRANS EQUIPMENT & SUPPLY INC	382011 GENERAL RELEASE - SEE APPROVAL ON BASE LEVEL
16	RESSLER CHEVROLET	DFS CONSTRUCTION VEHICLE
17	EAPC ARCHITECTS ENGINEERS	HVAC ENGINEERING SERVICES FOR DRY FORK STATION - EAPC ENGINEERS
18	SIR SPEEDY PRINTING & COPYING	CAD, PLOTTING, AND BULK COPIES
19	LIBERTY BUSINESS SYSTEMS INC	DFS CONSTRUCTION PRINTER/PLOTTER
20	LIBERTY BUSINESS SYSTEMS INC	DFS PRINTER/PLOTTER MAINTENANCE
21	GASES PLUS	MATERIAL
22	THUNDER BASIN FORD	DFS CONSTRUCTION VEHICLES
23	REAL ESTATE SYSTEMS INC	PROPERTY MANAGEMENT SERVICES FOR DRY FORK HOUSING
24	WATER GUY LLC	WATER TREATMENT, TESTING, AND MAINTENANCE @ PROSPECTOR VILLAGE
25	FOUNDATION WYOMING LAND COMPANY	LEASE CONTRACT OF PROSPECTOR VILLAGE FROM FOUNDATION COAL
26	WILLIAMS SCOTSMAN INC	FIELD OFFICE FOR DRY FORK STATION
27	HETTINGER WELDING LLC	INSTALL ELECTRICITY TO 20 MOBILE HOMES AND REPAIR STREET LIGHTS
28	HETTINGER WELDING LLC	GENERAL SERVICES AT PROSPECTOR VILLAGE
29	KEATING FURNITURE	MOBILE HOMES & APARTMENTS FURNITURE FOR DRY FORK STATION HOUSING
30	ACTION LOCK & KEY	LOCKSMITH SERVICES
31	TETRA TECH MM INC	POWDER RIVER ENERGY CORP. GENERATOR PERMITTING PROPOSAL
32	BURNS & MCDONNELL	FUTURE POWER GENERATION STUDIES
33	CAMPBELL COUNTY ABSTRACT CO	NE WY COAL PLANT - TITLE COMMITMENTS
34	WATER SUPPLY INC	NE WYOMING COAL PLANT - CONSULTING HYDROGEOLOGIST
35	WESTERN WATER CONSULTANTS INC	NE WY COAL PLANT-WTR RESOURCE INVEST& DVLPMNT & ENVIR SITE ASSMNT
36	DEISTER WARD & WITCHER INC	NE WY COAL PLANT - SITE ABSTRACTS
37	TETRA TECH MM INC	POWDER RIVER GENERATION PROJECT SUPPORT
38	BLACK & VEATCH	NE WY GENERATION STUDY - PHASE 2
39	UNIVERSITY OF NORTH DAKOTA	WYO COAL-BASED GENERATION - EERC COAL & LIMESTONE TESTING (CFBC)
40	TETRA TECH MM INC	CLOSING OF WYOMING METEOROLOGICAL TOWER IN GILLETTE WYOMING
41	COLTON TOWER CONSULTANTS INC	DISMANTLE, TRANSPORT & ERECT 100M TOWER(GILLETTE, WY - CUSTER,SD)
42	STAN PUKLICH CHEVROLET INC	BPO/CONTRACT HEADQUARTERS 07 - 08 VEHICLE MAINTENANCE
43	ODNEY ADVERTISING	BPO 2004 CONTRACTED SERVICES FOR ADVERTISING - ODNEY
44	CH2M HILL INC	SITING, CONCEPTUAL DESIGN AND PERMITTING SERVICES
45	WWC ENGINEERING INC	NE WY GENERATION - WATER SUPPLY INVESTIGATION
46	HILLCREST AIRCRAFT CO	RENTAL-HELICOPTER USE FOR SITE RECOGNIZANCE IN GILLETTE, WY
47	FIRST INTERSTATE BANK	OFFICE RENTAL FOR THE NE WYOMING PROJECT
48	J RILEY CONSULTING LLC	REVIEW OF AE PROPOSALS FOR NE WYOMING PROJECT
49	SARGENT & LUNDY LLC	AE SERVICES FOR NE WYOMING GENERATION PROJECT
50	WESTERN FUELS ASSOCIATION INC	PROJECT MANAGEMENT FOR NE WYO DRILLING EXPLORATION PROGRAM
51	WESTERN FUELS ASSOCIATION	EXPLORATION & DRILLING PROGRAM FOR NE WYOMING GENERATION PROJECT
52	CONSOLIDATED ENGINEERS &	GEOTECHNICAL INVESTIGATION FOR NE WYOMING POWER PLANT
53	ULTEIG ENGINEERS INC	PROPERTY SURVEYING FOR NE WYOMING POWER PLANT
54	HALL-WIDDOSS & CO INC	APPRAISAL OF NE WYOMING GENERATION SITE (H/H EXPANSION)
55	FIRST INTERSTATE BANK	COMM. RELATIONS REP./ENG. STAFF ADDITIONAL SPACE & CONF. ROOM
56	TUCKER'S OFFICE WORLD	MATERIAL
57	THUNDER BASIN CLEANING	CLEANING SERVICES FOR BEPC OFFICES IN GILLETTE WY
58	WESTERN FUELS ASSOCIATION	RENTAL AGREEMENT WITH WESTERN FUELS FOR GILLETTE WY OFFICE SPACE
59	PACER ENERGY LLC	NE WYOMING PROJECT OIL & GAS APPRAISAL SERVICES
60	NORWEST MINE SERVICES INC	DUE DILIGENCE OF DRY FORK MINE FOR NE WYOMING PROJECT
61	WESTERN FUELS ASSOCIATION INC	DRY FORK MINE DATA REQUEST
62	BENTLEY SYSTEMS INC	BENTLEY NAVIGATOR SOFTWARE AND MAINTENANCE
63	MITSUBISHI POWER SYSTEMS INC	STEAM TURBINE GENERATOR - DRY FORK STATION UNIT #1
64	GEA POWER COOLING INC	AIR COOLED CONDENSER FOR DRY FORK STATION UNIT #1
65	BABCOCK & WILCOX	DFS UNIT #1 420 MW PULVERIZED COAL FIRED BOILER
66	NOOTER/ERIKSEN INC	DFS UNIT #1 FURNISH AIR QUALITY CONTROL SYSTEMS EQUIPMENT (AQCS)
67	PULLMAN POWER LLC	CONCRETE CHIMNEY FOR DRY FORK STATION UNIT #1
68	AMES CONSTRUCTION INC	INITIAL SITE WORK PER SPEC. # 512271
69	AMES CONSTRUCTION INC	SUBSTRUCTURE WORK B-512273
70	NOOTER/ERIKSEN INC	DFS UNIT #1 INSTALLATION OF AIR QUALITY CONTROL SYSTEMS (AQCS)
71	STERLING DEAERATOR CO	DEAERATOR
72	THERMAL ENGINEERING INTRNTL	FEEDWATER HEATERS FOR DRY FORK STATION UNIT #1

	A	B
4	COMPANY	CONTRACT TITLE
73	BABCOCK & WILCOX	DFS - UNIT 1 AUXILIARY BOILER
74	FLOWERVE PUMP CORP	DFS - UNIT 1 - CONDENSATE PUMPS
75	KSB INC	BOILER FEED PUMPS FOR DFS UNIT #1
76	ITT CORPORATION	CLOSED COOLING WATER HEAT EXCHANGER, RFP#B-512294
77	ATLAS COPCO COMPRESSORS LLC	DFS AIR COMPRESSORS/DRYERS/RECEIVERS CONTRACT NO. 512297
78	BENDTEC INC	CRITICAL PIPING PER SPEC. # 512301
79	TYCO VALVES & CONTROLS LP	EXTRACTION STEAM CHECK VALVES - B-512309 "NEED TO ADD VENDOR"
80	ANDERSON WATER SYSTEMS	DFS UNIT 1 WATER TREATMENT SYSTEM
81	GRAVER WATER SYSTEMS LLC	DFS - UNIT 1 CONDENSATE POLISHER
82	CONSOLIDATED ENGINEERS &	EXPLORATORY GEOTECHNICAL INVESTIGATION SERVICES
83	STETSON ENGINEERING INC	SITE SURVEY PER SPEC.# 512337
84	GUARDSMARK LLC	SECURITY SERVICES FOR DRY FORK STATION
85	CONSOLIDATED ENGINEERS &	INSPECTION AND TESTING PER SPEC.# 512342
86	MERRILL IRON & STEEL INC	DRY FORK STATION - UNIT 1 STRUCTURAL STEEL FABRICATION
87	DIAMONDBACK TECHNOLOGY INC	DRY FORK STATION - UNIT 1 - COAL SILO FLOW STUDY
88	JD FIELDS & COMPANY INC	DRY FORK STATION UNIT 1 - H PILES, JD FIELDS & COMPANY, INC.
89	WESTERN FUELS ASSOCIATION	TEMPORARY ADMINISTRATIVE PERSONNEL FOR DRY FORK STATION GILLETTE
90	STALCUP, TOM	CONSULTING WORK SPRAY DRYER AND CDS TECNOLOGY & AQCS FOR DFS
91	TETRA TECH MM INC	PREPARE DESIGN & PERMIT APPL FOR ASH LANDFILL - DRY FORK STATION
92	EAPC ARCHITECTS ENGINEERS	HVAC DESIGN REVIEW
93	WATER SYSTEM DRILLING INC	INVESTIGATION OF POTENTIAL WATER SUPPLY - TEST WATER WELL
94	ULTEIG ENGINEERS INC	CAM-PLEX FACILITY IMPROVEMENTS (DESIGN SERVICES)
95	WILBER, KARL	DRY FORK STATION - AIR COOLED CONDENSER CONSULTATION
96	CAROUSEL FOODS	CATERING SERVICES IN WYOMING
97	MELGAARD CONSTRUCTION CO INC	DFS - LANCE-FOX HILLS #1 TEST WELL ROAD CONSTRUCTION WORK
98	ASPEN GROUP	CONSULTING SERVICES FOR DRY FORK HOUSING
99	PLUM COMPANY (THE)	COAL DUST IGNITION TEMPERATURE TEST - DFS
100	SARGENT & LUNDY LLC	DRY FORK STATION PHASE 2B ENGINEERING SERVICES
101	WESTERN FUELS ASSOCIATION	RENTAL AGREEMENT WITH WESTERN FUELS FOR GILLETTE WY OFFICE SPACE
102	XEROX CORPORATION	MAINT ON XEROX M20I DESKTOP COPIER- GILLETTE - S/N RYU326593
103	INTERMOUNTAIN	PROSPECTOR VILLAGE PAVEMENT PATCHING
104	WESTERN FUELS ASSOCIATION	BPO 06-11 DFS CONSULTING BY WESTERN FUELS WYOMING
105	RUSSMAN, PAUL R	DFS - ENGINEERING SERVICES FOR GENERATOR STEP-UP XFMR
106	FIRST INTERSTATE BANK	GILLETTE OFFICE SPACE FOR COMMUNITY RELATIONS/ENGINEERING
107	HETTINGER WELDING LLC	PROSPECTOR VILLAGE PRIMARY ELECTRICAL SYSTEM UPGRADE
108	THUNDER BASIN FORD	MATERIAL
109	HETTINGER WELDING LLC	PROSPECTOR VILLAGE WATER SYSTEM REPAIR
110	GAP ENTERPRISES	PROSPECTOR VILLAGE CLEANUP
111	HETTINGER WELDING LLC	PROSPECTOR VILLAGE SECONDARY ELECTRICAL
112	BRUCE ENGINEERING INC	PROSPECTOR VILLAGE ENGINEERING SERVICES
113	A-Z ASPHALT	PROSPECTOR VILLAGE ROAD REPAIR
114	ROBERTS & SCHAEFER CO	OVERSIGHT OF COAL HANDLING DELIVERY SYSTEM AT DFS
115	WESTERN FUELS ASSOCIATION	RENTAL AGREEMENT WITH WESTERN FUELS FOR GILLETTE WY OFFICE SPACE
116	BERNTSEN INTERNATIONAL INC	MATERIAL
117	RAMSEY CONSULTING LLC	CONSTRUCTION INSPECTION SUPPORT AT DFS BY DOUG RAMSEY
118	RUSHMORE HOMES	PURCHASE OF MOBILE HOMES AND SET UP FOR DRY FORK CONSTRUCTION
119	WOOD GROUP ESP INC	DFS WELL PUMP
120	HETTINGER WELDING LLC	PROSPECTOR VILLAGE LAGOON RESTORATION
121	BLACK BOX NETWORK SERVICES	MATERIAL
122	XEROX CORPORATION	XEROX PRO7665 LEASE- GILLETTE-DRY FORK STATION
123	XEROX CORPORATION	MAINT LEASE XEROX 7665 IN GILLETTE- 48 MONTHS
124	TAIT RADIO COMMUNICATIONS	MATERIAL
125	MODULAR SPACE CORP	TEMPORARY OFFICE TRAILER FOR DFS
126	FIRESIDE OFFICE PRODUCTS INC	MATERIAL
127	TAIT RADIO COMMUNICATIONS	MATERIAL
128	SITESAFE	MOBILE RADIO FREQ SEARCH/COORD/LICENSE: DRY FORK
129	XEROX CORPORATION	7132P MULTIFUNCTION COPIER/PRINTER FOR HARTZOG, WY
130	CONLINS FURNITURE	MATERIAL
131	KNECHT HOME CENTER OF GILLETTE LLC	MATERIAL
132	HUTTON COMMUNICATIONS INC	MATERIAL
133	NK COMMUNICATIONS	MATERIAL
134	CLARION INN	HOUSING FOR DFS AT CLARION INN - GILLETTE
135	BUDGET INN	HOUSING FOR DFS AT BUDGET INN EXPRESS
136	BEAR LODGE MOTEL	HOUSING FOR DFS AT THE BEAR LODGE HOTEL - SUNDANCE
137	WALLER RENTALS	HOUSING FOR DFS AT WALLER RENTALS - SUNDANCE
138	SMART CHOICE INN	HOUSING FOR DFS AT SMART CHOICE INN - GILLETTE
139	WESTON INN	HOUSING FOR DFS AT WESTON INN - UPTON
140	RANGELANE COURT MOTEL	HOUSING FOR DFS AT RANGELAND COURT MOTEL/RV - MOORCROFT
141	FASTENAL COMPANY (THE)	MATERIAL
142	JOHNSON CONTROLS INC	MATERIAL
143	PRIMUS ELECTRONICS CORP	MATERIAL

	A	B
4	COMPANY	CONTRACT TITLE
144	DIAMOND CARPET CARE	JANITORIAL SERVICES AT THE GILLETTE, WY OFFICES
145	FARMERS CO-OP ASSOC	MATERIAL
146	FARMERS CO-OP ASSOC	MATERIAL
147	BEACON SELF STORAGE	20 SELF STORAGE RENTAL UNITS IN GILLETTE, WY
148	FIRESIDE OFFICE PRODUCTS INC	MATERIAL
149	SOUTH FORK APARTMENTS LLC	SOUTH FORK APARTMENTS - CONSTRUCTION HOUSING
150	REMINGTON VILLAGE APARTMENTS	REMINGTON VILLAGE WORK FORCE HOUSING (APPTS)



Answer  
to Interrogatory  
#4

## ANTICIPATED FUTURE CONTRACTS FOR DRY FORK STATION

Spec No.	Description
B-512267	Diesel & Gas Filling Station Specification
B-512268	Coal Handling Specification
B-512270	Switchyard Packager Specification
B-512289	Switchyard Construction Specification
B-512282	Switchyard Control & Relay Panels Specification
	Circuit Breaker Procurement Specification
	SCADA Procurement Specification
	FO Cbl & Splice Box Specification
	Comm Eqpmt Specification
B-512272	Final Site Work Specification
B-512273	Pre-Engineered Buildings Specification
B-512274	General Work Contractor Specification
B-512274	Pre-Engineered Buildings Specification
B-512275	Mechanical Construction – Piping Specification
B-512275B	Steam Blowout Specification
B-512276	Electrical / I&G GWC Specification
B-512277	Field Fab Tanks Specification
B-512278	Fire Protection System Specification
B-512279	Cathodic Protection System Specification
B-512281	Railroad Specification
B-512286	Aux Cooling Tower Specification

B-512290	Horizontal & Vertical Pumps Specification
B-512291	Sump Pumps Specification
B-512292	Fire Pumps & Enclosure Specification
B-512293	Diesel Generator Specification
B-512294	Closed Cooling Wtr Heat Exchanger Specification
B-512295	Shop Fab Steel Tanks Specification
B-512297	Air Compressor, Dryer & Receiver
B-512298	Propane Treatment System Specification
B-512299	Ammonia Storage & Feed Specification
B-512302	Shop Fabricated BOP Piping Specification
B-512303	Engineered Pipe Supports Specification
B-512305	High Pressure Valves Specification
B-512306	Low Pressure Valves Specification
B-512307	Butterfly Valves Specification
B-512308	Control Valves Specification
B-512309	Extraction Steam Check Valves Specification
B-512310	Piping Specialties Specification
B-512313	Chemical Feed Systems Specification
B-512314	Steam & Water Sampling Systems Specification
B-512315	Extraction Steam Expansion Joints Specification
B-512316	GSU Transformer Specification
B-512317	Aux/Reserve Aux Transformers Specification
B-512318	Isolated Phase Bus Duct Specification
B-512319	Non-Seg Bus Duct Specification
B-512320	Medium Voltage Switchgear Specification

B-512321	480 V MCCs Specification
B-512322	480 V AC Power Distribution Boards Specification
B-512323	Continuous DC Power (Batteries/Charge rs/UPS) Specification
B-512324	120 V AC Power Distribution Boards Specification
B-512325	Low Voltage Switchgear Specification
B-512326	Protective Relay Panels Specification
B-512327	Distributed Control System Specification
B-512328	Continuous Emission Monitoring System Specification
B-512329	Instrumentation Specification
B-512330	Flow Elements Specification
B-512331	Main TB Crane Specification
B-512332	Misc Cranes & Hoists Specification
B-512335	Cable Specification
B-512343	Electrical Testing Specification
B-512344	Performance Testing Specification
B-512345	Emissions Testing Specification
B-512347	Generator Breakers Specification
B-512340	Elevator (Boiler & Service Bldg) Specification
B-512350	Hydrogen Generator Specification
B-512353	Freeze Protection Heat Tracing Specification
B-512360	HP Pile Testing Specification
B-512361	Heater Bypass 3-Way Valves Specification
B-537232	Glycol Heat Exchangers Specification
V-537233	Misc Valve Specification

B-537234	Mechanical Equipment Installation Specification
B-537235	Glycol Wall Coils Specification
B-537236	Steam Coil Air Heater Drain Skids Specification
	Plant Communications Specification
B-512280	Well Pumps

Answer  
to Interrogatory  
#5













Answer  
to Interrogatory  
#10

<b>Current Permits &amp; Supporting Documents</b>			
	<b>Permit Name</b>	<b>Entity Issuing Permit</b>	<b>Date Permit Issued</b>
	DOT Access Permit CL 04C 11071	Wyoming DOT	October 3, 2007
	DOT Access Permit CL 04C 11072	Wyoming DOT	October 3, 2007
	Access off Campbell County Road to DFS (Landfill)	Wyoming Campbell County	November 14, 2006
	Determination of No Hazard to Air Navigation FAA Aeronautical Study 2005ANM1173OE	FAA	June 6, 2005
	Industrial Siting Permit DEQ ISC 06 01	Wyoming Industrial Siting Council	July 7, 2006
	As-Built Permit to Construct 07555 Temporary Water Supply Well 1	Wyoming DEQ	September 13, 2007
	Permit 182018 to Appropriate Groundwater Lance Fox Hills Monitor 1	Wyoming State Engineer	July 26, 2007
	Permit 182019 to Appropriate Groundwater Lance Fox Hills 1 and 120 day extension on submittal of the form U.W. 6 dated 12.14.2007	Wyoming State Engineer	July 26, 2007
	Permit 182020 to Appropriate Groundwater Well Supply 1	Wyoming State Engineer	July 26, 2007
	Permit 182038 to Appropriate Groundwater Lance Fox Hills 3	Wyoming State Engineer	July 26, 2007
	Permit 182039 to Appropriate Groundwater Lance Fox Hills 2	Wyoming State Engineer	July 26, 2007
	Permit 172830 to Appropriate Groundwater for Monitor/Test Lance Fox Hills 1	Wyoming State Engineer	February 2, 2006

<b>Anticipated Permits</b>			
	<b>Permit Name</b>	<b>Entity Issuing Permit</b>	
	Industrial Solid Waste Landfill Permit	Wyoming DEQ	Will supplement this answer when permit is received from the Wyoming DEQ.
	FCC Permit	Federal Communications Commission (FCC)	Will supplement when this permit is obtained.
	Title IV Clean Air Act Permit	Wyoming DEQ	Will supplement this answer when permit is received from the Wyoming DEQ.
	Title V Clean Air Act Operating Permit	Wyoming DEQ	Will supplement this answer when permit is received from the Wyoming DEQ.

Exhibit

H

James S. Angell (WY Bar No. 6-4086)  
Robin Cooley  
Andrea L. Zaccardi  
Earthjustice  
1400 Glenarm Place, Suite 300  
Denver, CO 80202  
Tel: (303) 623-9466  
Fax: (303) 623-8083

Attorneys for Protestants

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
OF THE STATE OF WYOMING

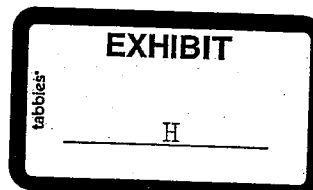
IN THE MATTER OF:	)	
BASIN ELECTRIC POWER COOPERATIVE	)	Docket No. 07-2801
DRY FORK STATION,	)	Presiding Officer, F. David Searle
AIR PERMIT CT - 4631	)	
_____	)	

**PROTESTANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR  
PRODUCTION OF DOCUMENTS SERVED ON BASIN ELECTRIC POWER  
COOPERATIVE**

Pursuant to Wyoming Rules of Civil Procedure 26, 33, 34, and the following definitions and instructions, Protestant Powder River Basin Resources Council requests that Basin Electric Power Cooperative ("Basin Electric") answer fully and under oath the following Interrogatories and Requests for Production of Documents within 30 days of the date of service.

**DEFINITIONS**

1. "Basin Electric" means the Basin Electric Power Cooperative and includes any agent, officer, employee, or member cooperative of Basin Electric.
2. "Communication(s)" means conversations, discussions, meetings, telephone calls, notes, letters, memoranda, reports, teletypes of facsimiles (faxes), electronic mail, voice mail, text messages, data or file transfer, pictures or photographs, and all other forms of oral, written or





electronic expression by which information may be conveyed, including any mechanical or electronic sound recording or transcription thereof.

3. “Describe” means to specify in detail and to particularize the content of the answer to the question and not just to state the reply in summary or outline fashion, including all pertinent facts about the fact, event, or situation in question, including but not limited to:

- (a) the time, date, and place;
- (b) identification of all persons present or involved;
- (c) identification of all oral or written communications made during the event or situation;
- (d) a detailed description of all actions taken.

4. “Document(s)” is used in the broadest sense contemplated by Wyo. R. Civ. P. 34. It means all records and other tangible forms of expression, including information in electronic, magnetic, or photographic form, in your possession, custody, or control, including drafts and any copies thereof that contain notes or otherwise differ from the original, however many, by whomever created, however prepared, circulated, sent, received, dated or used, produced or stores (manually, mechanically, electronically, or otherwise), including but not limited to books, papers, files, modeling files and data, notes, correspondence, memoranda, reports, writings, drawings, photographs, telegrams, facsimiles (faxes), telephone logs, contracts, agreements, calendars, datebooks, worksheets, summaries, magnetic tapes, data files, other data compilations from which information can be obtained, electronic mail, disks, diskettes, disk packs, and other electronic media, microfilm, microfiche, and storage devices. It includes all material that relates or refers in whole or in part to the subjects referred to in any Interrogatory and also includes the file jackets, and any labels thereon, in which responsive documents are contained. If any documents contain attachments or appendices, describe the attachments or appendices.

5. "Dry Fork Station" refers to the coal fired electric power generating station that Basin Electric applied to construct adjacent to the Dry Fork Mine, approximately 7 miles north northeast of Gillette, Wyoming. Wyoming Department of Environmental Quality ("WYDEQ") authorized construction of the Dry Fork Station through Air Permit No. CT-4631.

6. "Identify" means:

(a) When applied to an individual person, state the full name, present or last known business address, position with the state or other employer, job description, and telephone number;

(b) When applied to a document, state the title, date(s), author(s), signer(s), intended recipient(s), addressee(s), present location and custodian of the document, and current or last known address of the custodian of the document.

(c) When applied to oral communication, identify the speaker(s) and the person(s) addressed, state the date, place and medium of the communication and describe completely the content of the communication.

7. "Including" means "including, but not limited to."

8. "Regarding," "Related to," and "Concerning" means concerning, referring to, alluding to, responding to, relating to, connected with, commenting upon, in respect of, about, establishing, analyzing, criticizing, touching upon, constituting, supporting, refuting and/or being.

9. "WYDEQ" refers to the Wyoming Department of Environmental Quality or any agency, officer or employee of WYDEQ. This includes the Wyoming Division of Air Quality ("Air Division"), and any agency, officer or employee of the Air Division.

10. "You" or "Your" means Basin Electric or any agent, officer, employee or member cooperative of Basin Electric.



## INSTRUCTIONS

In responding to these Interrogatories and Requests for Production of Documents, please adhere to the following instructions:

1. Furnish all information that is available to you, known to you, or that can be known after reasonable inquiry, including information in the possession, custody, or control of your attorneys, staff, agents, employees, officers, consultants, experts, or other representatives. In answering, you are required to make a reasonable inquiry to ascertain the information or knowledge necessary to respond in detail to such request. Answers must be specific and responsive.

2. If you do not or cannot answer any Interrogatory or Request for Production of Documents after exercising due diligence in attempting to secure the information, please state your answer to the extent possible and indicate your inability to answer the remainder. Include whatever information you may have concerning the unanswered portions and set forth in detail all efforts undertaken to ascertain the requested information.

3. If anything is deleted from a document produced in response to an Interrogatory or Request for Production, state the reason for the deletion, the subject matter of the deletion, and the name of the person or persons who decided to delete the information.

4. If any information in these Interrogatories or Requests for Production is withheld pursuant to an objection or claim of privilege, answer portions of the Interrogatory or Request for Production for which the privilege does not apply, identify the objection or privilege claimed, set forth a specific basis upon which the objection is raised or the privilege is claimed, and provide a privilege log and/or index of documents withheld that includes the following information: a statement identifying the nature of the information withheld, the date and subject matter of any

communication containing that information, the names of all persons with knowledge of the information including the author, and the basis for withholding the information.

5. Answer all Interrogatories and Requests for Production under oath, and provide verification from appropriate representatives of Basin Electric, to support these answers.

6. Provide answers to these Interrogatories and Requests for Production within 30 days of the date of service. If you cannot complete these answers within this time, provide immediate notice to Plaintiffs' counsel so that an amicable resolution to the problem can be reached.

7. These Interrogatories and Requests for Production are to be deemed continuing in nature. Supplement all answers as required by Wyo. R. Civ. P. 26(e).

#### **INTERROGATORIES**

1. Identify and describe the source and amount of any financing, funding, loans, or monetary contribution of any kind that Basin Electric has requested or received from any source for planning, design, construction, equipment, and/or operation of the Dry Fork Station.

2. Identify and describe the source and amount of any financing, funding, loans, or monetary contribution of any kind that Basin Electric anticipates requesting or receiving from any source for planning, design, construction, equipment, and/or operation of the Dry Fork Station.

3. Identify and describe any payments made or anticipated to be made by Basin Electric to any other person or entity for planning, design, construction, equipment, and/or operation of the Dry Fork Station.

4. Identify and describe any contracts or agreements Basin Electric has entered into or expects to enter into with any person or entity related to the planning, design, construction, purchase of equipment, and/or operation of the Dry Fork Station.

5. Identify and describe the construction schedule, including the anticipated dates for each step of construction, for the Dry Fork Station.

6. Identify and describe any work completed at the site of the Dry Fork Station to prepare for its construction, including surveying, clearing, foundation analysis, grading, compacting, or building.

7. Identify and describe the cost and source of funding for any work described in Response to Interrogatory #6.

8. Identify and describe any payments made or anticipated to be made by Basin Electric to any other person or entity for any work described in Response to Interrogatory #6.

9. Identify and describe any contracts or agreements Basin has entered into or expects to enter into with any person or entity related to any work described in Response to Interrogatory #6.

10. Other than Air Permit CT-4631, identify and describe any steps taken or anticipated to be taken by Basin Electric to obtain any state or federal permits in connection with construction and operation of the Dry Fork Station.

11. Identify and describe any existing memorandum of understanding, contract, indenture, loan, loan guarantee, or other agreement between Basin Electric and the Department of Agriculture Rural Utilities Service, the National Rural Utilities Cooperative Finance Corporation, or CoBank, ACB for the Dry Fork Station or any other proposed or existing facility.

12. Identify and describe any communication between Basin Electric and the U.S. Department of Agriculture and any of its agencies, employees, or agents regarding Basin Electric's decision to withdraw its request to the Rural Development, Utilities Programs for a loan guarantee for the Dry Fork Station.

13. Identify all persons who assisted with the responses to these Interrogatories and Requests for Production.

### **REQUEST FOR PRODUCTION OF DOCUMENTS**

1. Provide a copy of any document that was used to answer any of the above Interrogatories.

2. Provide a copy of any document that contains information responsive to any of the above Interrogatories.

Dated: January 3, 2008

s/ James S. Angell  
James S. Angell  
Robin Cooley  
Andrea L. Zaccardi  
Earthjustice  
1400 Glenarm Place, Suite 300  
Denver, CO 80202  
Tel: (303) 623-9466  
Fax: (303) 623-8083  
Email: [jangell@earthjustice.org](mailto:jangell@earthjustice.org)  
[rcooley@earthjustice.org](mailto:rcooley@earthjustice.org)  
[azaccardi@earthjustice.org](mailto:azaccardi@earthjustice.org)

Attorneys for Protestants

**CERTIFICATE OF SERVICE**

I, Robin Cooley, certify that on this day of January 3, 2008, I served a copy of the foregoing **PROTESTANT'S FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF DOCUMENTS SERVED ON BASIN ELECTRIC POWER COOPERATIVE** via e-mail and by depositing copies of the same in the United States mail, postage prepaid, duly enveloped and addressed to:

Nancy Vehr  
Jay A. Jerde  
Kristen Dolan  
Office of the Attorney General  
123 State Capitol  
Cheyenne, WY 82002

Patrick R. Day  
Mark R. Ruppert  
Holland & Hart LLP  
2515 Warren Avenue, Suite 450  
Cheyenne, WY 82003

s/Robin Cooley  
Robin Cooley