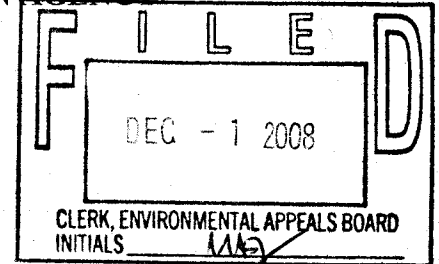


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)

Desert Rock Energy Company, LLC)

PSD Permit No. AZP 04-01)

PSD Appeal Nos. 08-03, 08-04,
08-05 & 08-06

**ORDER GRANTING MOTION FOR EXTENSION OF TIME
TO RESPOND TO PETITIONS AND SUPPLEMENTAL BRIEFS**

On July 31, 2008, the United States Environmental Protection Agency, Region 9 (“Region”) issued a prevention of significant deterioration (“PSD”) permit (number AZP 04-01) (the “Permit”) to Desert Rock Energy Company, LLC (“Desert Rock”) for the construction of a new 1500-megawatt (MW) coal-fired electric generating facility to be located approximately 25 miles southwest of Farmington, New Mexico. The Region is the permitting authority for this permit because the proposed facility will be located within the Navajo Indian Reservation and the Navajo Nation does not have an EPA-approved tribal PSD permitting program.

The Board received four petitions for review of the Permit: one from Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council, San Juan Citizens Alliance, Sierra Club, and WildEarth Guardians (collectively “NGO Petitioners”); one from the State of New Mexico (“State”); one from the Center for Biological Diversity (“CBD”); and from Ms. Leslie Glustrom. Two of the petitioners, the State and the NGO Petitioners, requested additional time to file supplemental briefs in support of their petitions for review, which the Board granted in part. *See* Order Granting Desert Rock’s Motion to

Participate, Granting a 30-Day Extension of Time, and Denying a Stay of Briefing on Certain Issues at 3 (Aug. 21, 2008). At that time, the Board also granted a motion from Desert Rock requesting that it be allowed to participate. *Id.* at 3. The Board subsequently granted a motion from Diné Power Authority (“DPA”) that had requested leave to participate and granted a motion from National Parks Conservation Association (“NPCA”) that had requested leave to file an amicus curiae brief. Order Granting Motion to Participate, Motion to File Amicus Curiae Brief, and Motion for Extension of Time to File Responses (Oct 14, 2008).

The State and NGO Petitioners filed their supplemental briefs on October 2, 2008. Shortly thereafter, the Region submitted a motion for a thirty-day extension of time to respond to the petitions and supplemental briefs. The Board granted the motion and ordered the Region, Desert Rock, and DPA to file any responses to the petitions, supplemental briefs, and/or amicus curiae brief no later than December 3, 2008. *Id.* at 3.

On November 18, 2008, New Mexico filed a Motion to Supplement the Record on Appeal or, in the Alternative, for Remand and Reopening of the Public Comment Period. Two days later, Desert Rock submitted a letter to the Board noting that it intends to file a response to the State’s motion on or by December 3, 2008, and requesting the Board consider Desert Rock’s motion prior to acting upon the State’s motion.

On November 26, 2008, the Board received a motion from the Region requesting an additional thirty-five day extension of time. Region’s Motion for Extension of Time to Respond to Petitions and Supplemental Briefs. DPA submitted a motion in support of the Region’s motion. DPA’s Support of, and Request for an Expedited Ruling on the U.S. EPA’s Motion to Extend Time (Nov. 28, 2008). The Region requests the extension for a number of reasons,

primarily its need to consider the impact of the Board's recent decision in *In re Deseret Power Electric Cooperative*, PSD Appeal No. 07-03, 13 E.A.D. __ (Nov. 13, 2008), on this case, and its need to respond to New Mexico's recent motion to supplement the administrative record.

Region's Mot. For Ext. of Time at 2-3, 5.

In its motion, the Region asks for the extension not just for itself but, "as a courtesy and to ensure an orderly presentation of argument," and requests that the Board grant Desert Rock and DPA an identical extension. *Id.* The Region states that Ms. Glustrom does not oppose the extension. *Id.* at 5-6. The Region notes that the other three petitioners – the State, NGO Petitioners, and CBD – do not oppose the extension subject to specific conditions that the Region does not articulate in its motion but that the Region does not agree to. *Id.* The Region indicates that Desert Rock opposes a 35-day extension of time but not a 20-day extension. *Id.* at 6. The Board notes that, as of this time, it has not received a motion or letter from Desert Rock on this issue. The Board has, however, received a letter from NGO Petitioners dated November 26, 2008, stating that they do not oppose the Region's motion provided the Board allows Petitioners until February 13, 2009, to file a reply to all responses that will likely be filed in the case.

The Board GRANTS a 35-day extension of time to file a response brief to the Region and DPA. Accordingly, the Region and DPA are hereby ordered to file responses by January 8, 2009. As noted above, to date no filing has been received from Desert Rock requesting an extension. Therefore, the Board does not grant an extension to Desert Rock at this time. Desert Rock's response is still due on December 3, 2008, although the Board will consider any request for an extension from Desert Rock filed prior to that date.

The Board notes that it anticipates receiving requests to file a reply brief to the Region's

(and potentially Desert Rock's and DPA's) responses but will defer determining what further briefing will be permitted until after all responses have been filed.

So ordered.

Dated: *December 1, 2008*

ENVIRONMENTAL APPEALS BOARD

By: *Edward E. Reich (by Charles Sheehan)*
Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Granting Motion for Extension of Time to Respond to Petitions and Supplemental Briefs in the matter of Desert Rock Energy Company, LLC, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06 were sent to the following persons in the manner indicated:

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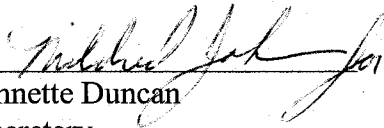
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Dated: DEC - 1 2008


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