



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
Washington, D.C. 20460

OFFICE OF  
GENERAL COUNSEL

September 9, 2008

Ms. Eureka Durr  
Clerk of the Board  
U.S. Environmental Protection Agency  
1341 G Street NW, Suite 600  
Washington, DC 20005

Re: Deseret Power Electric Cooperative, PSD Appeal No. 07-03

Dear Ms. Durr:

In consideration of the information and argument submitted in this case by the EPA Office of General Counsel (OGC) on behalf of the EPA Office of Air Radiation (OAR) and EPA Region 8, these offices believe that it is incumbent on them, in recognition of a duty of candor, to inform the Board of a recent action by the Agency that the Board may find relevant in its deliberations over the issue on which the Board granted review in this matter. OAR, Region 8, and OGC have recently learned that on April 29, 2008, EPA Region 3 issued a final approval of a Delaware State Implementation Plan (SIP) revision incorporating state regulations which include specific limitations on the rate of several pollutants, including carbon dioxide, that may be emitted by stationary generators in that state. *See* 73 Fed. Reg. 23101 (April 29, 2008); DNREC Regulation No. 1144 (January 11, 2006) (enclosed). Consistent with the arguments submitted on behalf of OAR and Region 8 in this case, these offices do not believe such action should influence the Board's decision in this case concerning a PSD permit issued prior to April 29, 2008 in another jurisdiction. *See* Response of EPA Office of Air and Radiation and Region VIII (filed March 21, 2008) at 53 n.21. Moreover, OAR is considering whether Region 3's approval of this aspect of the SIP submission was appropriate. Nevertheless, given the Board's careful review of the important issue before it in this matter, we wish to ensure that the Board is aware of this intervening activity by the Agency that the Board might consider relevant in its deliberations.

Sincerely,

A handwritten signature in cursive script that reads "Brian L. Doster".

Brian L. Doster  
Air and Radiation Law Office

Enclosures  
cc: Counsel of Record

## CERTIFICATE OF SERVICE

I hereby certify that copies of the attached letter were served on the following persons:

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