



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

In re:)	
)	
Anadarko Uintah Midstream, LLC)	
)	
Archie Bench Compressor Station)	
Permit No. SMNSR-UO-000817-2016.001)	
)	
Bitter Creek Compressor Station)	
Permit No. SMNSR-UO-000818-2016.001)	NSR Appeal No. 18-01
)	
East Bench Compressor Station)	
Permit No. SMNSR-UO-000824-2016.001)	
)	
North Compressor Station)	
Permit No. SMNSR-UO-000071-2016.001)	
)	
North East Compressor Station)	
Permit No. SMNSR-UO-001874-2016.001)	
)	
Sage Grouse Compressor Station)	
Permit No. SMNSR-UO-001875-2016.001)	

ORDER GRANTING MOTION FOR LEAVE TO FILE REPLY

On August 16, 2018, WildEarth Guardians (“Petitioner”) filed a motion for leave to file a reply brief in the above-captioned matter. Motion for Leave to File Reply (“Motion”). U.S. EPA Region 8 (“Region”) opposes the Motion. EPA Region 8’s Response in Opposition to Petitioner’s Motion for Leave to File Reply (Aug. 29, 2018) (“Region’s Opposition”). Generally, in new source review (“NSR”) permit appeals, the Environmental Appeals Board (“Board”) applies a presumption against the filing of a reply brief. This presumption was established “to facilitate [the] expeditious resolution of NSR appeals, while simultaneously

giving fair consideration to the issues raised in any given matter.” Revisions to Procedural Rules To Clarify Practices and Procedures Applicable in Permit Appeals Pending Before the Environmental Appeals Board, 78 Fed. Reg. 5281, 5283 (Jan. 25, 2013). A petitioner may seek leave to file a reply to the response, which the Board, in its discretion, may grant. *See* 40 C.F.R. § 124.19(c)(1).¹ “A petitioner seeking leave to file a reply brief must satisfy a high threshold to overcome this presumption by stating with particularity the arguments to which the Petitioner seeks to respond and the reasons the Petitioner believes it is both necessary to file a reply to those arguments * * * and how those reasons overcome the presumption in the Standing Order.” *In re Pio Pico Energy Ctr.*, 16 E.A.D. 56, 70-71 (EAB 2013) (internal quotation marks and citation omitted), *review voluntarily dismissed sub nom. Helping Hand Tools v. EPA*, No. 14-71267 (9th Cir. June 17, 2014). A party may overcome that presumption by, for example, demonstrating that the reply responds directly to arguments made in a response brief to which the petitioner has not previously had the opportunity, and that allowing the reply brief would not otherwise frustrate the presumption’s purpose. *See, e.g., In re Energy Answers Arecibo, LLC*, 16 E.A.D. 294, 305 (EAB 2014), *review dismissed sub nom. Sierra Club de P.R. v. EPA*, 815 F.3d 22 (D.C. Cir. 2016).

Petitioner argues that Region 8’s response brief as well as the response brief filed by Anadarko, the permittee in this matter, incorrectly asserts that Petitioner “failed to preserve for

¹ Although this matter is governed by the federal minor new source review program in Indian Country under 40 C.F.R. part 49, in reviewing challenges to tribal minor new source permits under part 49, the Board has stated that it will look to EPA’s regulations at 40 C.F.R. part 124 and relevant Board decisions under part 124 to guide its review in these matters. *In re Salt River Project Agric. Improvement & Power Dist. — Navajo Generating Station*, 17 E.A.D. 312, 314-15 (EAB 2016).

review the argument that the sources at issue in this proceeding were inappropriately deemed to be existing synthetic minor sources under 40 C.F.R. § 49.158.” Motion at 2-3. Petitioner asserts that it adequately preserved this issue for review and that the Region and Anadarko have misconstrued the basis for raising the issue. *Id.* at 3. Petitioner states that it seeks a fair opportunity to respond to this argument that both the Region and Anadarko have raised and that it is necessary to do so because the Region and Anadarko have misconstrued the basis and relevance of this issue. *Id.* The Region argues that Petitioner has failed to overcome the presumption against filing replies and that granting the request could “delay the expeditious resolution of this matter.” Region’s Opposition at 5.²

Upon review of Petitioner’s Motion and tendered reply, as well as the Region’s Opposition, the Board believes that such additional briefing will not cause delay and instead will be helpful in its consideration of the issues and, as such, may ultimately expedite a final decision. Based on the petition and the response briefs, it appears that there is a disagreement about the scope of the issue on appeal. Petitioner’s short reply responds only to a specific procedural argument the Region and Anadarko made in their responses to the petition and importantly may, in fact, help narrow the issues in this proceeding. Therefore, in this instance, the reply will not frustrate the purpose of the presumption. Under these particular circumstances, the Board

² The Board notes that the facilities in this case are currently operating pursuant to a consent decree entered in 2008, and, according to the Region, could continue to do so indefinitely. *See* Region 8’s Response to Petition for Review at 15-16 (Aug. 6, 2018). Assuming this is so, the instant matter would differ from other NSR appeals in that the exigencies typically present in such cases would not exist to the same degree.

exercises its discretion and **GRANTS** Petitioner's motion to file a reply brief. The Board will rule on the issues raised by the parties' pleadings in its final decision in this matter.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: **Sep 06 2018**

By: 
Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Granting Motion for Leave to File Reply* in the matter of Anadarko Uintah Midstream, LLC: Archie Bench Compressor Station, Bitter Creek Compressor Station, East Bench Compressor Station, North Compressor Station, North East Compressor Station, and Sage Grouse Compressor Station, NSR Appeal No. 18-01, were sent to the following parties in the manner indicated below:

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Dated: **Sep 06 2018**



Eurika Durr
Clerk of the Board