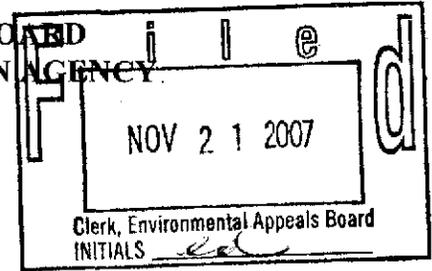


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



_____)
In re:)
Deseret Power Electric Cooperative)
PSD Permit No. PSD-OU-0002-04.00)
_____)

PSD Appeal No. 07-03

ORDER GRANTING REVIEW¹

On August 30, 2007, United States Environmental Protection Agency, Region 8 (“Region”) issued a prevention of significant deterioration (“PSD”) permit (number PSD-OU-0002-04.00) to Deseret Power Electric Cooperative (“Deseret”) for the construction of a new waste-coal-fired electric generating unit at Deseret’s existing Bonanza Power Plant, located near Bonanza, Utah.² On October 1, 2007, Sierra Club filed a petition, pursuant to 40 C.F.R. § 124.19(a), requesting that the Environmental Appeals Board review the Region’s decision to issue the PSD permit. On November 2, 2007, the Region filed a response to Sierra Club’s petition for review. On November 16, 2007, Deseret filed a motion requesting authorization to file a brief in response to Sierra Club’s petition. The Board hereby grants Deseret’s motion to submit a memorandum in response to Sierra Club’s petition and Deseret’s memorandum, which

¹ This order is not an adjudication on the merits of any of the issues raised in the Petition.

² The Bonanza Power Plant is located within the Uintah and Ourah Indian Reservation.

Deseret attached to its motion, is hereby accepted for filing. Both Sierra Club and Deseret have requested an opportunity to present oral argument.³

Sierra Club's petition raises two issues: first, Sierra Club argues that the Region erred by failing to require a best available control technology ("BACT") limit for control of CO₂ emissions; and, second, Sierra Club argues that the Region erred by failing to consider certain "alternatives" to the proposed facility that are similar to alternatives recommended by U.S. EPA Region 9 in another proceeding. The Region's response to public comments regarding the first of these two issues included a discussion of the recent U.S. Supreme Court decision in *Massachusetts v. EPA*, ___ U.S. ___, 127 S.Ct. 1438 (2007), and, consequently, this matter may be of national significance. For this reason, and because the Board has determined that it may benefit from further briefing and argument from interested persons not presently before the Board in this matter, the Board has determined to grant review, pursuant to 40 C.F.R. § 124.19(c), of Sierra Club's first issue.⁴

Section 124.19(c) provides that, if the Board grants review of a permit, public notice shall be provided setting forth a briefing schedule for the appeal and "any interested person may file an amicus brief." 40 C.F.R. § 124.19(c). Because we are granting review, a briefing schedule is set forth below which allows additional briefing by Sierra Club, Deseret, and the Region, as well as allows all other interested persons to file amicus briefs in this matter.

³ The Board anticipates scheduling oral argument in this matter once the Board has received the briefs and notices allowed by the briefing schedule set forth in this Order.

⁴ The Board continues to hold Sierra Club's second issue under advisement and expresses no opinion regarding it at this time.

As required by 40 C.F.R. §§ 124.10(a)(iv) and 124.19(c), the U.S. EPA Regional Administrator for Region 8 (or an authorized representative) is **DIRECTED** to promptly give public notice in compliance with 40 C.F.R. §§ 124.10 and 124.19(c) of this grant of review and other matters set forth in this Order. The Region shall file a notification with the Board, on or before Thursday, December 20, 2007, describing the manner in which public notice was provided and the date(s) on which notice was provided.

Briefing Schedule

The briefing schedule is established as follows:

- Briefs from Sierra Club and any amicus in support of Sierra Club's contention that the permit must contain a CO₂ BACT limit are **due on or before Thursday, January 31, 2008**. Sierra Club is not required to file a brief and may instead file notice that it is relying on the arguments presented in its petition for review.
- Responses from the Region, Deseret, and any amicus opposing Sierra Club's contention that the permit must contain a CO₂ BACT limit are **due on or before Thursday, February 21, 2008**. The Region and Deseret are not required to file a brief and may instead file notice that they are relying on the arguments presented in their briefs already on file with the Board.
- Reply to the responses filed by the Region, Deseret, and any amicus opposing Sierra Club's contention that the permit must contain a CO₂ BACT limit are **due on or before Thursday, March 6, 2008**. Replies may be filed only by persons who file a brief or notice before the

January 31 deadline, shall not exceed 20 pages, and are limited to arguments presented in the responses filed by the February 21 deadline.

No further briefing shall be permitted except by order of the Board.

Briefs or notices filed pursuant to this Order shall be served on all other persons who have filed motions, briefs, and/or memoranda in this matter as a party or amicus.⁵

So ordered.

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich
Environmental Appeals Judge

Date: 11/21/07

⁵ Interested persons are also advised that copies of filings are generally available for viewing and printing from the Board's internet-docket available at:
http://yosemite.epa.gov/oa/EAB_Web_Docket.nsf/Active+Dockets?OpenView.

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Review in the matter of Deseret Power Electric Cooperative, PSD Appeal No. 07-03, were sent to the following persons in the manner indicated:

By Inter-Office Mail
and telecopier:

Brian L. Doster
Kristi M. Smith
Elliot Zenick
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By Pouch Mail and
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Dated: NOV 21 2007

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

Annette Duncan
Secretary