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IDAHO PUBLIC UTILITIES COMMISSION

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**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

<b>IN THE MATTER OF THE</b>	)	<b>CASE NO. IPC-E-21-17</b>
<b>APPLICATION FOR AUTHORITY</b>	)	
<b>TO INCREASE RATES - RECOVER</b>	)	<b>IDAHO CONSERVATION LEAGUE</b>
<b>COSTS JIM BRIDGER POWER</b>	)	<b>AND</b>
<b>PLANT</b>	)	<b>SIERRA CLUB</b>
	)	
	)	<b>STATUS UPDATE</b>

The Idaho Conservation League (ICL) and the Sierra Club submit the following status update to the Idaho Public Utilities Commission regarding recent EPA action that affects the Jim Bridger power plant. This filing will provide background on the recent EPA action as well as outline the ways in which the EPA action may affect this docket.

We ask the Commission to reopen this docket so that Idaho Power can address the impact of EPA’s action on the issues raised in the utility’s application in this proceeding including “the incremental costs and benefits associated with the Company’s cessation of participation in coal-fired operations at Bridger.”<sup>1</sup>

<sup>1</sup> Notice of Application; Order No. 35088, Case No. IPC-E-21-17, p. 1 (June 24, 2021).

## **I. Status Update on EPA's Action Against the Jim Bridger Power Plant.**

Idaho Power initiated this docket in June of 2021 with the intent to permanently close Jim Bridger coal Units 1 and 2. In fall of 2021, PacifiCorp released its IRP which outlined a plan to convert Bridger coal Units 1 and 2 to natural gas. As a result, Idaho Power moved to suspend this docket until the conversion plans and the proposed Wyoming SIP (described in the next paragraph) were finalized.

The Commission is aware through ICL's and Sierra Club's October 1, 2021 filing, as well as filings from Idaho Power in this docket, that Bridger Units 1 and 2 have outstanding Regional Haze obligations under the Clean Air Act.<sup>2</sup> Specifically, under Wyoming's State Implementation Plan (SIP), which was proposed by Wyoming in 2011 and approved by EPA in 2014, PacifiCorp was required to install selective catalytic reduction (SCR) pollution control technology on Bridger Units 1 and 2 by December 31 of 2022 and 2021, respectively. This SCR technology, which reduces pollution that affects air quality in order to protect visibility in the country's national parks and Class I Wilderness Areas, would bring Bridger into compliance with regional haze requirements. Although neither Idaho Power nor Bridger's co-owner PacifiCorp challenged the SCR requirement, neither utility has taken any action to install SCR technology on either unit. Due to the utilities decision to ignore federal law, Bridger Unit 2 is now out of compliance with the Clean Air Act.<sup>3</sup>

In 2018, Wyoming submitted a proposed amendment to its SIP which would remove the SCR installation requirements for Bridger Units 1 and 2. As we neared the end-of-year 2021

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<sup>2</sup> Idaho Conservation League and Sierra Club Response to Joint Motion to Suspend Schedule, Case No. IPC-E-21-17, p. 2 (Oct. 1, 2021); *see also* Joint Motion to Suspend Procedural Schedule, Case No. IPC-E-21-17, p. 2 (Oct. 1, 2021).

<sup>3</sup> While Bridger Unit 2 is currently authorized to operate in violation of the Clean Act Air under Wyoming Governor Gordon's "emergency order," subsequent EPA action nullifies the emergency order, both of which are described below.

deadline for the installation of SCR on Unit 2, EPA had not yet taken action on Wyoming's proposed SIP, meaning that the SCR requirement remained in effect. In December 2021, the Wyoming Governor then issued an emergency order under the Clean Air Act which permitted Bridger Unit 2 to operate in violation of the Clean Air Act for four months, or until April 30, 2022. This emergency order was referenced by Idaho Power in its December 30, 2021 letter in this docket.<sup>4</sup>

On January 18, 2022, EPA announced its proposal to deny Wyoming's proposed SIP amendment.<sup>5</sup> EPA will take public comments on this proposal until February 17, 2022 after which it will issue a final decision. Because it is highly likely that EPA will deny Wyoming's proposed SIP, Wyoming's previous 2014 SIP and the SCR requirements for both Bridger units will remain in effect. Bridger Unit 2, which is currently out of compliance, will be required to close as soon as the EPA denial is finalized or the expiration of the governor's emergency order on April 20, 2022, whichever comes first. Bridger Unit 1 will have until December 31, 2022 to install SCR technology or shut down operation.

## **II. Impacts of EPA Action on this Cost Recovery Docket**

In this docket, Idaho Power seeks cost recovery for the end of coal operations at all four Bridger coal units by 2030. The Company states that 50 percent of the total outstanding capital is due to SCR's installed at Units 3 and 4, as required by the Wyoming SIP.<sup>6</sup> The Company does not include the costs of SCR's at Units 1 and 2, even though the federally enforceable Wyoming SIP requires these in 2021 and 2022.<sup>7</sup> Instead, Idaho Power claims Wyoming's Revised SIP will

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<sup>4</sup> Update, Case No. IPC-E-21-17, p. 2 (Dec. 30, 2021).

<sup>5</sup> Air Quality State Implementation Plans; Approvals and Promulgations: Wyoming; Proposed Revisions to Regional Haze State Implementation Plan; Disapproval, 87 Fed. Reg. 2571 (proposed Jan. 18, 2022) (to be codified at 40 C.F.R. pt. 52).

<sup>6</sup> Application, Case No. IPC-E-21-17, pp. 3-4 (June 2, 2021).

<sup>7</sup> Addelman Direct Testimony, Case No. IPC-E-21-17, p. 16 (June 2, 2021).

remove the SCR requirements. Now the opposite has occurred, and EPA proposes to enforce the 2014 Wyoming SIP. Idaho Power's choice to follow a plan that does not comply with federal Clean Air Act requirements has at least three ongoing impacts on this docket.

First, Idaho Power will likely be forced through the EPA action to select a specific date for either closure or gas conversion of Bridger Units 1 and 2. In Idaho Power's June 2021 application in this docket, Idaho Power proposed a cost recovery plan that accounted for flexible closure dates.<sup>8</sup> A specific closure/conversion date will alter the way in which Idaho Power will want to recover its costs from ratepayers.

Second, Idaho Power may be faced with fines for its non-compliance with the Clean Air Act if EPA chooses to initiate an enforcement action against PacifiCorp, which could expose Idaho Power customers to financial liability.<sup>9</sup> These fines could be sizable - up to \$100,000 per violation per day - and would impact Idaho Power's cost recovery for the plant as well as rates paid by Idaho Power customers.

Third, there are significant concerns that Pacificorp does not have a legally viable pathway to keep Bridger Units 1 and 2 operating, and this uncertainty places Idaho Power customers at significant risks. Although Idaho Power and PacifiCorp have expressed their intention to convert Bridger Units 1 and 2 from coal to gas,<sup>10</sup> EPA stated that neither Wyoming nor PacifiCorp sought approval for this alternative compliance strategy in the proposed SIP.<sup>11</sup> It is unclear why the gas conversion alternative was not proposed to EPA. It is also unclear how

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<sup>8</sup> Application, *supra* at 5-6

<sup>9</sup> 42 U.S.C. §7413(a)(1); 42 U.S.C. §7413(b) (allowing EPA to issue civil penalties against major stationary sources that are out of compliance with State Implementation Plans); *see also* Table 1, 40 C.F.R. §19.4 (sets civil penalties under 42 U.S.C. §7413(b) at \$102,638 per day per violation).

<sup>10</sup> *See, e.g.*, Joint Motion to Suspend Procedural Schedule, *supra* at 4.

<sup>11</sup> *See* EPA, *EPA Propose to Disapprove Revisions to Wyoming's 2014 Regional Haze Plan as Inconsistent with the Clean Air Act* (Jan. 12, 2022), <https://www.epa.gov/newsreleases/epa-proposes-disapprove-revisions-wyomings-2014-regional-haze-plan-inconsistent-0> (last visited Jan. 25, 2022).

Idaho Power and PacifiCorp plan to ensure that customer capacity needs are met in the likely scenario that Bridger Units 1 and 2 are forced to close before the utilities are able to acquire the appropriate permits and make the structural changes necessary to convert the units to gas.

### **III. Relief Requested**

ICL and Sierra Club request that the Commission reopen this docket so that Idaho Power can update its filing based on EPA's clear direction to uphold the permits and Idaho Power's clear commitment to convert Units 1 and 2 to gas, both of which are not included in the Application or Testimony in this docket. In addition, reopening this docket will allow parties to explore the impacts of EPA's recent actions on Idaho Power's proposal through discovery.

IPC stated in its October, 2021 motion to suspend this docket that it could not respond to discovery until "greater clarity is achieved" regarding the Bridger emission limits and the coal-to-gas conversion.<sup>12</sup> We now have more clarity about both issues. Both IPC and PacifiCorp's IRP Action Plans state that the utilities will move forward with converting the coal units to gas beginning this year.<sup>13</sup> EPA has clearly communicated their intent to uphold the pollution emission limits that the Bridger owners have known about since 2014. Given this clarity, Idaho Power has sufficient information to update its filing to include information about the gas conversion and to respond to discovery requests, particularly those related to its plan for Bridger's closure and compliance with EPA mandates. At the very least, Idaho Power should address how its planned gas conversion and coal unit depreciation will be impacted by the scenarios in which EPA: 1) requires immediate closure of Unit 2 and initiates a civil enforcement action which results in fines; and 2) EPA requires closure or SCR installation of Unit 1 by the end of 2022.

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<sup>12</sup> Joint Motion to Suspend Procedural Schedule, *supra* at 4.

<sup>13</sup> See Idaho Power 2021 IRP at 167 (Action Plan); PacifiCorp 2021 IRP at 322 (Action Plan).

Although these issues could be addressed in an IRP or rate case, this docket is the most appropriate forum to address Bridger issues. The PUC has consistently stated that “[t]he appropriate place to determine the prudence of the IRP or Idaho Power’s decision to follow or not follow it, and the validation of predicted performance under the IRP, is a general rate case or other proceeding where the issue is noticed.”<sup>14</sup> While Idaho Power’s 2021 IRP includes the planned conversion to gas, this proceeding relates specifically to Bridger issues. Thus, it is a better docket to address EPA’s action related to Bridger than the upcoming IRP proceeding. Idaho Power has also not indicated when they intend to file a general rate case. Additionally, in this depreciation proceeding “the Company asked to establish a balancing account and the necessary regulatory accounting to track the incremental costs and benefits associated with the Company’s cessation of participation in coal-fired operations at Bridger.”<sup>15</sup> The implications of EPA’s actions and the gas conversion are directly related to the costs and benefits of Idaho Power’s participation in the Bridger plant.

As described above, Bridger’s non-compliance with federal law has immediate and potentially serious implications for Idaho ratepayers. Idaho ratepayers have a right to know how Idaho Power will address the risk that it created with its inaction and poor planning. Time is of the essence to create a plan to protect Idaho Power customers before this crisis worsens.

Respectfully submitted this 31st day of January, 2022

/s/ Rose Monahan  
Rose Monahan  
Sierra Club

/s/ Benjamin J Otto  
Benjamin J. Otto  
Idaho Conservation League

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<sup>14</sup> Order No. 34959, Case No. IPC-E-19-19, p. 25 (Mar. 16, 2021) (Order which acknowledges Idaho Power’s 2019 IRP).

<sup>15</sup> Notice of Application; Order No. 35088, *supra* at 1.

## CERTIFICATE OF SERVICE

I hereby certify that on this 31st day of January 2022, I delivered true and correct copies of the foregoing STATUS UPDATE to the following persons via the method of service noted:

/s/ Benjamin J Otto  
Benjamin J. Otto  
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### **Electronic mail only (see Order 35058)**

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