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OAG-029-25

MEMORANDUM

TO: File

DATE: December 10, 2025

SUBJECT: Emergency Procurement of Outside Counsel for the Utah Division of Air Quality:
Intermountain Generation Station's Permit Challenge Litigation

The purpose of this memorandum is to provide the written documentation required by Utah Code § 63G-6a-803 (emergency procurement), and Utah Admin. Code R105-1 and R33-108-401 in the hiring of outside counsel for the Utah Division of Air Quality ("UDAQ").

Section 63G-6a-803 allows the Attorney General to authorize an emergency procurement without using a standard procurement process if the procurement is necessary to, among other things: (a) mitigate a negative impact on public health, safety, welfare, or property; or (b) protect the legal interests of a public entity. In making that authorization, the Attorney General is required to: (a) ensure the procurement is made with as much competition as reasonably practicable while protecting the aforementioned interests; and (b) make publicly available within 14 days (i) a written document describing the specific emergency, (ii) the name of the highest ranking government official that approved the emergency procurement, and (iii) each written contract related to the procurement. In addition, R33-108-401 requires written documentation outlining the basis for the emergency and the selection of the procurement item to be kept in the contract file.

Basis for the emergency. As part of its responsibilities under the Utah Air Conservation Act, the UDAQ administers a federally delegated New Source Review ("NSR") permitting program. Under this program, the UDAQ accepts and reviews permit applications from industrial sources of air pollution, proposes draft permits for public comment, and issues final permits, taking public input into account. The permits are designed to regulate air emissions to meet the federal national ambient air quality standards and other federal and state air quality laws.

Intermountain Generation Station ("IGS") applied for an NSR permit with the UDAQ in April 2025 to allow for the continued operation of the coal-fired electrical generating units along with its hydrogen units. This application satisfied the requirements of Utah Code Ann. § 19-2-109.4 to allow multiple operating scenarios at the facility and ensure energy security for the State. The UDAQ reviewed the application and proposed the permit for public comment. The permit received

hundreds of public comments, including extensive and technically dense comments from the environmental groups' coalition. The UDAQ reviewed public comments and issued the final permit allowing the coal-fired units to operate at a specific capacity. As permitted by the Utah Department of Environmental Quality's¹ ("Department") administrative procedures, the environmental groups' coalition appealed the final permit on October 31, 2025. The Department then appointed an Administrative Law Judge to preside over the proceedings. Under the Department's rules, the administrative record is due by December 24, 2025.

The current administrative proceeding and any related actions (such as an appeal of the administrative decision to the Utah Court of Appeals) are necessarily on a fast track to protect the interests of the State of Utah and the public at large for purposes of energy security. The continued operation of the coal-fired units, which were scheduled to close in 2027, will provide additional electrical power for the State.

These appeals also involve complex technical and engineering issues. The UDAQ is represented full-time by one Assistant Attorney General and part-time (40-50%) by one Assistant Attorney General. The Assistant Attorney General, who represented the UDAQ full-time for 10 years, has accepted employment elsewhere and will leave the office on December 30, 2025. The other Assistant Attorney General has been reassigned to represent the UDAQ full-time, but has only 1.5 years of relevant experience. The environmental groups opposing the permit are represented at least by three attorneys. Given the lack of resources and expertise at the Utah Attorney General's Office ("OAG"), it is necessary to retain outside counsel quickly. The imminent litigation deadlines and the speed of this litigation created an emergency that justified the immediate retention of outside counsel to protect public welfare and the UDAQ's legal interests in defending its permitting decision.

Basis for selecting the procurement item. The AGO followed the following procedures to ensure the best competition possible under the circumstances. The AGO identified six local law firms known to the AGO to possess the qualifications necessary to undertake the representation. Local law firms were preferred to minimize costs and improve the efficiency of the representation. However, it was anticipated that local law firms would also likely have conflicts of interest representing DEQ in this matter, either direct or for business reasons. Only one of the six law firms responded to the request with rate quotes and an initial cost estimate, four declined to respond, and one did not respond at all.

Selection. While Ray Quinney & Nebeker was the only law firm to submit a proposal, the AGO determined that the firm is well qualified to undertake this representation. This is so because Ray Quinney has extensive experience representing regional utilities engaged in coal fired power plant operations, including defending Clean Air Act claims against the Sierra Club in federal court (district court and Tenth Circuit appeals). The hourly rates proposed by Ray Quinney were reasonable and comparable to market rates and its total budget estimate for the engagement was reasonable. Ray Quinney & Nebeker has presented a few conflicts of interest regarding unrelated matters involving DEQ divisions other than Air Quality, in matters totally unrelated to the IPP matter. DEQ has agreed to waive these conflicts and Ray Quinney has accepted that waiver in principle (formal waiver agreement under review).

A copy of the written contract is attached.

Dated December 10, 2025

Mark E. Burns

Utah Attorney General or designee

¹ The UDAQ is the Division within the Utah Department of Environmental Quality.