

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

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In re:	)	
	)	
Granite Shore Power Merrimack LLC	)	NPDES Appeal No. 20-05
	)	
NPDES Permit No. NH0001465	)	
	)	

**ORDER GRANTING MOTION FOR LEAVE TO FILE SURREPLY**

On November 20, 2020, EPA Region 1 (“Region”) filed a motion seeking leave to file a surreply brief in response to the reply brief filed by Petitioners Sierra Club, Inc. and Conservation Law Foundation, Inc. (“Petitioners”). *See* EPA Region 1 Motion for Leave to File Surreply (Nov. 20, 2020) (“Motion”). In support, the Region contends that Petitioners raise new arguments in their reply brief, contrary to the rules governing this appeal. *See* 40 C.F.R. § 124.19(c)(2) (“Petitioner may not raise new issues or arguments in the reply.”). Additionally, the Region asserts that a surreply brief would assist the Board in its decisionmaking because (1) the new arguments raised by Petitioners involve “technical issues that must be evaluated against a complex and extensive permit record with which the Region is familiar;” and (2) Petitioners raise issues concerning the Board’s decision in *In re Arizona Public Service Co.*, 18 E.A.D. 245 (EAB 2020), which was released following the filing of the Region’s response brief in this proceeding. Motion at 2-3. The Region states that it contacted counsel for Petitioners to ascertain their position on the motion and that Petitioners replied that they “cannot take a position until they see the motion the Region files, and they reserve the right to file a response then.” *Id.* at 3.


The Environmental Appeals Board possesses discretionary authority to grant a request to file a surreply brief. 40 C.F.R. § 124.19(n). The Board typically grants such requests where allegations arise that a reply brief raises new arguments or where further briefing would otherwise assist the Board in resolving disputed issues. *See, e.g., In re Ariz. Pub. Serv. Co.*, NPDES Appeal No. 19-06, at 2 (EAB Jan. 29, 2020) (Order Granting Motion for Leave to File Surreply); *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, Denying Petitioner’s Request to Provide Additional Information, and Granting Oral Argument).

Based upon the current record, the Board determines that a surreply would be helpful in the Board’s decisionmaking process and therefore **GRANTS** the Region’s motion for leave to file a surreply brief. The Board further **ORDERS** that the Region’s surreply brief be filed on or before **Friday, December 4, 2020**.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: November 24, 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 Granite Shore Power Merrimack LLC, NPDES Appeal No. 20-05, were sent to the following persons in the manner indicated:

**By Email:**

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Dated: November 24, 2020



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Eurika Durr  
Clerk of the Board