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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)

STIPULATED PROTECTIVE ORDER AND CONFIDENTIALITY AGREEMENT

Pursuant to a Stipulated Motion the parties move the Environmental Quality Council (Council or EQC) to enter this Order governing the production and use of certain confidential information, testimony and exhibits, as defined below. Pending entry of this order, and thereafter, the parties have also agreed to observe and be bound by the terms of this order as a confidentiality agreement as evidenced by the signatures of counsel below. The Council being fully advised, **HEREBY ORDERS** as follows:

ORDER

1. This Order is entered solely to govern the review and disclosure of certain designated 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 certain designated 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. Nothing contained in the provisions of this Order nor any party's production of documents designated as Confidential shall be deemed a waiver of any objection regarding such documents.

2. The Confidential Information designated in this 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" is defined as:

a. Loan Agreement between Basin Electric and CoBank, ACB, dated December 1, 2005, to finance the construction of Dry Fork Station and for general corporate purposes; a Revolving Credit Agreement and Loan Agreement between Basin Electric and CoBank, ACB, dated November 1, 2007 and December 5, 2007, to finance the construction of Dry Fork Station and for general corporate purposes; a Credit agreement between Basin Electric and JP Morgan dated December 1, 2007; and any other documents to or from Basin Electric regarding Basin Electric's plans to initiate a commercial paper program sometime during the spring of 2008; and

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 any hearing or pursuant to the EQC's Scheduling Conference Order, which contain or refer to the information in paragraph 3a; and

c. Any oral or written testimony which refers to the information in paragraph 3a; and

d. Any questions submitted by the parties or asked by the EQC at any hearing which contains or refers to the information in paragraph 3a.

e. 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 or a party's possession through no violation of this Agreement 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.

f. A party shall not be obligated to challenge the propriety of a designation as Confidential at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. In the event that a party disagrees at any stage of these proceedings with a Confidential designation, the parties shall first try to resolve such dispute in good faith on an informal basis. If the dispute cannot be resolved, the objecting party may object in writing to the designation and may move the Council for an order reversing the designated status of such information.

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 and Agreement. 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 and Agreement as set forth in paragraph 9 above.

11. Documents covered by this Agreement shall be marked as "Confidential" on every page, and only pages so marked shall be subject to 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.

DATED this _____ day of _____, 2008.

Hearing Examiner
Wyoming Environmental Quality Council

APPROVED AS TO FORM BY:

Nancy E. Vehr
Jay A. Jerde
Kristen A. Dolan
Wyoming Attorney General's Office

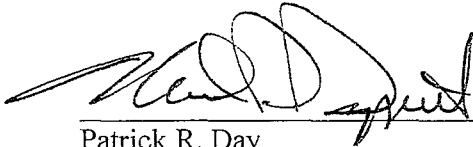
Date



James S. Angell
Robin Cooley
Andrea L. Zaccardi
Earthjustice

March 19, 2008

Date

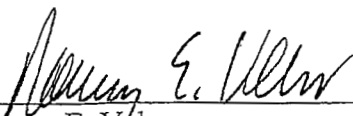


Patrick R. Day
Mark R. Ruppert
Attorneys for Basin Electric Power Cooperative

20 March 08

Date

APPROVED AS TO FORM BY:



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3/19/2008

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