

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

_____)	
In re:)	
)	Appeal No. SDWA 22-01
Panoche Energy Center, LLC)	
)	
UIC Permit No. R9UIC-CA1-FY17-2R)	
_____)	

JOINT MOTION FOR EXTENSION OF TIME

The United States Environmental Protection Agency (“EPA”) Region 9 and Panoche Energy Center, LLC (“PEC”) request that the Environmental Appeals Board (“EAB” or “Board”) grant a 26-day extension of time for EPA to file its response to the Petition for Review (“Petition”) filed by PEC in Appeal No. SDWA 22-01; and that the Board grant a 23-day extension for PEC to file its reply. EPA and PEC also propose that any amicus parties must file by the date PEC’s reply is due. The modified proposed briefing schedule is set forth below, as well as the parties’ justification for the extension.

The Petition raises a substantively complex, distinct, and varied range of issues, including important legal and policy questions turning on interpretation of the Safe Drinking Water Act and its implementing regulations. Therefore, consistent with the Board’s direction, preparation of the Region’s response has, since receipt of the Petition, required close consultation and coordination with EPA’s Office of General Counsel – Water Law Office, who has an interest in the matters raised in the petition. *See*, Procedures for Coordination OE-OGC-Regions Environmental Appeals

Board (Jan. 25, 1993) (emphasizing the importance of early consultation with Headquarters offices).

The extensive coordination among these offices is continuing, and the requested 26-day extension is necessary to ensure that the brief filed by the Region reflects full deliberation among the Office of General Counsel on the important issues in this matter. The length of the requested extension reflects, in part, that attorneys with subject matter expertise in the issues raised by the petition had long-planned absences during the week of November 21. However, the relevant offices have structured the internal coordination processes so as to minimize the length of the requested extension while ensuring conclusion of needed deliberations and reviews.

Further, the Region issued a Notice of Stayed Permit Conditions on November 7, 2022, in accordance with 40 C.F.R. 124.16(a), stating that the challenged permit conditions and inseverable portions of the permit are stayed pending final agency action from the Board.

EPA conferred with PEC and it agrees to the proposed extension, provided PEC and any amicus who wish to file may have a 23-day extension as well. PEC requests the extension to file the reply brief because of the complexities involved in drafting the reply brief and long-planned absences during the winter holidays.

The proposed joint briefing schedule is set forth below:

- EPA's Response to the Petition (including the Certified Index of the Administrative Record and the relevant portions of the Administrative Record), which would otherwise be due on November 28, 2022, shall be filed on or before December 23, 2022.

- PEC's Reply Brief, which would otherwise be due on January 8, 2023 shall be filed on or before January 31, 2023.
- Any amicus briefs shall be filed on or before January 31, 2023.

The parties would also like to inform the Board that they have agreed to accept service of filings by electronic mail only, pursuant to 40 C.F.R. 124.19(i)(3)(ii), with no hard copy service by mail or similar means.

In conclusion, EPA Region 9, after consultation with and concurrence by the Office of General Counsel, and PEC respectfully request that the Board approve the proposed briefing schedule for the reasons described above.

November 10, 2022

Respectfully submitted,

For EPA

/S/ Desean Garnett

Desean Garnett
Office of Regional Counsel (ORC-2-4)
75 Hawthorne Street
San Francisco, CA 94105
Telephone:(415) 972-3046
Email: Garnett.Desean@epa.gov

Nathaniel Boesch
Office of Regional Counsel (ORC-2-3)
75 Hawthorne Street
San Francisco, CA 94105
Telephone:(415) 972-3926
Email:
Boesch.Nathaniel@epa.gov

Of Counsel:

Alec Mullee
Office of General Counsel
1200 Pennsylvania Avenue, NW
Washington, DC 20460
Telephone: (202) 564-9616
Email: Mullee.Alec@epa.gov

For Panoche Energy Center, LLC

/S/ Ankur K. Tohan

Ankur K. Tohan
K&L Gates LLP
925 4th Avenue, Suite #2900
Seattle, Washington 98104
Telephone: (206) 370-7658
Email: ankur.tohan@klgates.com

/S/ J. Timothy Hobbs

J. Timothy Hobbs
K&L Gates LLP
222 2nd Avenue S. Suite 1700
Nashville, Tennessee 37201
Telephone: (615) 514-1811
Email: tim.hobbs@klgates.com

/S/ Robert L. Hines

Robert L. Hines
Farella Braun + Martell LLP
235 Montgomery Street
San Francisco, California 94104
Telephone: (415) 954-4935
Email: rhines@fbm.com

/S/ Linda Sobczynski

Linda Sobczynski
Farella Braun + Martell LLP
235 Montgomery Street
San Francisco, California 94104
Telephone: (415) 954-4941
Email: lsobczynski@fbm.com

Certificate of Service

I hereby certify that copies of the foregoing *JOINT MOTION FOR EXTENSION OF TIME* in the matter of Panoche Energy Center, LLC, Appeal No. SDWA 22-01, were served via email upon the persons listed below.

November 10, 2022

Respectfully submitted,

S/ Desean Garnett

Desean Garnett
Office of Regional Counsel (ORC-2-4)
75 Hawthorne Street
San Francisco, CA 94105
Telephone: (415) 972-3046
Email: Garnett.Desean@epa.gov

Ankur K. Tohan
K&L Gates LLP
925 4th Avenue, Suite #2900
Seattle, Washington 98104
Telephone: (206) 370-7658
Email: ankur.tohan@klgates.com

J. Timothy Hobbs
K&L Gates LLP
222 2nd Avenue S. Suite 1700
Nashville, Tennessee 37201
Telephone: (615) 514-1811
Email: tim.hobbs@klgates.com

Robert L. Hines
Farella Braun + Martell LLP
235 Montgomery Street
San Francisco, California 94104
Telephone: (415) 954-4935
Email: rhines@fbm.com

Linda Sobczynski
Farella Braun + Martell LLP
235 Montgomery Street
San Francisco, California 94104
Telephone: (415) 954-4941
Email: lsobczynski@fbm.com