

Docket No. 20000-418-EA-12
Witness: Cathy S. Woollums

BEFORE THE WYOMING PUBLIC SERVICE
COMMISSION

ROCKY MOUNTAIN POWER

Rebuttal Testimony of Cathy S. Woollums

March 2013

1 **Q. Please state your name and business address and position.**

2 A. My name is Cathy S. Woollums. My business address is 106 East Second Street,
3 Davenport, Iowa. My position is senior vice president of environmental services
4 and chief environmental counsel for MidAmerican Energy Holdings Company
5 (MEHC). PacifiCorp is a subsidiary of MEHC.

6 **Qualifications**

7 **Q. Please describe your education and business experience.**

8 A. I received a Bachelor of Arts Degree in Political Science from Winona State
9 University and a Juris Doctorate from Drake University Law School. I was
10 admitted by examination to practice law in Iowa and Illinois and maintain my
11 licensure in both states. Following law school, I served a one-year appointment as
12 a law clerk in the 7th Judicial District in Iowa and then entered the private practice
13 of law for approximately three years. I joined Iowa-Illinois Gas and Electric
14 Company, a predecessor of MidAmerican Energy Company and MEHC, in 1991
15 where I served in the capacity of an attorney within the general counsel's office
16 and handled environmental matters, among others. I became the manager of
17 environmental services in 1995 and have held increasing positions of
18 responsibility for environmental issues within MEHC. In my current role as the
19 senior vice president of environmental services, I have responsibility for the
20 development and implementation of MEHC's worldwide corporate environmental
21 policy, strategy and programs, including the development of comments on
22 proposed state and federal laws and regulations, integrating environmental
23 assessments of existing and anticipated environmental regulations into planning

1 and operating decisions of business units, and advising management of the impact
2 of proposed regulations and developing potential compliance strategies. In
3 addition, I oversee the organization's environmental compliance assurance
4 management program, environmental permitting and reporting, and
5 environmental litigation.

6 I have served on the Iowa State Bar Association's Environmental and
7 Natural Resources Section Council, the Edison Electric Institute's Environment
8 Executive Advisory Committee, the Iowa Climate Change Advisory Council, the
9 Midwestern Governors' Association Power Sector Working Group, the
10 Midwestern Governors' Renewable Electricity Advanced Coal with Carbon
11 Capture Advisory Group, and The Climate Registry Advisory Committee. I was
12 appointed to serve two terms as the Iowa governor's appointee to the Clean Air
13 Act Compliance Advisory Panel, chaired the Iowa Association of Business and
14 Industry's Environmental Committee for four years, and was recently invited to
15 serve on the GHG Reporting and Mitigation Advisory Committee, a partnership
16 of The Climate Registry and the Greenhouse Gas Management Institute.

17 **Purpose of Testimony**

18 **Q. What is the purpose of your rebuttal testimony in this proceeding?**

19 A. As indicated by Company witness Mr. Chad A. Teply, I am providing testimony
20 on the potential effects of pending U.S. Environmental Protection Agency (EPA)
21 action on the Wyoming Regional Haze 309(g) State Implementation Plan
22 (Wyoming SIP) on selective catalytic reduction (SCR) Project compliance
23 obligations and the Company's interaction in that process.

1 My testimony responds primarily to issues raised by the direct testimony
2 of Mr. Randall J. Falkenberg, submitted on behalf of the Wyoming Industrial
3 Energy Consumers (WIEC) and Dr. Jeremy Fisher, on behalf of Sierra Club. This
4 testimony will respond to these parties' concerns that:

5 (1) The Company's alleged refusal to request an extension of time to
6 install emissions controls at Jim Bridger Units 3 and 4 is not in the best
7 interests of customers;

8 (2) The Company's failure to pursue an extension for the installation of
9 SCR controls at Jim Bridger Units 3 and 4 is itself a basis for the
10 Commission to deny the application;

11 (3) The requirement for SCR is not enforceable until 2018;

12 (4) Given EPA's recent action to delay its final Best Available Retrofit
13 Technology (BART) determination, it is very likely that the Company
14 and the Wyoming Department of Environmental Quality could reach
15 an agreement to modify the applicable deadlines; and

16 (5) The Company's pursuit of a request with respect to Naughton Unit 3 to
17 modify timelines shows that the Wyoming Department of
18 Environmental Quality and the Environmental Quality Council would
19 be amenable to such a request, suggesting that the Company's refusal
20 to request an extension is irrational.

1 **Background on State and EPA Action**

2 **Q. Please provide some background on the recent action of the EPA regarding**
3 **the Wyoming SIP.**

4 A. After being sued by WildEarth Guardians, the National Parks Conservation
5 Association and Environmental Defense Fund for its alleged failure to meet the
6 regional haze implementation plan requirements that were due by December 17,
7 2007, EPA entered into a consent agreement in June 2011 which required the
8 agency to take proposed action on the Wyoming SIP by April 15, 2012, and to
9 sign a notice of final rulemaking on the Wyoming SIP by October 15, 2012.

10 On May 15, 2012, EPA released its proposed action on the Wyoming SIP,
11 with publication in the Federal Register June 4, 2012 (see 77 Fed. Reg. 33022). In
12 that action, EPA advanced the adoption of the Wyoming SIP requirements to
13 install NO_x controls to achieve an emission limit of 0.07 lb/mmBtu on Jim
14 Bridger Units 3 and 4 by December 31, 2015, and December 31, 2016,
15 respectively. While the June 2011 consent decree required EPA to finalize its
16 action on the Wyoming SIP by October 15, 2012, the parties to the consent decree
17 agreed to extend to December 14, 2012, the deadline for EPA to finalize its action
18 on the Wyoming SIP. On December 10, 2012, EPA filed an unopposed motion
19 with the U.S. District Court for the District of Colorado, seeking once again to
20 defer its action on the Wyoming SIP. In that motion, EPA indicated it intended to
21 re-propose its action on the Wyoming SIP by March 29, 2013, and to take final
22 action by September 27, 2013. The Court granted EPA's motion December 14,
23 2012.

1 **Q. Is there anything in the EPA’s motion to extend its deadlines to take action**
2 **on the Wyoming SIP that suggests it will extend the deadlines for installation**
3 **of controls at Jim Bridger Units 3 and 4?**

4 A. No. It is clear in EPA’s motion that in order to obtain the approval of WildEarth
5 Guardians and the National Parks Conservation Association to not oppose the
6 EPA’s action seeking to extend its deadlines for action on the Wyoming SIP by
7 almost another year, it was not acceptable for EPA to commensurately delay the
8 installation of controls by one year. As such, EPA and the parties to the consent
9 decree agreed that EPA would, in developing its proposal, “determine, for each
10 source subject to BART, the period of time for BART compliance that is as
11 expeditious as practicable, as required by 42 U.S.C. §7491.”

12 **Q. Did the Company have any discussions with EPA regarding whether its**
13 **deferral and re-proposed action would have any impact on the timing of the**
14 **Company’s obligations to install controls at Jim Bridger Units 3 and 4?**

15 A. Yes. While the Company had no advance knowledge of EPA’s plans to extend
16 either the October 15, 2012, or the December 14, 2012, deadlines, we did meet
17 with EPA on December 11, 2012, to discuss a mechanism to address the
18 conversion of Naughton Unit 3 as an alternative to installing controls. At that
19 meeting, EPA advised the Company that it had filed the motion and would, with
20 the Court’s approval, re-propose action on the Wyoming SIP with a proposed rule
21 to be issued by March 29, 2013, and a final rule by September 27, 2013. At the
22 December 11, 2012, meeting, I specifically raised the issue of the timing of the
23 Company’s obligations to install controls at Jim Bridger Units 3 and 4, pointing

1 out that because the Company had near-term deadlines to install those controls,
2 any changes in the requirements were a concern.

3 **Q. Did EPA respond to this concern?**

4 A. EPA did not directly respond to the concern, saying only that they understood the
5 concern, but did not provide further direction on the issue. The Company filed a
6 Freedom of Information Act (FOIA) Request January 17, 2013, seeking, among
7 other things, communications about modifications to the consent decree, as
8 reflected in Exhibit RMP___(CSW-1R). Documents received from EPA in
9 response to the FOIA request, included as Exhibit RMP___(CSW-2R), clearly
10 suggest that “deadlines do matter,” that the environmental groups were frustrated
11 about the number of extensions EPA had requested from the consent decree
12 deadlines, and that the issue of the timing of controls was subject to significant
13 negotiation between the parties to the consent decree, evidencing their desire to
14 force the installation of controls as soon as possible.

15 **Q. Is there anything in the Court’s order that indicates the timing of the**
16 **installation of the Jim Bridger Units 3 and 4 selective catalytic reduction**
17 **controls is changed?**

18 A. No. The Court order merely contains the same language, stating that in its re-
19 proposal, “EPA will propose to determine, for each source subject to BART, the
20 period of time for BART compliance that is as expeditious as practicable, as
21 required by 42 U.S.C. §7491.” This language is consistent with the exchange
22 between EPA and the consent decree parties documented in EPA’s response to the
23 Company’s FOIA request.

1 **Q. Do you agree with Sierra Club witness Fisher that the requirement for SCR**
2 **at Jim Bridger Units 3 and 4 is not enforceable until 2018?**

3 A. No. Dr. Fisher completely disregards the statutory language of the Clean Air Act
4 that requires BART controls to be installed as expeditiously as practicable. Dr.
5 Fisher’s statement ignores and is completely contrary to the position taken
6 previously by Sierra Club in comments filed with the EPA on the Wyoming SIP,
7 which state in pertinent part:

8 EPA’s proposal would require installation of SCR plus low-NOx
9 burners/SOFA by 2015 at Unit 3 and 2016 at Unit 4. 77 Fed. Reg.
10 at 33035. However, EPA also is seeking comment on an alternative
11 that would allow PacifiCorp to install SCR at Jim Bridger Units 3
12 and 4 within 5 years from the date of EPA’s final action. *Id.* at
13 33053. EPA’s reasoning is that this alternative would allow
14 PacifiCorp the flexibility to determine the implementation
15 schedule for BART controls on all four Jim Bridger units. Because
16 EPA’s initial proposal to require BART installation by 2016 best
17 complies with the statutory requirement that BART be installed
18 and operated —as expeditiously as practicable, 42 U.S.C. §
19 7491(b)(2)(A), we support EPA’s proposal over the alternative for
20 Jim Bridger Units 3 and 4.¹

21 Sierra Club, in its comments filed in August 2012, did not take the position it is
22 now erroneously asserting as being the law – allowing Jim Bridger Units 3 and 4
23 to install controls at least five years after the date of final action on the Regional
24 Haze Implementation Plan, whether implemented by EPA or by Wyoming. There
25 is no legal or regulatory support for Dr. Fisher’s statement that “the new
26 compliance deadline for the installation and operation of BART controls in
27 Wyoming would be no earlier than September 27, 2018,” nor can it be reconciled
28 with any information from EPA or Wyoming. Dr. Fisher has taken a delay of less

¹ See comments at: <http://www.regulations.gov/#!documentDetail;D=EPA-R08-OAR-2012-0026-0056> at pages 23 – 24.

1 than one year for EPA's final action and inappropriately stretched the compliance
2 date by two years – precisely the issue EPA and the Court, in its order, warned it
3 would not allow by requiring controls to be installed as expeditiously as
4 practicable.

5 **Enforceable Compliance Deadlines Under Wyoming Law**

6 **Q. If the EPA has changed the timeframe within which it will take action on the**
7 **Wyoming SIP, why don't the Company's obligations change?**

8 A. Regardless of the EPA's delays, the Company continues to have the obligation to
9 install the controls as required by the Wyoming SIP. The Regional Haze program
10 is intended to be a program that is developed and implemented at the state level
11 and approved by the EPA. In the event that EPA determines a state's
12 implementation plan does not contain the necessary elements of the Clean Air
13 Act's requirements for a SIP, it may issue a federal implementation plan (FIP).

14 **Q. What are the Company's obligations under the Wyoming Regional Haze**
15 **SIP?**

16 A. As Company witness Mr. Teply has previously indicated in his direct and rebuttal
17 testimony, the Wyoming SIP, the Settlement Agreement between the Wyoming
18 Department of Environmental Quality, and the Environmental Quality
19 Commission's order require the installation of controls at Jim Bridger Unit 3 by
20 December 31, 2015, and Jim Bridger Unit 4 by December 31, 2016. Unless and
21 until all three of these requirements are changed, the Company remains under an
22 obligation to install the controls notwithstanding EPA's action.

1 **Q. Has the Company sought to change those requirements?**

2 A. The Company has explored its options to change the requirements, but it cannot
3 change the 2015 and 2016 deadlines on its own. As discussed, the Company met
4 with EPA December 11, 2012, and expressed concern to EPA regarding the
5 timing of its obligations under the Wyoming SIP as a result of the delay. EPA
6 indicated it understood the concerns, but did not provide further direction on the
7 issue. After receiving EPA's responses to the Company's FOIA request, I can
8 understand EPA's reluctance to affirmatively address an extension of the
9 compliance date.

10 The Company then met with the Wyoming Department of Environmental
11 Quality and the Wyoming Attorney General's office January 4, 2013, to discuss
12 the deadlines and the agency's position on extending the deadlines. The Company
13 was advised that the state of Wyoming views the deadlines as being
14 independently legally enforceable under the Wyoming SIP, the Settlement
15 Agreement and Environmental Quality Council's Order, and Chapters 6 and 9 of
16 the Wyoming Air Quality Standards and Regulations. The state's position was
17 confirmed at the Wyoming Environmental Quality Council's meeting on January
18 10, 2013.

19 **Q. Did the Wyoming Environmental Quality Council express an interest in
20 extending the compliance deadlines at its January 10, 2013, meeting?**

21 A. After receiving a briefing on the status of the Company's progress toward meeting
22 the terms and conditions of the Settlement Agreement by the Attorney General's
23 office, two council members indicated that it may be reasonable to extend the

1 deadlines given EPA's intention to re-propose action on the Wyoming SIP.
2 However, the Wyoming Attorney General's office cautioned the council that
3 doing so would also require a change in the SIP that had been submitted by the
4 state. The Attorney General's office indicated that even if an extension may sound
5 reasonable on its face, part of what goes into the Wyoming SIP is the timing and
6 quantity of the emission reductions.

7 **Q. Why doesn't the Company request an extension in the compliance deadlines**
8 **from either the Wyoming Department of Environmental Quality or the**
9 **Environmental Quality Council?**

10 A. As discussed, the Company cannot unilaterally effectuate a change in the
11 deadlines. Further, both the Company and the Wyoming Department of
12 Environmental Quality are obligated to adhere to the terms and conditions of the
13 November 2010 Settlement Agreement, included as Exhibit RMP___(CSW-3R),
14 which provides, in part, "[u]nless EPA affirmatively disapproves such portions of
15 the Wyoming Regional Haze SIP in a final rulemaking, the parties shall continue
16 to abide by the terms of this Settlement Agreement."

17 **Q. Has EPA affirmatively disapproved the provisions of the Wyoming SIP in a**
18 **final rulemaking relating to the Jim Bridger NO_x emissions controls?**

19 A. No. As discussed, EPA published in the Federal Register on June 4, 2012, its
20 proposal to approve those provisions of the Wyoming SIP relating to Jim Bridger
21 Units 3 and 4 at 77 Fed. Reg. 33022. Rather than taking final action on that
22 proposal, EPA intends to re-propose action on the Wyoming SIP. As a result, the
23 Company and the Wyoming Department of Environmental Quality continue to be

1 bound to the terms of the Settlement Agreement, including those relating to the
2 deadlines for controls at Jim Bridger Units 3 and 4.

3 **Q. Doesn't the Settlement Agreement contain a provision for a change in**
4 **circumstances?**

5 A. Yes. The provisions of paragraph 7 of the Settlement Agreement address a change
6 in circumstances that would allow the parties (i.e., the Company and the
7 Wyoming Department of Environmental Quality) the ability to request an
8 amendment to the Settlement Agreement under two circumstances – if federal or
9 state requirements change or if technology would materially alter the emissions
10 controls and rates that are otherwise required. Neither of those circumstances has
11 occurred.

12 **Q. Do you agree with Sierra Club witness Dr. Fisher, that because EPA is re-**
13 **proposing action on the Wyoming SIP, it is reasonable to assume that EPA**
14 **intends to significantly revise its prior proposal?**

15 A. No. EPA is required to re-notice and take public comment on when it changes the
16 proposal it originally published for public comment. That does not mean that
17 there will be significant changes to the control requirements imposed on the Jim
18 Bridger facility.

19 **Q. Is it likely that the requirements for Jim Bridger Units 3 and 4 will**
20 **substantially change or that it is likely the requirement for SCR installation**
21 **would be eliminated?**

22 A. No. EPA indicated in its motion to extend the consent decree deadlines that it
23 seeking additional time “because of the public comments EPA received and new

1 information gathered” and that “EPA developed substantial new cost and
2 visibility analyses for several of the units subject to emission controls under the
3 regional haze requirements.” None of the public comments asserted that Jim
4 Bridger Units 3 and 4 should not install SCR. In fact, many of the commenters
5 asserted that more stringent controls should be installed.

6 **Q. Do you agree with Dr. Fisher’s comment that the Company’s “apparent**
7 **refusal to even request an extension [of the Jim Bridger Units 3 and 4**
8 **compliance deadlines] is irrational”?**

9 A. No. Dr. Fisher has not been involved in any of the negotiations or discussions
10 involved in setting the deadlines and does not have an understanding of the basis
11 for the Company’s adherence to legal requirements or regulatory provisions. For
12 him to suggest that following the law is irrational is disconcerting.

13 **Q. Do you believe, as WIEC Witness Mr. Falkenberg asserts, that the**
14 **Company’s refusal to pursue an alternative “further suggests that the**
15 **decision to install the SCR systems is not based on the interests of**
16 **ratepayers” and fails to attempt to mitigate costs?**

17 A. No. The Company cannot ignore either its compliance obligations under
18 Wyoming’s Air Quality laws and regulations or its commitments under the
19 Settlement Agreement. The Settlement Agreement was entered into based on the
20 facts as known at the time and structured to ensure that if there were significant
21 changes the Company could address those changes. At the time, the Company
22 was concerned that EPA would require the installation of controls more quickly

1 rather than allowing the Company more time to install the controls. This effort
2 was undertaken to protect the Company and its customers.

3 As previously indicated, the Company has independent obligations under
4 the Wyoming SIP, the November 2010 Settlement Agreement, the Environmental
5 Quality Council’s Order approving the November 2010 Settlement Agreement
6 and the Wyoming Air Quality Regulations to install the controls. EPA’s action to
7 re-propose its action has not changed any of these requirements. There is no
8 uncertainty regarding the compliance deadlines; even if EPA were to change the
9 deadlines – which is unlikely – the Wyoming Department of Environmental
10 Quality is under no requirement to change its deadlines. WIEC’s use of the
11 alleged uncertainty created by the EPA’s action or lack of action is misplaced and
12 has the potential to place the Company in a position of being unable to timely
13 meet its compliance obligations under Wyoming law.

14 **Q. Do you believe that moving forward on the current schedule without seeking**
15 **an extension of time for completion of the SCR systems is imprudent as**
16 **WIEC’s witness Falkenberg asserts?**

17 A. No. In fact, the Company would likely be deemed imprudent if it did not meet its
18 compliance obligations and took a low-cost resource out of service prematurely.

19 **Q. Is WIEC correct in its assertion that because EPA was granted an extension**
20 **to take action on the Wyoming SIP that “this in turn extends, by almost a full**
21 **year, the five year federal NO_x compliance deadline to as late as September**
22 **of 2018”?**

23 A. No. There is no “five year federal NO_x compliance deadline” as Mr. Falkenberg

1 suggests. Further, the requirement to install BART controls is “as expeditiously as
2 practicable” but no later than five years. Further, even if EPA would extend the
3 compliance deadline, the Wyoming Department of Environmental Quality has no
4 obligation to extend the deadlines.

5 **Q. Does this conclude your rebuttal testimony?**

6 A. Yes.