

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

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| _____) | |
| In the Matter of:) | |
|) | |
| PacifiCorp Naughton Generating) | |
| Station) | CAA Appeal No. 01-04 |
|) | |
|) | |
| _____) | |

ORDER GRANTING VOLUNTARY MOTION TO DISMISS APPEAL

In a petition filed September 4, 2001, PacifiCorp Naughton Power Station ("PacifiCorp"), seeks review of the decision ("Decision") of the Director of the Clean Air Markets Division ("Director") of the U.S. Environmental Protection Agency denying PacifiCorp's petition for exemption from the continuous opacity monitoring requirements of 40 C.F.R. § 75.14(a) at Unit #3 in Kemmerer, Wyoming. See Petition for Review (Sept. 4, 2001).

In the interim, PacifiCorp requested a stay of the Director's Decision, and an affirmative finding that the Decision is inoperative until the Environmental Appeals Board ("Board") has issued its final decision on PacifiCorp's petition for

review. See Request for Stay of Decision (Sept. 7, 2001) ("Request for Stay").

On September 25, 2001, the Air and Radiation Law Office of EPA's Office of General Counsel ("OGC") filed a brief on behalf of the Office of Air and Radiation ("OAR") addressing the issues raised by PacifiCorp in its Request for a Stay. See Reply Brief of EPA Office of Air and Radiation in Opposition to Petitioner's Request for a Stay (Sept. 25, 2001).

On October 9, 2001, OGC filed a motion for an extension of time to file its response, in which it requested a 23-day extension of its October 22, 2001 deadline for responding to the issues raised in PacifiCorp's Petition for Review. See Unopposed Motion of Office of Air and Radiation for Extension of Time to File Response (Oct. 9, 2001). In addition, by motion dated October 10, 2001, PacifiCorp requested that the Board defer action on PacifiCorp's Request for a Stay of Decision until at least October 17, 2001. See Motion for Board to Defer Action on PacifiCorp's Request for Stay of Decision (Oct. 10, 2001). The stated basis for this motion was that PacifiCorp and the Office

of Air and Radiation were engaged in negotiations that could resolve the issue of the requested stay without further use of the Board's resources. *Id.*

In an order issued on October 15, 2001, the Board directed OGC to file its response addressing the issues raised in PacifiCorp's Petition for Review no later than November 14, 2001. See Order Setting Briefing Schedule (Oct. 15, 2001). In addition, the Board directed PacifiCorp to apprise the Board whether the parties had reached a settlement obviating the need for a Board decision on PacifiCorp's Request for a Stay of Decision by no later than October 19, 2001. *Id.*

In a notice filed October 19, 2001, PacifiCorp notified the Board that the parties were still engaged in settlement negotiations which the parties anticipated would resolve all of the issues on appeal before the Board, and that PacifiCorp would not be filing a response to OGC's September 25, 2001 brief. See Notification of Settlement Negotiations (Oct. 19, 2001).

On November 7, 2001, OGC filed a motion on OAR's behalf, in which it sought a three-month extension of the November 14, 2001 deadline for filing a response to PacifiCorp's Petition for Review. See Unopposed Motion of Office of Air and Radiation For Further Extension of Time to File Response (Nov. 7, 2001). OGC represented that the extension was needed to facilitate further settlement negotiations, and that PacifiCorp had not objected to such an extension. *Id.* at 2-3. On November 8, 2001, the Board granted OGC's motion for an extension of time. See Order Granting Unopposed Motion Of Office Of Air & Radiation For Further Extension of Time to File Response (Nov. 8, 2001).

On February 13, 2002, OGC filed a second unopposed motion for an extension of the deadline for filing a response to PacifiCorp's Petition for Review. See Unopposed Motion For Further Extension of Time to File Response (Feb. 13, 2002). As OGC represented that the parties remained in settlement negotiations that were expected to fully resolve the matter, the Board granted OGC a two-month extension of the February 14, 2002 deadline, and directed OGC to file its response addressing the issues raised in PacifiCorp's Petition for Review no later than

April 15, 2002. See Order Granting Unopposed Motion of Office of Air and Radiation for Further Extension of Time to File Response (Feb. 20, 2002).

On April 4, 2002, PacifiCorp submitted a motion to dismiss the appeal. See Voluntary Motion to Dismiss (Apr. 4, 2002). PacifiCorp asserts that OAR granted it an exemption from the requirements of 40 C.F.R. § 75.14(a) of the Acid Rain regulations and, accordingly, the issue on appeal is moot. *Id.* For good cause shown, PacifiCorp's Petition for Review is dismissed.

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: _____ /s/ _____
Scott C. Fulton
Environmental Appeals Judge

Dated: 04/12/02

CERTIFICATE OF SERVICE

I hereby certify that copies of the forgoing Order Granting the Voluntary Motion to Dismiss in the matter of PacifiCorp, CAA Appeal No. 01-04, were sent to the following persons in the manner indicated:

By Certified Mail

Return Receipt Requested:

James A. Holtkamp
LeBoeuf, Lamb, Greene & MacRae L.L.P
136 South Main Street, Suite 100
Salt Lake City, UT 84101-1685
(801) 320-6747
(801) 359-8256 (fax)

Michael G. Jenkins
PacifiCorp
201 South Main Street, Suite 2200
Salt Lake City, UT 84140
(801) 220-2233
(801) 220-3299 (fax)

By Pouch Mail:

Michael W. Thrift
U.S. Environmental Protection Agency
Office of General Counsel
Air & Radiation Law Office (MC2344-A)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
(202) 564-5596
(202) 564-5603 (fax)

Brian J. McLean, Director
U.S. Environmental Protection Agency
Clean Air Markets Division (MC6204-N)
1200 Pennsylvania Ave., NW
Washington, D.C. 20460
(202) 564-9150
(202) 565-2141 (fax)

Dated: 04/12/02

/s/
Annette Duncan
Secretary