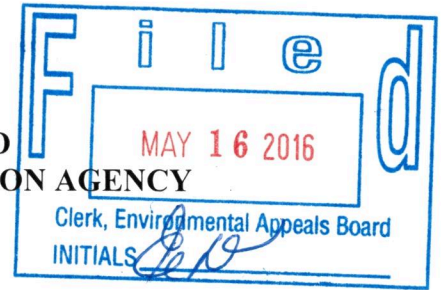


ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____))
In re:))
Arizona Public Service Company) PSD Appeal No. 16-01
Ocotillo Power Plant))
Maricopa County Air Quality Department))
PSD Permit No. PSD 16-01))
_____)

ORDER GRANTING MOTION TO FILE REPLY

On May 13, 2016, petitioner Sierra Club filed a motion for leave to file a reply in the above-captioned case, along with a reply brief and three exhibits. Sierra Club acknowledges that, in time-sensitive New Source Review (“NSR”) permit appeals such as this one, the Environmental Appeals Board (“Board”) applies a presumption against the filing of reply briefs. Motion at 1; *see* 40 C.F.R. § 124.19(c)(1).

The Board established this presumption “to facilitate [the] expeditious resolution of NSR appeals, while simultaneously giving fair consideration to the issues raised in any given matter.” Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits 2 (EAB Mar. 27, 2013) (“Standing Order”). 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.*, PSD Appeal Nos. 12-04 to -06, slip op. at 18 (EAB Aug. 2, 2013), 16 E.A.D. ____ (citation omitted). A party may overcome this presumption by demonstrating that the reply responds directly to significant arguments made

in response briefs to which the party has not previously had the opportunity to respond, and that allowing the reply would not otherwise frustrate the purpose of the presumption. *In re Energy Answers Arecibo, LLC*, PSD Appeal Nos. 13-05 to -09, slip op. at 15 (EAB Mar. 25, 2014, 16 E.A.D. ____).

Sierra Club argues that the Board should grant its motion because: (1) Sierra Club filed the motion less than twenty-four hours after receiving the permit issuer's and permittee's response briefs, and thus the Board's ability to expeditiously resolve this appeal will not be impaired; (2) a reply is needed to correct errors in the record purportedly made by permit issuer Maricopa County Air Quality Department ("MCAQD") that pertain to public notice of the revised draft permit; and (3) the reply is narrowly confined to the issue of whether Sierra Club has standing to raise the arguments presented in its petition for review, which MCAQD and APS challenged for the first time in their response briefs.

Sierra Club reports that it contacted both MCAQD and permittee Arizona Public Service Company ("APS") to determine whether they agreed to or opposed the granting of this motion. Sierra Club states that MCAQD did not respond to its request for a statement of position and that APS opposes the motion.

The Board concludes that Sierra Club's short reply responds directly to arguments that MCAQD and APS made in their responses to Sierra Club's petition, and that allowing Sierra Club's reply in this instance would not otherwise frustrate the purpose of the presumption. Finding no prejudice to any party, for good cause shown, and without ruling on the merits, the Board **GRANTS** Sierra Club's motion to file a reply brief. The Board also directs MCAQD and APS to file surreply briefs, if they so choose, by **Friday, May 20, 2016**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: 5/16/2016

By: Mary Beth Ward
for Mary Kay Lynch
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the forgoing **Order Granting Motion to File Reply** in the matter of *Arizona Public Service Co., Ocotillo Power Plant*, PSD Appeal No. 16-01, were sent to the following persons in the manner indicated:

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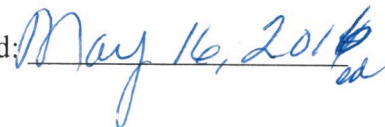
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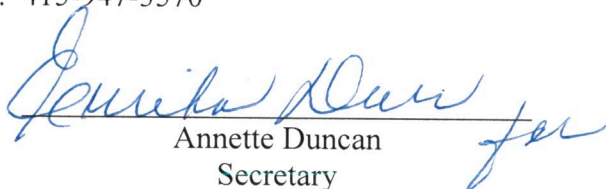
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Dated: May 16, 2016




Annette Duncan
Secretary