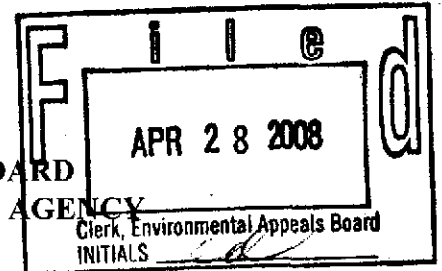


BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.



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

PSD Appeal No. 07-03

ORDER REGARDING ORAL ARGUMENT

On August 30, 2007, the 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. 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, and on November 16, 2007, Deseret filed a motion requesting authorization to file a brief in response to Sierra Club's petition (with a copy of the proposed response attached).

By Order dated November 21, 2007, the Board granted Deseret's motion to file a response, and the Board granted review of one of the two issues raised in Sierra Club's petition for review. Sierra Club's petition raised two issues: first, Sierra Club argued that the Region

erred by failing to require a best available control technology (“BACT”) limit for control of CO₂ emissions; and, second, Sierra Club argued 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 U.S. Supreme Court’s decision in *Massachusetts v. EPA*, ___ U.S. ___, 127 S.Ct. 1438 (2007). The Board granted review of only the first issue.¹

The Board’s November 21 Order also set forth a briefing schedule to allow briefing and argument from interested persons as provided in 40 C.F.R. § 124.19(c). Pursuant to that briefing schedule (as extended by subsequent order), the Board has received briefs from Sierra Club and several amici in support of Sierra Club’s contention that the Region erred in not requiring a CO₂ BACT limit, and the Board also has received briefs from the Region (in which EPA’s Office of Air and Radiation joined), Deseret, and several amici in opposition to Sierra Club’s contention. The Board has also received reply briefs from Sierra Club and supporting amici.

By order dated March 31, 2008, the Board scheduled oral argument in this matter to be held on May 29, 2008. In the Board’s March 31 Order, the Board invited Sierra Club, Deseret, and the Region to participate in the oral argument. The Board also stated that a subsequent order would be issued deciding whether to invite any of the amici to participate in presenting oral argument and allocating time among the parties to present argument. The Board has now

¹ The Board continues to hold Sierra Club’s second issue under advisement.

determined to invite the following amici to present oral argument regarding the matters asserted in the indicated portions of their briefs²:

1. States of New York, California, Connecticut, Delaware, Maine, Massachusetts, Rhode Island, and Vermont (“State AGs”) regarding the matters set forth under the heading “EPA Erred in Deciding that Carbon Dioxide is Not an Air Pollutant ‘Subject to Regulation’ Under the Clean Air Act” at pages 5-11 of their January 31 brief;
2. National Parks Conservation Association (“NPCA”) regarding the matters set forth under the heading “The Environmental Protection Agency is Required to Regulate Carbon Dioxide Emissions” at pages 10-13 of its January 31 brief;
3. Utility Air Regulatory Group (“UARG”) regarding the matters set forth under the heading “Congress’s Enactment of the Section 821 Information Gathering Provisions Did Not Make CO₂ Subject to PSD Requirements” at pages 6-20 of its March 21 brief.

As previously ordered, the oral argument will begin at 10:00 a.m. on Thursday, May 29, 2008, in the Administrative Courtroom, U.S. Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue, N.W., Washington, D.C. The Board has allocated one hour and forty minutes total for this oral argument, divided as follows and in the following order: (1) thirty minutes for Sierra Club; (2) fifteen minutes for the State AGs; (3) five minutes for NPCA; (4) thirty minutes total for the Region and EPA’s Office of Air and

² All participants in the oral argument are reminded that the Board will entertain argument only on the issue on which the Board granted review.

Radiation; (5) ten minutes for Deseret; and (6) ten minutes for UARG. At the outset of the hearing, Sierra Club may reserve five minutes of its thirty-minute allocation for rebuttal.

The participants shall notify the Clerk of the Board in writing by Monday, May 19, 2008, of the names of counsel who will present argument. Counsel who wish to participate in this oral argument via video-conferencing shall contact the Clerk of the Board, at 202-233-0122, no later than Wednesday, May 14, 2008, to make arrangements for use of the Administrative Court Room's video-conference equipment.

So ordered.

Dated: *Apr. 28, 2008*

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

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

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Dated: APR 28 2008


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Secretary