

**BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.**

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	)	
In the Matter of:	)	Appeal No. PSD 16-01
Arizona Public Service Company	)	
Ocotillo Power Plant	)	Maricopa County Air Quality
	)	Department PSD Permit No. PSD16-01
	)	
	)	

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**SIERRA CLUB MOTION FOR LEAVE TO FILE A REPLY BRIEF**

Pursuant to 40 C.F.R. § 124.19 and Section IV.D.6 of the Environmental Appeals Board (“EAB” or “Board”) Practice Manual, Petitioner Sierra Club files this motion requesting leave to file a reply brief in the above-captioned proceeding. Sierra Club’s Reply Brief is attached. Sierra Club contacted counsel for the permitting authority, Maricopa County Air Quality Department (the “County” or “MCAQD”), and the project applicant, Arizona Public Service (“APS”) (together “Respondents”) to ascertain their position on the motion. APS opposes the motion. Counsel for the County did not respond to Sierra Club’s request for a statement of position.<sup>1</sup>

Sierra Club’s reply is limited to the issue of whether Sierra Club appropriately preserved its right to appeal the issues raised in its Petition in this proceeding. Sierra Club understands that due to the time-sensitive nature of New Source Review (“NSR”) permit appeals, EAB applies a presumption against filing a reply brief. (Practice Manual, § IV.D.6.) However, in this case good cause exists to grant Sierra Club’s motion. First, Sierra Club filed this motion extremely quickly;

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<sup>1</sup> Sierra Club left a voicemail and sent an email to Robert Swan, Deputy Maricopa County Attorney, at approximately 9:00 am pacific time on the May 13, 2016. Given the time-sensitive nature of this appeal, Sierra Club elected to file the motion prior to hearing back from counsel.

less than 24 hours after receiving the County and APS's response briefs. As a result, EAB's ability to quickly resolve this issue will not be impeded by granting Sierra Club's motion. Second, Sierra Club's reply brief is necessary to correct errors in the record asserted by the County. Specifically, as addressed in more detail in the reply brief, Sierra Club did not "ignore" the public comment period for the December 11, 2015 revised draft permit because Sierra Club was not aware that a revised draft had been issued until after the comment period had closed. (Country Brief at 23-24). The County's assertions that it provided adequate notice to Sierra Club of the revised permit draft are false. (County Brief at 11, 24.) Good cause therefore exists to grant Sierra Club's motion to file a reply brief so that Sierra Club can correct these misstatements on the record. Third and finally, the reply is narrowly confined to the issue of whether Sierra Club preserved the issues on appeal, which is an issue newly raised by Respondents in their briefs filed yesterday.

Sierra Club respectfully requests that the Board therefore grant this motion for leave to file the attached reply brief.

Respectfully submitted, this 13<sup>th</sup> day of May, 2016.

/s/ Travis Ritchie .

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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing SIERRA CLUB MOTION FOR LEAVE TO FILE A REPLY BRIEF were served through the Environmental Appeal Board's electronic filing system and by electronic mail to the following, this 13th day of May, 2016:

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Dated at Oakland, CA, this 13th day of May of 2016.

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