

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

In the Matter of the Appeal)	
And Petition for Review of:)	
BART Permit No. MD-6040)	Docket No. 10-2801
(Jim Bridger Power Plant); and)	
BART Permit No. MD-6042)	
(Naughton Power Plant).)	

PROTECTIVE ORDER

The Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”) and PacifiCorp (referred to jointly as “Parties,” or singularly as “Party”) have jointly moved the Environmental Quality Council (“EQC”) to enter this Protective Order (“Order”). The Presiding officer has reviewed the Joint Motion and Supplemental Filing in support of said Motion. This Order governs the disclosure and/or use of “Protected Information,” which is defined as: (i) DEQ/AQD Exhibit 18 (PacifiCorp's letter dated January 29, 2009) marked “Confidential Commercial Information and Trade Secret”; (ii) discussions between the DEQ/AQD and PacifiCorp regarding such exhibit; (iii) other documents or pleadings referencing or incorporating such exhibit or discussions; and (iv) any other trade secrets or commercial confidential information identified by either of the Parties (the “Protected Information”). The EQC being fully advised, **HEREBY ORDERS** as follows:

1. This Order is entered to govern the use of the Protected Information in this proceeding. This Order is not intended to alter, amend, expand, restrict or in any fashion affect the respective rights, if any, of PacifiCorp, the DEQ/AQD, or the EQC, in or to the Protected Information in other proceedings now or in

the future. PacifiCorp's legal, equitable and/or statutory rights to protect the Protected Information 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 the Protected Information in other proceedings solely because such information was made available or used in this proceeding. Similarly, the DEQ/AQD's rights, if any, to seek unfettered access to the Protected Information in other proceedings shall not be affected in any fashion by this Order.

2. The Protected Information shall be protected from public disclosure in accordance with the terms of this Order and WYO. STAT. ANN. § 16-4-203 (d)(v) and § 35-11-1101.

3. For purposes of this Order, "Protected Information" shall include:
- a. the Protected Information as defined above;
 - b. Any pleadings or written reports or portions thereof in connection with this proceeding, which contain or refer to the Protected Information;
 - c. Any oral or written testimony offered in connection with this proceeding which contain or refer to the Protected Information;
 - d. Any questions or discovery submitted by the Parties or asked by the EQC in connection with this proceeding which contain or refer to the Protected Information;
 - e. Notwithstanding the above, Protected Information shall not include information, data, and knowledge, as shown by written records, that (i) was in the public domain prior to use in this proceeding; or (ii) lawfully enters the public domain through

no violation of this Order after use by EQC or DEQ/AQD in this proceeding. Any confidentiality agreements, orders or other legal or statutory restrictions governing the prior use and/or receipt of the Protected Information shall not be affected by this Order.

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

a. Protected Information may only be used by, and disclosed to, DEQ/AQD's counsel of record, its staff, expert consultants, expert witnesses, and others employed by a party in connection with this proceeding; and

b. Protected Information may be used by, and disclosed to, EQC, its attorney and staff, and others employed by EQC in connection with this proceeding. Protected Information also may be disclosed to court reporters retained to transcribe any proceedings before the EQC. Such court reporters will be bound by this Order.

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

6. Nothing in this Order shall prohibit PacifiCorp from using the Protected Information in any manner consistent with its ownership rights and in the ordinary course of its business.

7. All Protected Information used or referred to by any party or the EQC shall be filed under seal and designated as subject to this Order. The Protected Information only shall be disclosed and/or used by DEQ/AQD, PacifiCorp and EQC in accordance

with this Order. Such Protected Information shall not be placed on the EQC or DEQ/AQD websites or in publically accessible files. In the event Protected Information is attached as an exhibit to a deposition or a filing before the EQC, the exhibit and testimony or written statements relating to such exhibit also shall be sealed.

8. This Order shall continue to be binding throughout and after the conclusion of this proceeding, 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 scheduled hearings. If, after such hearings, additional investigative proceedings are conducted or ordered by the EQC, the EQC will revisit issues of disclosure and access to Protected Information, if necessary, upon advance notice with an opportunity to be heard by PacifiCorp and the DEQ/AQD.

9. To the extent any person, corporation, governmental entity or agency subject to the terms of this Order decides that to understand or evaluate any Protected Information, the assistance of any additional person(s) not identified in paragraph 4 is needed, that person, corporation, governmental entity or agency must request PacifiCorp's permission to show such information to the specifically identified additional person(s). PacifiCorp shall promptly respond to the request. If permission is granted, the Protected 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 Protected 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 Protected Information to be disclosed and, where appropriate, stating with particularity the reason or reasons assistance is needed, and naming the person to whom the Protected Information is to be disclosed to obtain assistance. Each person to whom Protected 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.

10. No marking of documents as “Confidential” or “Protected” shall be required, although any document marked, stamped, or designated as “Confidential” or “Protected” shall be treated as Protected Information under this Order.

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

12. The restrictions on disclosure and use of Protected 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.


13. 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.

14. The persons to whom Protected 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.

15. At the conclusion of this proceeding and any related appeal(s), all parties shall retrieve all Protected 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. ANN. § 16-4-203.

16. 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 DRQ/AQD and EQC which retain their sovereign immunity from suit for damages, by the undersigned parties.

DATED this 1st day of September, 2010.



David Searle, Presiding Officer
Wyoming Environmental Quality Council