

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

In re:)
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Deseret Power Electric Cooperative)
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PSD Appeal No. 07-03

MOTION FOR EXTENSION OF TIME
TO FILE A RESPONSE TO THE BOARD'S JUNE 16, 2008 ORDER

The Office of Air and Radiation (OAR) of the Environmental Protection Agency (EPA) and EPA Region 8 hereby move for an extension of time to respond to the Board's June 16, 2008 Order Requesting Further Briefing in this case. OAR and Region 8 request leave to file a response to the Board's order on August 8, 2008 and that the Board extend the deadline for filings by other parties and interested persons to September 12, 2008.

Counsel for Petitioner Sierra Club and Intervener Deseret Power Electric Cooperative do not oppose this request. As grounds for this motion, OAR and Region 8 state the following:

1. This case involves an appeal of a Prevention of Significant Deterioration (PSD) permit issued by Region 8 of the Environmental Protection Agency (EPA) on August 30, 2007 under the Clean Air Act to Deseret Power Electric Cooperative (Deseret). On November 21, 2007, the Board granted review of one of the issues raised in the petition filed by Sierra Club (Petitioner) – whether the PSD permit at issue is required to contain a Best Available Control Technology limit for carbon dioxide (CO₂)

emissions. After the conclusion of briefing on the issue by Petitioner, the Office of Air and Radiation (OAR) and Region 8, Deseret, and several amici, the Board heard oral arguments in this matter on May 29, 2008.

2. On June 16, 2008, the Board issued an Order Requesting Further Briefing in this matter. The Board's order requested that OAR and Region 8 provide further briefing on two matters: (1) the enforceability of the CO₂ monitoring requirements set forth in section 821 of Public Law 101-549 and 40 C.F.R. §§ 75.1(b), 75.10(a)(3), and (2) whether "a facility with the potential to emit at least the requisite number of tons per year, as specified in section 169(1) of the Clean Air Act, 42 U.S.C. § 7479(1), of carbon dioxide is a major emitting facility requiring a PSD permit." The Board's Order established a filing date of Wednesday, July 16, 2008 for OAR and Region 8's brief, and a filing date of Friday, August 15, 2008 for any responses from any party or interested person that previously participated in this matter as amicus.

3. The Board's June 16, 2008 Order specified that OAR and Region 8 "shall consult with both the Office of General Counsel and Office of Enforcement and Compliance Assurance" (OGC and OECA, respectively) in preparing the supplemental brief. The Board's Order also requested that EPA identify "every administrative or judicial enforcement action taken to date, if any, to enforce any requirements springing out of or resulting in whole or in part from section 821 of Public Law 101-549 or 40 CFR part 75 (as they relate to CO₂) and the basis on which the jurisdiction of the court or Agency was invoked in each case."

4. As requested by the Board, OAR and Region 8 are currently consulting with OGC and OECA to address the issues raised in the Board's Order. In addition, these

offices are working diligently to compile the enforcement action information requested by the Board:

5. Based on efforts to date, the aforementioned EPA offices have determined that additional time will be needed to gather a thorough record of the previous enforcement actions and to complete deliberations among offices regarding the response to the Board's Order. Based on discussions to date, OAR and Region 8 anticipate that they will need an additional 23 days to complete the requested fact-gathering and develop a coordinated position on these matters, in consultation with OGC and OECA. The Board's granting of this extension of the filing date will ensure that the response filed by OAR and Region 8 will be complete and fully informed by the views of the appropriate offices within EPA.

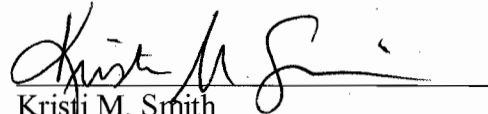
6. Prior to filing this motion, counsel for EPA contacted counsel for Petitioner and Deseret. Both counsel indicated that they did not oppose the proposed extension of time and requested a similar extension (with additional time for consideration of the Labor Day weekend) to file their response briefs.

WHEREFORE, OAR and Region 8 respectfully request that the Board grant an additional 23 days – until August 8, 2008 – for OAR and Region 8 to respond to the Board's July 16, 2008 Order Requesting Further Briefing. In addition, OAR and

Region 8 request an additional 28 days – until September 12, 2008 – for any other parties and amici to file response briefs.

Date: July 9, 2008

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that copies of this Unopposed Request for Extension of Time to File A Response to the Board's June 16, 2008 Order were served on the following persons:

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