



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

In re:)
Arizona Public Service Co.) NPDES Appeal No. 19-06
NPDES Permit No. NN0000019)
_____)

ORDER GRANTING MOTION FOR LEAVE TO FILE SURREPLY

On January 13, 2020, the Dine’ Citizens Against Ruining the Environment, the San Juan Citizens Alliance, Amigos Bravos, the Center for Biological Diversity, and the Sierra Club (collectively “Petitioners”) filed a reply brief with the Environmental Appeals Board (“Board”) that contained 9,124 words. *See* Petitioners’ Consolidated Reply Brief to EPA and APS’ Response Briefs and to NTEC’s Amicus Brief (Jan. 13, 2020). On January 17, 2020, Arizona Public Service Company (“APS”) filed a motion for leave to file a surreply, or, in the alternative, to strike “all new issues and arguments in Petitioners’ reply.” *See* APS Motion for Leave to File a Surreply or, in the Alternative, to Strike All New Issues and Arguments in Petitioners’ Reply at 1 (Jan. 17, 2020). APS states that it seeks to address “new issues and arguments” raised in the reply and “assist the Board in resolving the disputed claims.” *Id.* at 2. APS contacted the parties prior to filing its motion and reported that U.S. Environmental Protection Agency, Region 9, takes no position on the motion, Petitioners object to the motion in its entirety, and amicus curiae Navajo Transitional Energy Company, LLC, supports the motion. *Id.* at 1 n.1. On January 24, 2020, Petitioners filed a response in opposition to APS’s motion. *See* Petitioners’ Response in Opposition to APS’s Motion for Leave to File a Surreply, or, in the Alternative, to Strike the

Reply Brief (Jan. 24, 2020). On January 28, 2020, APS filed a reply to Petitioners' response in opposition to APS's motion. *See* APS's Reply to Petitioners' Opposition to Motion for Leave to File a Surreply or, in the Alternative, to Strike All New Issues and Arguments in Petitioners' Reply (Jan. 28, 2020).

Upon examination of the filings and in light of the Board's discretion to grant requests for surreply briefs — discretion the Board has typically exercised to allow surreply briefs where it is alleged that new arguments are raised in reply briefs or where further briefing would assist the Board in resolving disputed claims, *see In re ArcelorMittal Cleveland, Inc.*, NPDES Appeal No. 11-01 at 1 (EAB Dec. 9, 2011) (Order Granting in Part EPA's Motion to File Surreply) (citing cases); *see also* 40 C.F.R. § 124.19(n) — the Board **GRANTS** APS's request to file a surreply brief. The surreply shall be limited to identifying new issues that APS alleges were raised in Petitioners' reply brief and concisely responding to those issues. The Board further **ORDERS** that APS's surreply brief be filed on or before **Wednesday, February 12, 2020**.

So ordered.

ENVIRONMENTAL APPEALS BOARD

Dated: January 29, 2020

By: _____



Aaron P. Avila
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I certify that copies of the foregoing *Order Granting Motion for Leave to File Surreply* in the matter of Arizona Public Service Company, NPDES Appeal No. 19-06, were sent to the following persons in the manner indicated:

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