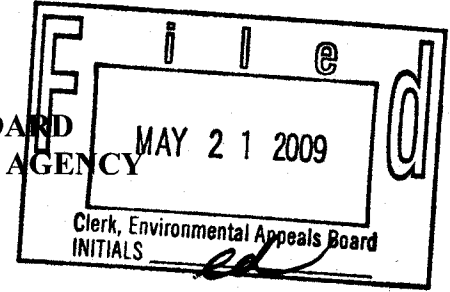


BEFORE THE ENVIRONMENTAL APPEALS BOARD  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
WASHINGTON, D.C.



\_\_\_\_\_)  
In re: \_\_\_\_\_)  
Desert Rock Energy Company, LLC \_\_\_\_\_)  
PSD Permit No. AZP 04-01 \_\_\_\_\_)  
\_\_\_\_\_)

PSD Appeal Nos. 08-03, 08-04,  
08-05 & 08-06

**ORDER DENYING MOTION TO PARTICIPATE**

On April 27, 2009, United States EPA Region 9 (“Region”) filed a motion with the Environmental Appeals Board (“Board”) requesting a voluntary remand of the final prevention of significant deterioration (“PSD”) permit (number AZP 04-01) (“the Permit”) it had issued to Desert Rock Energy Company, LLC (“Desert Rock”) on July 31, 2008. The Permit is the subject of four petitions for review currently before the Board pursuant to 40 C.F.R. § 124.19.<sup>1</sup>

The Board had, by order, initially established a ten-day deadline for the filing of any responses to the Region’s motion. *See* Order Establishing Deadline for Responses to Region’s Motion for Voluntary Remand at 2 (Apr. 28, 2009). The Board, however, later granted Diné Power Authority (“DPA”) and Desert Rock’s May 1, 2009 motion that had sought additional

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<sup>1</sup> The following parties filed petitions in this matter: Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians; the State of New Mexico; Center for Biological Diversity; and Ms. Leslie Glustrom. In addition to the four Petitioners and the Region, the following entities have filed responses, amicus curiae, and/or nonparty briefs in the matter: the Navajo Nation, Desert Rock, the National Parks Conservation Association, the Diné Power Authority, the New Mexico Building and Construction Trades Council (“NMBCTC”), and Physicians for Social Responsibility.

time in which to respond to the Region's motion for a voluntary remand. *See* Revised Order Granting Motion for Extension of Time to Respond to Region's Motion for Voluntary Remand at 3 (May 5, 2009). The Board instructed Desert Rock, DPA, and the other eight participants in the above-captioned matter who wished to respond to the Region's motion to do so by June 11, 2009. *Id.* The Board further noted that any such responses should not exceed fifty double-spaced pages. *Id.*

On May 19, 2009, the Board received a motion from the American Coalition for Clean Energy Coal Electricity ("ACCCE") requesting the Board grant it leave to file a brief opposing the Region's motion. *See generally* Motion to Participate at 1. ACCCE is "a non-profit organization formed by the nation's coal-producing companies, railroads, a number of electric utilities, and related organizations for the purpose of educating the public (including public-sector decision-makers) about the benefits of affordable, reliable and environmentally compatible coal-fueled energy." *Id.* ACCCE states that the Region's Motion for Voluntary Remand, if granted, would negatively affect the interests of ACCCE's members. *Id.* at 4. ACCCE is not one of the eleven current participants in this permit appeal.

Significantly, the Environmental Appeals Board ("Board") granted review of the Permit on January 22, 2009, pursuant to 40 C.F.R. § 124.19(c). *See generally* Order Granting Review, Staying the Carbon Dioxide BACT Issue, and Granting Motions to File Amicus/Nonparty Briefs Motions to File Reply Briefs ("Order Granting Review"). In that order, the Board established a schedule for the filing of various briefs in this proceeding, including the filing of all amicus

curiae briefs by any interested party who wished to participate in this permit appeal.<sup>2</sup> *See id.* at 8. Amicus curiae briefs from any interested person were due by March 5, 2009. *See id.* at 8 (establishing a deadline for amicus briefs no later than twenty-one days from the date on which the Region published the public notice of the grant of review); *see also* Order Denying Motion for Extension of Time to File Nonparty Brief at 4 (February 17, 2009) (explaining that March 5, 2009 was twenty-one days from publication of the public notice). At the same time, the Board also granted all pending requests to participate that had previously been submitted by several entities.<sup>3</sup> *See* Order Granting Review at 6. One amicus curiae brief was received during the period established by the Board. *See* Physicians for Social Responsibility's Amicus Curiae Brief in Support of Petitioners.

ACCE's Motion to Participate was submitted electronically to the Board on May 19, 2009, over two months after the deadline for submission of amicus curiae briefs. In its motion, ACCCE does not explain why it failed to file a timely request to participate in this matter under the schedule previously outlined by the Board in its Order Granting Review and in the public notice issued by the Region.

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<sup>2</sup> In the order, the Board noted that granting review of the Desert Rock Permit allowed interested persons to participate in this proceeding because the part 124 regulations specifically require public notice of the grant of review and also allow for the filing of amicus briefs by "any interested person." *See* Order Granting Review at 5 (citing 40 C.F.R. § 124.19(c)). The regulations also require that the public notice set forth a briefing schedule. 40 C.F.R. § 124.19(c).

<sup>3</sup> The Board granted requests by the Navajo Nation and NMBCTC. Order Granting Review at 6. The Board had previously granted several motions to participate, including requests from Desert Rock, the National Parks Conservation Association, and DPA.

Based upon the foregoing, the Board hereby DENIES ACCCE's untimely filed Motion to Participate in this proceeding.<sup>4</sup>

So ordered.

ENVIRONMENTAL APPEALS BOARD



Kathie A. Stein  
Kathie A. Stein  
Environmental Appeals Judge

Date: May 21, 2009

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<sup>4</sup> Moreover, the Board notes that two of the current participants in this matter – Desert Rock and DPA – have informed the Board that they plan to file oppositions to the Region's Motion for Voluntary Remand. See Joint Motion for Reconsideration of Order Establishing Deadline for Response to Region's Motion for Voluntary Remand at 1. Thus, the Board will have ample opportunity to consider the views of those opposed to the Region's motion.

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Order Denying Motion to Participate in the matter of Desert Rock Energy Company, LLC, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06 were sent to the following persons in the manner indicated:

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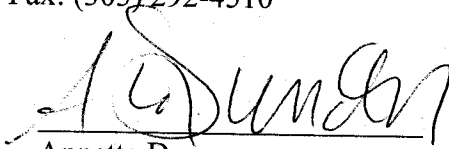
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Dated:

MAY 21 2009

A handwritten signature in black ink, appearing to read "Annette Duncan", written over a horizontal line.

Annette Duncan  
Secretary