

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

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

OCT 17 2008

Jim Ruby, Executive Secretary
Environmental Quality Council

**PROPOSED ORDER DENYING PROTESTANTS' MOTION TO
STRIKE AFFIDAVIT OF KENNETH J. SNELL AS TO PM2.5 AND
MERCURY**

The Environmental Quality Council, (EQC) having read Protestants' Motion to Strike the Affidavit of Kenneth J. Snell and Basin Electric Power Cooperative, Inc.'s (Basin Electric) Response, and having listened to oral argument at hearing, and being fully advised in the premises, FINDS and ORDERS as follows:

Protestants ask the Council to strike the affidavit of Kenneth J. Snell in its entirety. The affidavit was filed by Basin Electric as an exhibit to their Response to Protestants' Motion for Summary Judgment. Protestants allege in their motion that the affidavit contains previously undisclosed expert opinions. At hearing, Protestants clarified their objections and specified paragraphs 6, 7, 9, and 10 as being the alleged previously undisclosed opinion testimony. Further, Protestants assert that the late disclosure of these opinions is in violation of the Council's Scheduling Conference Order and their admittance would be unduly prejudicial.

Basin Electric disputes these allegations and contends that the opinions were previously disclosed, were available for examination, and that the affidavit consists largely of fact evidence. Basin Electric argues that because the opinions and facts in the affidavit were not previously undisclosed, there can be no prejudice. Further, Basin

notes that the Protestants declined an opportunity to depose Mr. Snell about his PM2.5 opinions.

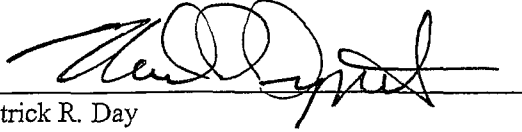
The Council finds that the opinions in the affidavit do not constitute a violation of the Scheduling Conference Order. The affidavit is largely fact evidence. The opinions at issue all pertain to PM2.5. Protestants had an opportunity to depose Mr. Snell on those opinions but did not.

THEREFORE, for the above stated reasons, IT IS ORDERED that Protestants' Motion to Strike Affidavit of Kenneth J. Snell as to PM2.5 and Mercury is DENIED.

ORDERED this ____ day of October, 2008.

F. David Searle, Presiding Officer
Environmental Quality Council
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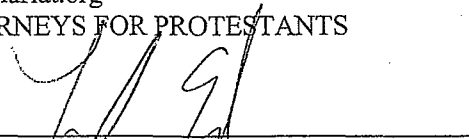
ORDER DENYING PROTESTANTS' MOTION TO STRIKE AFFIDAVIT OF KENNETH J. SNELL
AS TO PM2.5 AND MERCURY APPROVED AS TO FORM:



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