

Application No. 18-04-002  
Exhibit PAC/1605  
Witness: Chad A. Teply

BEFORE THE PUBLIC UTILITIES COMMISSION  
OF THE STATE OF CALIFORNIA

PACIFICORP

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Exhibit Accompanying Rebuttal Testimony of

Chad A. Teply

BART Appeal Settlement Agreement

November 2018

## **BART APPEAL SETTLEMENT AGREEMENT**

The Wyoming Department of Environmental Quality, Air Quality Division (the "DEQ/AQD") and PacifiCorp Energy, a division of PacifiCorp ("PacifiCorp"), enter into this BART Appeal Settlement Agreement (the "Settlement Agreement") to fully and finally resolve PacifiCorp's appeal before the Wyoming Environmental Quality Council (the "EQC") in Docket No. 10-2801 wherein PacifiCorp challenged certain conditions of BART permit Nos. MD-6040 and MD-6042 for the Jim Bridger and Naughton power plants. The DEQ/AQD and PacifiCorp are collectively referred to herein as the "Parties" and sometimes individually as "Party." The Settlement Agreement shall be effective between the Parties on the date that the last signature is affixed below (the "Effective Date"), conditioned on approval by the EQC as described herein.

Wyo. Stat. 16-3-107(n) and Chapter I, § 11 of the DEQ's Rules of Practice & Procedure provide for the disposition of this contested case by stipulation of the Parties upon approval by the EQC. Additionally, Wyo. Stat § 35-11-112 empowers the EQC to order the modification of BART Permit Nos. MD-6040 and MD-6042 to resolve this contested case. To that end, PacifiCorp and the DEQ/AQD, conditioned on the approval of the EQC, hereby stipulate and agree as follows.

1. **Background:** As part of its obligation under the Clean Air Act's Regional Haze Program, the State of Wyoming, through the DEQ/AQD, promulgated regulations requiring the installation of Best Available Retrofit Technology ("BART") on certain eligible facilities. PacifiCorp timely complied with these regulations by filing applications for BART permits for its eligible facilities, including an application for its Bridger power plant on January 16, 2007, and its Naughton power plant on February 12, 2007. PacifiCorp further filed additional information with the DEQ/AQD relating to these applications. Following public notice and comment, and public hearings, the DEQ/AQD issued BART permit Nos. MD-6040 for the Bridger power plant and MD-6042 for the Naughton power plant on December 31, 2009. On February 26, 2010, PacifiCorp timely filed an appeal to the EQC of certain provisions in BART permit Nos. MD-6040 and MD-6042. Litigation ensued, including discovery and motion practice. This Settlement Agreement resolves all issues raised in that litigation. Also, in connection with this Settlement Agreement, PacifiCorp has provided to DEQ/AQD the information attached as Exhibit A which the parties intend to be used in the Wyoming Regional Haze SIP as that term is described below.
2. **Definitions:** As used in this Agreement, the following terms are defined as:  
  
"BART Permit Appeal" means: PacifiCorp's Appeal and Petition for Review of BART Permits regarding the Bridger BART Permit and the Naughton BART Permit, referred to as Docket No. 10-2801, before the EQC.  
  
"BART Appeals Arguments" means: The arguments raised by PacifiCorp in the BART Permit Appeal, including its Motion for Partial Summary Judgment and

supporting Memorandum, filed June 30, 2010, and its Reply in Support of Its Motion for Partial Summary Judgment, filed August 31, 2010.

“Naughton BART Permit” means: BART permit No. MD-6042 as issued by the DEQ/AQD on December 31, 2009.

“Bridger BART Permit” means: BART permit No. MD-6040 as issued by the DEQ/AQD on December 31, 2009.

“Wyoming Regional Haze SIP” means: the final version of the Wyoming State Implementation Plan regarding “regional haze” and addressing regional haze requirements for Wyoming mandatory Class 1 areas under 40 CFR §51.309(g) as prepared by the DEQ/AQD and submitted to EPA for review and approval. As of the date of this Settlement Agreement, the DEQ/AQD has not completed the final version of the Wyoming Regional Haze SIP and instead has prepared a draft of that document dated August 25, 2009, which DEQ/AQD released previously for public comment. Based in part on those comments, DEQ/AQD intends to release an updated version of the draft Wyoming Regional Haze SIP for additional public comment before the end of 2010.

3. **Agreement:** The Parties have engaged in negotiations to reach a settled resolution to this contested case. The Parties have agreed, upon the terms contained herein, to settle and compromise PacifiCorp’s BART Permit Appeal, including the BART Appeals Arguments.
4. **Performance by PacifiCorp:** In reliance upon the releases, agreements, and representations of the DEQ/AQD in this Settlement Agreement, and conditioned upon the EQC’s approval of this Settlement Agreement and its terms, PacifiCorp shall do the following:
  - (a) Naughton - PacifiCorp shall withdraw its BART Appeals Arguments regarding the Naughton power plant, dismiss its BART Permit Appeal as it relates to the Naughton power plant, and agree to abide by the terms of the Naughton BART Permit;
  - (b) Bridger - PacifiCorp shall withdraw its BART Appeals Arguments regarding the Bridger power plant, dismiss its BART Permit Appeal as it relates to the Bridger power plant, and agree to abide the terms of the Bridger BART Permit as modified by the EQC in accordance with this Settlement Agreement, including the removal of Conditions 17 and 18;
  - (c) NOx Control for Bridger Units 3 and 4 – With respect to Bridger Units 3 and 4, PacifiCorp shall: (i) install SCR; (ii) install alternative add-on NOx control systems; or (iii) otherwise reduce NOx emissions to achieve a 0.07 lb/mmBtu 30-day rolling average NOx emissions rate. These installations shall occur, and/or this emission rate will be achieved, on Unit 3 prior to



December 31, 2015 and Unit 4 prior to December 31, 2016. These installations shall occur, and/or this emission rate will be achieved, in conjunction with PacifiCorp's planned overhaul schedule for these units and pursuant to a construction or other permit application to be submitted by PacifiCorp to AQD no later than December 31, 2012; and

- (d) NOx Control for Bridger Units 1 and 2 -- With respect to Bridger Units 1 and 2, PacifiCorp shall: (i) install SCR; (ii) install alternative add-on NOx control systems; or (iii) otherwise reduce NOx emissions not to exceed a 0.07 lb/mmBtu 30-day rolling average NOx emissions rate. These installations shall occur, and/or this emission rate will be achieved, on Unit 2 prior to December 31, 2021 and Unit 1 prior to December 31, 2022. These installations shall occur, and/or this emission rate will be achieved, in conjunction with PacifiCorp's planned overhaul schedule for these units and pursuant to a construction or other permit application to be submitted by PacifiCorp to AQD no later than December 31, 2017.

- 5. **Performance by the DEQ/AQD:** In reliance upon the releases, agreements and representations of PacifiCorp in this Settlement Agreement, and conditioned upon the EQC's approval of this Settlement Agreement and its terms, the DEQ/AQD shall do the following:

- (a) Naughton – The DEQ/AQD shall, pursuant to an order by the EQC approving this Settlement Agreement, include in the Wyoming Regional Haze SIP a statement explaining that the cost of the Naughton Unit 3 baghouse is reasonable when considering all factors relating to the existing PM controls in addition to those considered during the BART analysis.
- (b) Bridger – The DEQ/AQD shall, pursuant to an order by the EQC approving this Settlement Agreement, delete Conditions 17 and 18 from the Bridger BART Permit and, in lieu of Conditions 17 and 18, adopt the requirements of paragraphs 4(c) and 4(d) of this Settlement Agreement into the Wyoming Regional Haze SIP as part of Wyoming's Long-Term Strategy and/or Reasonable Progress Goals; and
- (c) PacifiCorp's Compliance with BART and LTS Requirements - The DEQ/AQD shall not require further PM or NOx reductions at Naughton Unit 3, or require further NOx reductions at Bridger Units 1 – 4, for purposes of meeting BART, Long-Term Strategy requirements and/or Reasonable Progress Goals in the Wyoming Regional Haze SIP through 2023.

- 6. **Conditions of Settlement:** The Parties' duties, rights and obligations of this Settlement Agreement are conditioned upon, and the Parties shall in good faith cooperate to achieve, the following:

- (a) The EQC and any other required Wyoming governing authority must approve this Settlement Agreement and its terms;
  - (b) PacifiCorp and the DEQ/AQD must file a joint stipulated motion with the EQC requesting dismissal of PacifiCorp's BART Permit Appeal, and the EQC must dismiss the BART Permit Appeal on approval of the terms contained herein subject only to EQC's continuing jurisdiction as described in Section 7 below;
  - (c) The EQC must order the Bridger BART Permit be modified as required herein; and
  - (d) EPA must approve those portions of the Wyoming Regional Haze SIP that are consistent with the terms of this Settlement Agreement. Provided, however, that unless EPA affirmatively disapproves such portions of the Wyoming Regional Haze SIP in a final rulemaking, the parties shall continue to abide by the terms of this Settlement Agreement.
7. **Changed Circumstances:** The Parties agree that this Settlement Agreement may be subject to modification if future changes in either: (i) federal or state requirements or (ii) technology would materially alter the emissions controls and rates that otherwise are required hereunder. In that case, either Party may request that the other Party enter into an amendment to this Settlement Agreement consistent with such changes. The Parties shall negotiate in good faith to amend the affected Settlement Agreement provision(s) consistent with the changed federal or state requirements or technology and with the purposes of this Settlement Agreement. If the Parties cannot agree on the proposed amendment, then either Party may request the EQC to determine if the proposed amendment is consistent with the changed federal or state requirements or technology and with the purposes of this Settlement Agreement. In that case, the Parties anticipate that the EQC determination will be incorporated into an EQC order that requires the Parties to proceed in accordance with its terms, including the possibility of entering into the proposed amendment. The Parties further anticipate that the EQC will retain continuing jurisdiction over the BART Permit Appeal and this Settlement Agreement for the foregoing purposes only.
8. **Reservation of Rights:** PacifiCorp reserves the right to appeal or challenge any actions by AQD, EQC or EPA that are inconsistent with this Settlement Agreement. In addition, if the EQC takes any action which is materially inconsistent with or in any way materially alters this Settlement Agreement, then this Settlement Agreement shall be voidable at the option of the Party materially affected by the EQC's actions.
9. This Settlement Agreement shall be admissible by either Party without objection by the other Party in any subsequent action between these Parties to enforce the terms hereof or as otherwise required herein.



10. Neither Party shall have any claim against the other for attorney fees or other costs incurred with the issues resolved. Each Party shall bear its own attorney fees and costs, if any, incurred in connection with the BART Permit Appeal and this Settlement Agreement. Each Party assumes the risk of any liability arising from its own conduct. Neither Party agrees to insure, defend or indemnify the other.
11. This Settlement Agreement is binding upon PacifiCorp, its successors and assigns, and upon the DEQ/AQD.
12. This Settlement Agreement may only be amended in writing, signed by both Parties.
13. Neither the DEQ/AQD nor the State of Wyoming nor any of its Agencies shall be held as a party to any contracts or agreements entered into by PacifiCorp to implement any condition of this Agreement.
14. Nothing in this Agreement relieves PacifiCorp of its duty to comply with all applicable requirements under the Wyoming Environmental Quality Act (WEQA), and rules, regulations, and standards adopted or permits issued thereunder. DEQ/AQD does not warrant or aver that PacifiCorp's completion of any aspect of this Agreement will result in compliance with the WEQA and rules, regulations and standards adopted or permits issued thereunder.
15. The State of Wyoming and the DEQ/AQD do not waive sovereign immunity by entering into this Settlement Agreement, and specifically retain all immunity and all defenses to them as sovereigns pursuant to Wyo. Stat. §1-39-104(a) and all other state law.
16. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only among the Parties to this Agreement.
17. Should any portion of this Agreement be judicially determined to be illegal or unenforceable, the remainder of this Agreement shall continue in full force and effect, and either Party may renegotiate the terms affected by the severance.
18. The construction, interpretation and enforcement of this Agreement shall be governed by the laws of the State of Wyoming. The Courts of the State of Wyoming shall have jurisdiction over this Agreement and the parties, and the venue shall be the First Judicial District, Laramie County, Wyoming.
19. This Agreement may be executed in any number of separate counterparts any one of which need not contain the signatures of more than one Party but all of such

counterparts together will constitute one Agreement. The separate counterparts may contain original, photocopy, or facsimile transmissions of signatures.

20. The persons signing this Settlement Agreement certify that they are duly authorized to bind their respective Party to this Settlement Agreement.
21. This agreement is not binding between the Parties until fully executed by each Party.

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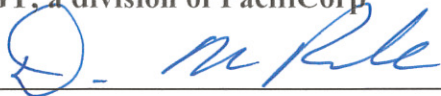
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**PACIFICORP ENERGY, a division of PacifiCorp**

By:



Name:

DANA RALSTON

Title:

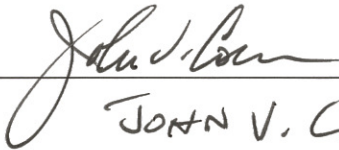
VICE PRESIDENT GENERATION

Date:

11-2-2010

**THE WYOMING DEPARTMENT OF  
ENVIRONMENTAL QUALITY**

By:



Name:

JOHN V. CORRA

Title:

Director

Date:

11/3/10

**THE WYOMING DEPARTMENT OF  
ENVIRONMENTAL QUALITY/DIVISION OF AIR  
QUALITY**

By:



Name:

STEVEN A. DIETRICH

Title:

AQD - ADMINISTRATOR

Date:

11-3-10

Approved As To  
Form



Nancy E. Vehr,  
Senior Assistant Attorney General