

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL
STATE OF WYOMING

FILED

AUG 23 2011

In the Matter of :)
Basin Electric Power Cooperative)
Air Quality Permit No. MD-6047)
BART Permit: Laramie River Station)

Docket No. 10-2802 Ruby, Executive Secretary
Environmental Quality Council

JOINT MOTION FOR CONDITIONAL DISMISSAL

Petitioner Basin Electric Power Cooperative (“Basin Electric”), by and through its counsel of record, and Respondent Wyoming Department of Environmental Quality, Air Quality Division (“DEQ/AQD”), by and through the Wyoming Attorney General’s Office, and pursuant to WYO. STAT. ANN. §§ 16-3-107(n) and Chapter I, § 11 of the DEQ’s Rules of Practice and Procedure hereby jointly move this Council for an Order conditionally dismissing this matter, and in support thereof state as follows:

1. WYO. STAT. ANN. § 16-3-107(n) and Chapter I, § 11 of the DEQ’s Rules of Practice and Procedure provide for disposition of contested cases by agreed settlement of the parties upon approval of this Council.
2. Basin Electric and the DEQ/AQD reached an agreed settlement which was memorialized in a November 16, 2010 Settlement Agreement (“Settlement Agreement”) which was approved by this Council on November 19, 2010.
3. Paragraph 3 of this Council’s *Order Approving Settlement Agreement and Staying Appeal Pending Final Dismissal* (“Order”) directed the Parties to submit an order of dismissal if DEQ/AQD decided not to cancel the Settlement Agreement.

4. On or about January 14, 2011, Wyoming submitted to the EPA Wyoming's State Implementation Plan, Regional Haze, Addressing Regional Haze Requirements for Wyoming Mandatory Federal Class I Areas Under 40 CFR 51.309(g) ("309(g) SIP").

5. Wyoming's 309(g) SIP modified Sections 6.5.8 and 8.3.3 of the draft SIP as provided in paragraphs 7.5 and 8.D of the Settlement Agreement. Wyoming's 309(g) SIP also incorporated paragraphs 7.B, 7.C and 7.D of the Settlement Agreement.

6. The conditions set forth in paragraphs 5.A, 5.B, and 5.C of the Settlement Agreement have been satisfied.

7. The condition set forth in paragraph 5.D of the Settlement Agreement (i.e., final approval by the EPA of Wyoming's 309(g) SIP that is consistent with paragraphs 7.B, 7.C and 7.D of the Settlement Agreement and Order) remains pending.

WHEREFORE, Basin Electric and the DEQ/AQD jointly request this Council enter an Order:

1. Dismissing Basin Electric's Appeal and Petition for Review of Permit No. MD-6047 ("Appeal") conditioned upon the satisfactory completion of paragraph 5.D of the Settlement Agreement;

2. Retaining jurisdiction over the Appeal for the purpose of hearing such Appeal if paragraph 5.D of the Settlement Agreement is not met; and

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

3. Providing that Basin Electric and DEQ/AQD shall each bear their own costs and attorney fees through entry of this Order. A proposed form of order is attached.

RESPECTFULLY SUBMITTED this 23 day of August, 2011.

FOR BASIN ELECTRIC:




Patrick R. Day, P.C. (#5-2246)
Mark R. Ruppert, P.C. (#6-3593)
Holland & Hart LLP
P.O. Box 1347
Cheyenne, WY 82003-1347

Lawrence E. Volmert (pro hac vice)
Holland & Hart
555 Seventeenth Street, Suite 3200
Denver, CO 802010

Attorneys for Basin Electric

FOR DEQ/AQD:



Nancy E. Vehr (#6-3341)
Sr. Asst. Attorney General
123 Capitol Building
Cheyenne, WY 82002

Attorney for the State of Wyoming,
DEQ/AQD