IN THE MATTER OF THE APPLICATION OF ROCKY MOUNTAIN POWER FOR APPROVAL OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO CONSTRUCT THE SELECTIVE CATALYTIC REDUCTION SYSTEM, PULSE JET FABRIC FILTER SYSTEM AND RELATED ENVIRONMENTAL UPGRADES AT NAUGHTON UNIT NO. 3 LOCATED NEAR KEMMERER, WYOMING

Docket No. 20000-400-EA-11 (RECORD NO. 12953)

SURREBUTTAL TESTIMONY OF

Bryce J. Freeman
On behalf of the Wyoming Office of Consumer Advocate

Filed May 8, 2012
Hearing March 19, 2012
Q. PLEASE STATE YOUR NAME, ADDRESS AND OCCUPATION.

A. My name is Bryce J. Freeman. My business address is 2515 Warren Avenue, Suite 304, Cheyenne, WY, 82002. I am the Administrator of the Wyoming Office of Consumer Advocate (OCA). The OCA is an independent consumer advocacy agency that was created by an act of the legislature in the 2003 general session.

Q. ARE YOU THE SAME BRYCE J. FREEMAN THAT SPONSORED DIRECT TESTIMONY IN THIS PROCEEDING?

A. Yes, I am.

Q. WHAT IS THE PURPOSE OF YOUR SURREBUTTAL TESTIMONY IN THIS PROCEEDING?

A. My surrebuttal testimony in this proceeding will respond to the rebuttal testimony filed by Mr. Chad Teply and Mr. Rick Link on behalf of Rocky Mountain Power (RMP or Company) on April 9, 2012. In his rebuttal testimony, Mr. Teply indicates that the Company is no longer seeking a Certificate of Public Convenience and Necessity (CPCN) to construct a Selective Catalytic Reduction (SCR) and Pulse Jet Fabric Filter (PJFF) baghouse at its Naughton Unit 3 (N3) coal fired generation unit located near Kemmerer, Wyoming. Instead, Mr. Teply indicates that based upon updated analysis and assumptions, RMP is now planning to convert N3 to burn natural gas and operate as a peaking unit. Mr. Link’s testimony describes the updated modeling and input assumptions that led the Company to conclude that the proposed gas conversion is a better option than continuing to pursue the SCR and PJFF upgrades that would allow N3 to continue to operate as a coal fueled resource.

Q. ARE YOU OFFERING ANY EXHIBITS IN ASSOCIATION WITH YOUR SURREBUTTAL TESTIMONY?

A. No, I am not.

Q. PLEASE DESCRIBE HOW WE GOT TO THIS POINT IN THIS CASE.
A. Certainly. As the Commission will recall, pursuant to a stipulation reached in RMP’s last general rate case, Docket Number 20000-384-ER-10, RMP agreed to file a CPCN application for certain environmental and emissions control projects at its coal fired generation plants. Under the terms of the stipulation RMP is required to file a CPCN for facilities for which the expected cost will exceed $25 million, are located within the state of Wyoming, and are not already contracted or under construction. There are five projects specified in the stipulation that meet these criteria, including the Naughton Unit 3 upgrades that are the subject of this proceeding. There are an additional 23 environmental upgrade projects identified in the stipulation that the parties agreed will not be subjected to the agreed to CPCN process either because they are not located in Wyoming or the cost associated with them is expected to be less than $25 million. Most of the remaining 23 projects are associated with mercury control upgrades at a number of the Company’s coal plants both within and without Wyoming. Additionally, the agreement specifies a process whereby RMP is required to seek a CPCN and/or alternative ratemaking treatment for certain transmission segments it plans to construct as part of its Gateway transmission project. Those filings will be the subject of future proceedings before the Commission and are not included in the instant case.

On September 16, 2011, RMP filed its application for a CPCN to construct the SCR and PJFF projects noted above. In addition to the OCA, the Wyoming Industrial Energy Consumers (WIEC), Interwest Energy Alliance (IEA) and Powder River Basin Resource Council (PRBRC) intervened in the proceeding. In its application RMP stated that these investments were necessary to continue to operate N3 as a coal fired power plant past December 31, 2014. The Company further stated that under the terms of its Regional Haze permit issued by the Wyoming Department of Environmental Quality (WDEQ) the SCR and PJFF are required to meet the emissions limits specified in the permit. Additionally, the Company stated that the SCR and PJFF investments would assist in compliance with other regulations prospectively applicable at N3 including; mercury, acid gases, non-mercury metals and particulate matter.

Also, in its September application RMP provided the results of an extensive analysis which it stated supported the investments in the SCR and PJFF facilities as the least cost,
least risk alternative for customers. According to RMP’s analysis the SCR and PJFF investments showed a significant Present Value Revenue Requirement differential (PVRR(d)) over any other alternative evaluated by the Company. Other alternatives considered by the Company in its analysis included the conversion of N3 to burn gas and the construction of a Combined Cycle Combustion Turbine at the Naughton plant site.

On January 30, 2012, OCA, WIEC, IEA and PRBRC filed their direct testimony in response to the Company’s application in this matter. After the filing of intervenor testimony, on March 23, 2012, the Company filed a motion for modification of the Commission’s procedural schedule in this matter. The new schedule allowed RMP to file updated information and rebuttal testimony on April 9, 2012, and required parties to respond to those updates by May 8, 2012. My surrebuttal testimony responds to the Company’s updated information and testimony filed on April 9, 2012.

Q. PLEASE REVIEW THE RECOMMENDATIONS YOU MADE IN YOUR DIRECT TESTIMONY IN THIS PROCEEDING.

A. Certainly. I provided my direct testimony in this proceeding in association with that of Mr. Leo Stander. Mr. Stander is a consultant with over thirty years experience in air quality permitting and regulation, most of that time being spent at the U.S. Environmental Protection Agency. Mr. Stander examined the permits under which RMP was required to install the SCR and PJFF facilities to ensure that those investments were actually required as conditions under the BART (Best Available Retrofit Technology) permit issued by WDEQ and to ascertain whether or not those investments were the least cost options available under the permits. My testimony focused on the cost effectiveness of these investments as compared to other alternatives, including retiring and replacing N3 with some other generation resource.

After extensive review and much independent research in this matter, both Mr. Stander and I concluded that installing the SCR and PJFF upgrades at N3 were necessary as required under the BART permit to comply with Regional Haze rules, and would be the least cost, least risk option for serving customers through the end of N3’s design life in 2029. I recommended that the Commission conditionally grant the requested CPCN.
Q. WHY DID YOU RECOMMEND THAT THE COMMISSION GRANT A CONDITIONAL CPCN?

A. As I indicated in my direct testimony, none of us really knows what the future holds with regard to evolving environmental regulations, market power and fuel prices, and the myriad of other factors that must be considered in deciding whether to make these types of investments, or not. These are not risk free decisions and the results, favorable or unfavorable will likely not be known until after the decisions are made. However, as I also pointed out in my direct testimony, these are Company decisions that are largely at the discretion of management. The Company is in a better position than either customers or the Commission to make these decisions and they should be held accountable for the decisions that they make.

As I indicated in my direct testimony, I believe it is unfair for customers to bear all of the risk associated with the Company's preferred alternative in this case, no matter what that preferred alternative is. Accordingly, I recommended that the Commission approve RMP's request for the environmental controls in this case under the following condition. If, after making the upgrades proposed in this proceeding, RMP chooses to retire the Naughton 3 plant prior to the end of 2020, recovery of the remaining undepreciated investment in the environmental controls approved in this case should be limited to no more than 50%. Recovery of the remaining 50% of the investment should be contestable in a future proceeding if the plant retires prior to the end of 2020.

Q. IS THAT CONDITION STILL VALID IN LIGHT OF THE COMPANY'S MODIFIED REQUEST IN THIS PROCEEDING?

A. Obviously, holding the Company accountable for the installation of the SCR and PJFF is moot now that the Company has determined not to proceed with those upgrades. However, the larger point of holding the Company accountable for the management decisions it makes is not moot and is still extremely germane to its decision to convert the N3 plant to burn natural gas. I will discuss the issue of accountability more fully when I address my recommendations regarding the Company's updated plan in this proceeding.
Q. WHAT IS YOUR REACTION TO THE FILING MADE BY THE COMPANY ON APRIL 9, 2012?

A. To say I was surprised would be an understatement. During the pendency of this proceeding RMP has insisted that constructing the SCR and PJFF upgrades and continuing to run N3 as a coal fired plant would be the least cost option for customers. In responses to data requests RMP ardently rejected the idea of converting the plant to burn natural gas stating that a far preferable option would be to build a greenfield gas resource somewhere else on its system. It also dismissed the idea of building Combined Cycle Combustion Turbine (CCCT) at the Naughton plant site citing space and layout as well as elevation considerations. Yet, converting the plant to burn natural gas, albeit on a peaking basis, has now become the Company’s preferred option. The Company, in my opinion, provides scant justification for its change of heart as I will describe in a moment.

Q. WHAT EVIDENCE DOES THE COMPANY PROVIDE TO JUSTIFY ITS DECISION TO CONVERT N3 TO BURN NATURAL GAS?

A. The Company provides the testimony of Messers Teply and Link to support its decision. Both Mr. Teply and Mr. Link describe the review process undertaken by the Company to address the concerns of interveners in their testimony filed in January as well as the updated assumptions used in the model to support the revised proposal. Among other things, in its revised model runs the Company allowed the model to select the option to convert N3 to natural gas as well as the option to select wind resources to replace the N3 capacity. Most importantly, RMP updated its forward market power and natural gas price curves consistent with its most recent business plan.

Q. WHAT IMPACT DO YOU BELIEVE THESE CHANGED AND UPDATED ASSUMPTIONS HAD ON THE RESULTS PRODUCED BY THE MODEL?

A. Based on what I have learned since the Company filed its testimony on April 9, 2012, through discussions with both company personnel and the experts retained by the other parties, I have concluded that the overriding driver for the Company’s revised proposal is its revised natural gas price forecast. While the Company did address the concerns of
other parties when it revised its modeling for N3, those revisions, in my judgment, would
not have been sufficient to turn the economics against the proposed environmental
upgrades by themselves. Make no mistake, this decision turns on one’s perspective with
regard to future natural gas prices.

Q. WHY IS THE FORWARD PRICE OF NATURAL GAS SUCH AN IMPORTANT
FACTOR IN THIS DECISION?

A. There are inherent trade-offs between the capital cost and associated recovery of the SCR
and PJFF investments, the required capital associated with the gas conversion option, and
the expected operating costs if the plant continues to operate as a coal plant or is
converted to burn natural gas. The initial capital costs required for the SCR and PJFF
projects are approximately ten times more than the capital investment required to convert
the plant to burn natural gas. But, coal would be a less expensive fuel, particularly if N3
was intended to continue operating as a baseload plant. Even at today’s low natural gas
prices, operating N3 as a baseload plant on natural gas would require a substantially
higher heat rate than burning coal and would therefore be less efficient at high load
factors, although low gas prices significantly enhance the economics of gas generation.
Obviously, the lower the cost of gas the more favorable natural gas generation appears
relative to other options.

Q. SO, WHY ARE YOU CONCERNED ABOUT THE DECISION TO CONVERT N3
TO BURN NATURAL GAS?

A. I have a number of substantive questions and concerns regarding how this decision will
play out. I will detail those concerns over the next few pages of my testimony. But, at a
conceptual level I simply can’t understand how the decision to convert N3 to burn natural
gas is consistent with a least cost strategy for serving customers at the same time the
Company is also upgrading other units to continue to burn coal. As the Commission is
aware, one of the biggest drivers of RMP’s rate increase currently pending before the
Commission is its investment in environmental upgrades at Naughton Unit 1 (N1), Dave
Johnston Unit 4 (DJ4), and Hunter Units 1 and 2 (H1 and H2). If natural gas prices are
going to remain low, as predicted by the Company in its revised N3 analysis, then how
can the environmental upgrades at N1, DJ4, H1 and H2 be the least cost strategy for providing service to customers? Conversely, if these plants are expected to remain the least cost resources for serving customers then how can it be cost effective to convert N3 rather than upgrade it to continue burning coal?

It seems as though the prophecy that I made in my original testimony is coming true. In that testimony I opined that “…one could construct a scenario based on the SO model in which retrofitting the Naughton 3 plant is never economic. Likewise, I am certain that a scenario could be constructed in which alternative resources never displace the Naughton 3 plant regardless of how much additional investment is required”. The original analysis done by the Company in this proceeding, based on inputs and assumptions vigorously defended by the Company, showed that investing in the environmental upgrades at N3 was clearly in the best interests of the Company and its customers. The revised modeling shows exactly the opposite.

I’m left wondering which is correct. And, more importantly, I more convinced than ever that we should not blindly follow the results of a computer model, however rationally it may behave. As I indicated in my original testimony, the Company’s modeling and analysis in this case are just that, modeling and analysis. While it can inform our judgment on these issues, ultimately it is no substitute for reasoned consideration and interpretation of the results.

Q. WHAT ARE YOUR SPECIFIC SUBSTANTIVE CONCERNS AND QUESTIONS REGARDING RMP’S DECISION TO CONVERT N3 TO BURN NATURAL GAS?

A. I’m worried that RMP has not thought this decision all the way through. The decision to convert N3 to burn natural gas appears to be a knee-jerk reaction to current historically low natural gas prices. However, if the plant is converted to burn gas it is intended to remain in operation through the end of its design life in 2029. Gas prices could increase, perhaps dramatically, over the intervening period. Given the current low levels of natural gas prices it is not likely that they will decrease as dramatically as they could potentially increase. And, as an aside, I find it more than a little ironic that RMP sees future natural gas prices as the key driver of its decision in this proceeding while, at the same time, by
virtue of its corporate hedging policy, it has locked in gas supply prices at levels well above current spot market gas prices.

One can find vast numbers of expert opinions about the future price of natural gas; some that say low natural gas prices are here to stay and others that believe that current low price levels are not sustainable in the future. A recent Wall Street Journal article indicates that forward natural gas prices are not expected to exceed $4 per mmbtu until 2016.\(^1\) On the other hand, in a recent presentation to the Commission and interested stakeholders, WEXPRO, an oil and gas developer, indicated that the full life cycle cost of developing shale gas is well above $6 per mmbtu.\(^2\) Couple that with increased demand for natural gas in electricity generation, in transportation fuels, in on shore petrochemical processes, and liquefied natural gas for export, and there is clearly upside price risk. I am not convinced that RMP has appropriately accounted for this upside price risk over the remaining life of the N3 unit.

Thinking this decision through would require that the Company evaluate conversion of the N3 plant in the context of its Integrated Resource Plan (IRP) to ensure that the conversion option is the least cost option when compared to all other options available on its system. It has not done so. In fact, it appears to some extent that events rather than the IRP are driving its resource decisions. These types of decisions should not be one-off decisions. Rather, they should be guided and informed by the IRP.

Thinking this decision all the way through, consistent with the IRP, would also require that certain questions be asked and answered. For example, what will the impact of this decision be on other system resources? Will the conversion of N3 negatively impact the cost of energy produced at the other two Naughton units? Will other coal fired units on the system (i.e. Bridger and Dave Johnston) be impacted by this decision? Will this decision impact the decisions regarding whether or not to continue with planned environmental upgrades at the other coal plants on the system? What about coal costs?

\(^1\) Wall Street Journal Online Edition, April 30, 2012,
http://online.wsj.com/article/SB10001424052702304868004577376311839047378.html?KEYWORDS=%22Utilities+Give+Coal+the+Heave-Ho%22

My understanding is that the Company intends to displace Company owned coal at the Bridger mine with excess coal from the Naughton plant that it must purchase under a take or pay contract. What happens if there is reduced coal consumption at Bridger? There appears to be the potential for a domino effect from this N3 decision that has not been considered by the Company.

Q. ARE YOU SUGGESTING THAT THE COMMISSION PURSUE A PATH THAT REQUIRES RMP TO GO AHEAD WITH THE N3 ENVIRONMENTAL UPGRADES INSTEAD OF THE NATURAL GAS CONVERSION?

A. No, of course not. RMP has already provided information to the Commission and the parties in this case indicating, based on its revised analysis, that it doesn’t believe the N3 environmental upgrades are prudent and does not intend to pursue them. This is tantamount to withdrawing the CPCN application. Even if the Commission could force the Company to complete the environmental upgrades, which I am not qualified to offer a legal opinion on, I would advise against such a directive. I don’t believe the Commission would or should limit itself with respect to its ability to address the prudence of this decision in future cases.

I am suggesting that RMP be held accountable for the decisions it makes. These are management decisions well within the discretion of senior management. I am not proposing to substitute my judgment for that of the Company and I am not recommending the Commission do that either. If it turns out that gas prices, notwithstanding the Company’s hedging policies, remain low enough for long enough to make the conversion an economic option for customers, then the Company made the right choice. If, on the other hand, it turns out that customers would have been better off to invest in the SCR and PJFF, even though the upfront capital costs are significantly greater than the conversion, then the Company should be held accountable for that choice. The worst of all worlds for customers is that the Company is able to recover the costs of all of its environmental compliance obligations regardless of whether or not those costs result in least cost service to customers.
Yet, that is exactly the path that RMP is taking. In assessing the prudence of RMP's environmental compliance investments in the N1, DJ4, H1 and H2 plants in the pending rate case that I referenced earlier in this testimony, I asked the Company how those investments, which were begun several years ago, could be prudent while the same types of investments in the N3 plant are not. Essentially, I was told that each of these decisions is based on the information available to the Company at the time the decision is made and the best decision is made given available information. That standard seems to suggest that the prudence of an investment decision could never be challenged regardless of the economic value, or lack thereof, that accrues to customers. That is simply an intolerable position in which to put customers. In no other private industry in the country is a company held harmless from the management decisions it makes, good or bad. Competitive markets are cruel and efficient arbiters of management decisions. Stock your shelves with products that are costlier than those of competitors and you will lose money on every sale. Do that enough times and you will be out of business, notwithstanding enterprises that the federal government judges to big to fail.

Q. HOW DO YOU BELIEVE THE COMMISSION CAN HOLD RMP ACCOUNTABLE FOR ITS DECISIONS, PARTICULARLY WITH REGARD TO ENVIRONMENTAL COMPLIANCE?

A. I want to be very clear. I am not recommending that the Commission do anything at this time regarding the N3 CPCN. As I testified earlier, RMP has effectively withdrawn the N3 CPCN; I anticipate a formal motion to withdraw will be filed in the near future. We have no idea whether or not the decision to convert N3 to natural gas is prudent, and we won't know that until some point in the future; the Company doesn't even plan to make the conversion until early 2015. Based on how abruptly it changed its mind in this case, it could very well be that the Company will propose a different plan before the conversion is due to be completed.

However, if the conversion project goes ahead as currently planned, interveners should have the right to question its prudence when recovery of the investment is sought. Interveners ought to be able to make whatever showing and propose any remedy in their
interest based on the facts and circumstances prevailing at that time. Alternatively, interveners might find that the conversion investment is prudent as promised by the Company. If a particular intervener finds that all or part of the investment in the conversion is imprudent then it has a right to recommend that all or part of the investment be denied recovery in customer rates. Interveners might also advocate measures beyond simply disallowing investments to rebalance the risk between customers and shareholders, thereby holding the Company accountable for the decision it has made. Of course, it may also turn out that this is the right decision for the Company and its customers, in which case interveners would likely not challenge the prudence of the decision to convert N3.

Q. DOESN'T THIS AMOUNT TO SECOND GUESSING UTILITY MANAGEMENT DECISIONS IN CONTRAVENTION OF THE RATE CASE AGREEMENT THAT SPAWNED THE FILING OF THIS CPCN IN THE FIRST PLACE?

A. No, I don't believe it does. I believe there is a clear distinction between what the parties agreed to in the rate case stipulation and what the Company is proposing in this CPCN proceeding. In the stipulation, at paragraph 13, b, i, the parties agreed that:

In recognition that the Company estimates that new environmental projects associated with its coal-fired power plants will cost over $1.3 billion over the next ten years, the Company agrees to the following procedures to allow the Commission an opportunity to meaningfully review, generally before construction, whether the proposed expenditures are reasonable and in the public interest and to allow parties to have meaningful input into that process...

In the stipulation, at paragraph 13, b, iv, the parties further agreed that:

...If the Commission grants a CPCN for a particular facility, the Parties agree that they will not challenge the Company's prudence or recovery of the costs associated with that facility in any future Wyoming rate case except to the extent that (1) the cost of the environmental project exceeds the estimated costs or (2) there is evidence of mismanagement. If such circumstances ever exist, any challenge to the environmental project will be limited to the prudence of the construction costs in excess of the estimated costs or the impact of the mismanagement.

The stipulation goes on to state at paragraph 13, b, v, that:
...If a CPCN is not obtained, or is obtained subject to conditions, all Parties retain all rights to take any position they deem appropriate in any subsequent rate case or other proceedings regarding such projects.

Under the terms of the agreement as outlined above, I do not feel compelled to endorse alternative actions proposed by the Company, including its decision in this proceeding to convert the N3 plant to natural gas. The scope of the agreement is very clearly limited to CPCN filings. To the extent that the Commission does not issue a CPCN, or the Company does not seek a CPCN for environmental upgrades, then parties are free to take any position that serves their interest in subsequent proceedings. The Company states in its rebuttal testimony filed on April 9, 2012 that it is no longer seeking a CPCN for the N3 environmental upgrades. Consistent with the language in the stipulation cited above, the OCA will preserve its right to speak to these issues in subsequent proceedings.

Q. DO YOU HAVE ANY THOUGHTS WITH REGARD TO THE $7.8 MILLION IN EXPENDITURES THAT HAVE ALREADY BEEN MADE TO DATE TO ON THE SCR AND PJFF PROJECTS?

A. In his testimony, Mr. Teply states that the Company has incurred approximately $7.8 million to date for permitting, development, engineering and site assessment activities at the N3 plant site. Mr. Teply further avers that these costs were prudently incurred and the Company will request a deferral of these costs as a regulatory asset in a separate proceeding. That request is now on file with the Commission in Docket Number 20000-413-EA-12. The OCA will raise any objections it has to the proposed deferral in the referenced deferral docket.

Q. DOES THAT CONCLUDE YOUR SURREBUTTAL TESTIMONY IN THIS PROCEEDING?

A. Yes, it does.
BEFORE THE PUBLIC SERVICE COMMISSION OF WYOMING

IN THE MATTER OF THE APPLICATION OF )
ROCKY MOUNTAIN POWER FOR )
APPROVAL OF A CERTIFICATE OF PUBLIC )
CONVENIENCE AND NECESSITY TO )
CONSTRUCT THE SELECTIVE CATALYTIC ) DOCKET NO. 20000-400-EA-11
REDUCTION SYSTEM, PULSE JET FABRIC ) (Record No. 12953)
FILTER SYSTEM AND RELATED )
ENVIRONMENTAL UPGRADES AT )
NAUGHTON UNIT 3 LOCATED NEAR )
KEMMERER, WYOMING )

AFFIDAVIT, OATH AND VERIFICATION

Bryce J. Freeman (Affiant) being of lawful age and being first duly sworn, hereby deposes and says that:

Affiant is the Administrator of the Wyoming Office of Consumer Advocate which is a party intervener in this matter pursuant to its Notice of Intervention filed on October 17, 2011.

Affiant prepared and caused to be filed the foregoing surrebuttal testimony. Affiant has, by all necessary action, been duly authorized to file this testimony and make this Oath and Verification.

Affiant hereby verifies that, based on Affiant's knowledge, all statements and information contained within the testimony and all of its attached schedules and/or exhibits are true and complete and constitute the recommendations of the Affiant in his official capacity as Administrator of the Wyoming Office of Consumer Advocate.

Further Affiant Sayeth Not.

Dated this 4th day of May, 2012.

Bryce J. Freeman, Administrator
Wyoming Office of Consumer Advocate
2515 Warren Avenue, Suite 204
Cheyenne, WY 82002
(307) 777-5742
STATE OF WYOMING  )
COUNTY OF LARAMIE  )

The foregoing was acknowledged before me by Bryce J. Freeman on this 4th day of May, 2012. Witness my hand and official seal.

My Commission Expires: 1-10-15

Notary Public

Affidavit of Bryce J. Freeman

Docket No. 20000-400-EA-11
CERTIFICATE OF SERVICE

I hereby certify that on May 8, 2012, copies of the foregoing testimony of Bryce J. Freeman was sent, via the USPS and/or electronic mail to the following:

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