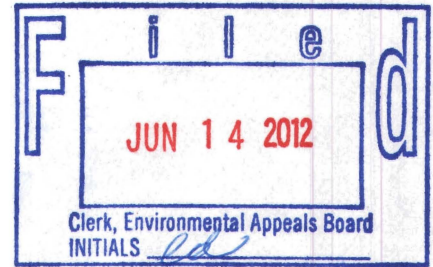


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC**

_____)
In re:)
Christian County Generation, LLC) PSD Appeal No. 12-01
)
)
PSD Permit No. 02106ACB)
_____)



**ORDER ESTABLISHING FILING DEADLINES FOR
AMENDED PETITION AND RESPONSES TO AMENDED PETITION,
AND ORDER DENYING MOTION TO EXCLUDE AND
DENYING IN PART MOTION FOR LEAVE TO EXCEED PAGE LIMIT**

On May 30, 2012, the National Resources Defense Council (“NRDC”) and Sierra Club petitioned the Environmental Appeals Board (“Board”) for review of Prevention of Significant Deterioration (“PSD”) permit number 02106ACB, issued by the Illinois Environmental Protection Agency (“IEPA”) to Christian County Generation, LLC (“CCG”) on April 30, 2012. On June 11, 2012, the permit applicant, CCG,¹ moved to exclude NRDC and Sierra Club’s petition on grounds that it does not comply with the Board’s April 19, 2011 Order Governing Petitions for Review of Clean Air Act New Source Review Permits (“Standing Order”). Motion to Exclude at 1. NRDC and Sierra Club responded to the Motion to Exclude and cross-moved for retroactive leave to file their petition, or, in the alternative, to submit an amended petition that complies with the Standing Order, or with another other longer page limit of the Board’s choosing. NRDC & Sierra Club Resp. to CCG’s Motion to Exclude (“NRDC & Sierra Club

¹ CCG is participating in this matter as an intervener. Order Granting Christian County Generation, LLC’s Motion for Leave to Intervene (June 13, 2012).

Resp.”) at 1.

PSD appeals are time-sensitive because new source construction cannot begin prior to receiving a final permit. Clean Air Act § 165(a), 42 U.S.C. § 7475(a). In an effort to streamline such appeals, the Board issued the Standing Order, which applies to this matter. The Standing Order requires that petitions for review in New Source Review cases, such as this PSD appeal, be no more than 14,000 words (or thirty pages in lieu of a word count), and provides that the Board may exclude any petition brief that does not meet this limitation. Standing Order at 2. A request for leave to file a petition that exceeds the word or page limitation must demonstrate a compelling and documented need to do so. *Id.* The petition must also include a statement of compliance with the word limitation. *Id.*

In this case, the petition submitted by NRDC and Sierra Club exceeds the Standing Order’s page limit by over fifty pages and does not include a statement of compliance. Moreover, the Board has not granted NRDC and Sierra leave to exceed the word or page limitation. The petitioners state that “[a]t the time of filing, [they] had reviewed the Board’s practice manual and spoken to the Board clerk’s office personnel, but since they learned of no page limits through those sources, the filed [p]etition was 88 pages in length.” NRDC & Sierra Club Resp. at 2. However, the Board calls to the petitioners’ attention that there is clear notice of the Standing Order on the Board’s public website. U.S. EPA, Environmental Appeals Board Homepage, <http://www.epa.gov/eab> (last visited June 14, 2012) (providing menu and link to “Standing Orders”). Specifically, in the notice section of the Board website’s home page, potential litigants in Clean Air Act New Source Review/PSD matters are directed to review the April 19, 2011 Standing Order. *Id.* (“For all Clean Air Act New Source Review/PSD permit

matters, see Standing Order issued April 19, 2011.”).

In their Cross-Motion, the petitioners submit that the complexity of the issues in this matter justify exceedance of the Board’s word and page limits for PSD matters. In particular, the petitioners state that “[t]he comment process underlying this appeal was extraordinarily complex and lengthy,” and that the petitioners ultimately submitted “a 156-page (exclusive of more than 1.6GB of exhibits) highly technical analysis” to IEPA. Cross Motion at 3. IEPA’s responsiveness summary was 331 pages. *Id.* According to the petitioners, “[a]lthough the ultimate questions are of a legal or policy nature, simply setting forth the questions in a comprehensible way requires an extensive explanation of the underlying technical background and controversy. The alternative would be Petitioners to include only cursory references to the background material in a much shorter petition, leaving the board to pick through IEPA’s 331 comment response (which contains only minimal guidance for locating responses to specific issues) to determine whether issues were fairly addressed.” *Id.* The petitioners then enumerated the issues raised in the petition and further explained why additional page space was necessary for each issue. *Id.* at 4-6.

The Board does not agree that mere complexity of issues or background constitutes a “compelling and documented need” to exceed the word and page limits in the Standing Order. PSD appeals typically involve numerous and often complex issues. In light of the need for expedition in resolving PSD permit appeals, the Board is not willing to permit exceedance of word and page limits based merely on complexity.

In this case the Board will exercise its discretion to allow the petitioners to re-file their petition within three business days, within the word or page limit of the Standing Order. NRDC

and Sierra Club may file an amended petition and a statement of compliance with the word limitation or page limit, as required by the Standing Order, by no later than Tuesday, June 19, 2012.² If an amended petition is not filed by that date, in compliance with this Order and the Standing Order, the Board will consider only the first thirty-two pages (through Argument heading I) of the petition.

Intervenor-permittee CCG's Motion to Exclude is denied. CCG & IEPA may file a response to the petition no later than July 10, 2012, if the petitioners file an amended petition by June 19, 2012. If the petitioners do not file an amended petition by that date, CCG & IEPA may file a response to the petition by June 25, 2012.

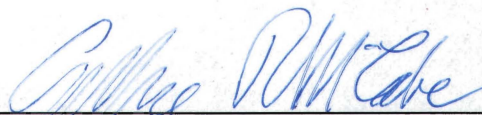
So ordered.

Dated:

June 14, 2012

ENVIRONMENTAL APPEALS BOARD

By:



Catherine R. McCabe
Environmental Appeals Judge

² A document is "filed" on the date it is received by the Clerk of the Board.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **Order Establishing Filing Deadlines for Amended Petition and Responses to Amended Petition, and Order Denying Motion to Exclude and Denying in Part Motion for Leave to Exceed Page Limit in *Christian County Generation, LLC***, PSD Appeal No. 12-01, were sent to the following persons in the manner indicated:

By Facsimile and First Class U.S. Mail:

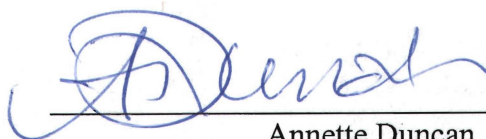
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Date: JUN 14 2012



Annette Duncan
Secretary