

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

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In re: )  
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Deseret Power Cooperative, )  
Bonanza Power Plant, )  
                                  ) )  
Permit No. V-UO-000004-00.00 )  
\_\_\_\_\_)

**PETITION FOR REVIEW  
OF A CLEAN AIR ACT PART 71 PERMIT TO OPERATE**

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## INTRODUCTION

On December 5, 2014, U.S. Environmental Protection Agency (“EPA”) Region 8 issued a permit for the Deseret Power Cooperative (hereafter “Deseret”) to operate the Bonanza Power Plant (hereafter “Bonanza Plant” or “Plant”), a 500-megawatt coal-fired power plant located in northeastern Utah, pursuant to Title V of the Clean Air Act and regulations at 40 C.F.R. § 71.

Unfortunately, in issuing the final Title V permit, the agency failed to fully comply with its permitting duties, namely by failing to ensure the Bonanza Plant operates in compliance with all applicable requirements under the Clean Air Act. Of particular concern is that, although the EPA acknowledges that Deseret failed to obtain a necessary prevention of significant deterioration (“PSD”) permit after undertaking a major modification of the Plant, the Title V permit fails to include provisions to bring the facility into compliance with PSD. The result is that the permit fails to ensure the Bonanza Plant operates in compliance with best available control technology (“BACT”) and other applicable requirements under PSD.

Therefore, pursuant to 40 C.F.R. § 71.11(l), WildEarth Guardians petitions the Environmental Appeals Board (“EAB”) to review EPA Region 8’s issuance of a federal operating permit pursuant to Title V of the Clean Air Act and 40 C.F.R. § 71 for Deseret to operate the Bonanza Plant. Guardians requests EAB review on the basis that the Title V permit is based on a finding of fact or conclusion of law that is clearly erroneous. Specifically, EPA Region 8 failed to ensure the Plant will operate in compliance with the Clean Air Act in accordance with 42 U.S.C. § 7661c(a) and 40 C.F.R. § 71.5(c)(8)(iii)(C) by failing to:

1. Ensure the Bonanza Plant operates in compliance with PSD requirements under the Clean Air Act and to include a schedule of compliance to bring the sPlant into compliance; and

2. Ensure the Bonanza Plant operates in compliance with represented heat input rates set forth in Deseret's PSD permit application and to include a schedule of compliance to bring the Plant into compliance.

Below, we detail the basis for seeking review. We request the EAB grant this petition for review and either vacate the permit or remand it back to the EPA Region 8 and order the agency to promptly remedy all deficiencies. Most importantly, we request the EAB ensure the Bonanza Plant operates in full compliance with the Clean Air Act.

### **LEGAL BACKGROUND**

Title V of the Clean Air Act requires that major sources of air pollution “obtain comprehensive operating permits to assure compliance with the requirements of the [Clean Air] Act.” *In re: Peabody Western Coal Co.*, CAA Appeal No. 11-01, slip op. at 3, 15 E.A.D. \_\_\_ (EAB March 13, 2012). To this end, a Title V permit must be explicitly written to assure compliance with all applicable requirements under the Clean Air Act. *See* 42 U.S.C. § 7661c(a); *see also* 40 C.F.R. § 71.7(a)(iv) (a permit may only be issued if “[t]he conditions of the permit provide for compliance with all applicable requirements and the requirements of this part”). As the EPA has explained, “the title V operating permits program is a vehicle for ensuring that air quality control requirements are appropriately applied to facility emission units and that compliance with these requirements is assured.” *In the Matter of Public Service Company of New Mexico, San Juan Generating Station*, Order, Title V Petition VI-2010-04 at 2 (Feb. 15, 2012), available online at [http://www.epa.gov/region7/air/title5/petitiondb/petitions/san\\_juan\\_response2010.pdf](http://www.epa.gov/region7/air/title5/petitiondb/petitions/san_juan_response2010.pdf) (last accessed January 7, 2015).

Applicable requirements include, among other things, PSD requirements under Part C of the Clean Air Act. *See* 40 C.F.R. § 71.2 (definition of “[a]pplicable requirement” including terms or conditions of any permits issued pursuant to Part C of the Clean Air Act). Under PSD, major stationary sources of air pollution, as defined under 40 C.F.R. § 52.21(b)(1), which are located in areas designated as in attainment with national ambient air quality standards (“NAAQS”), are subject to certain preconstruction permitting requirements.<sup>1</sup> Specifically, a major source must apply for and obtain a permit before undertaking any “major modification.” 40 C.F.R. § 52.21(a)(2). A major modification occurs whenever a “physical change” of a major source leads to a “significant net emission increase of any pollutant subject to regulation under the [Clean Air] Act.” 40 C.F.R. § 52.21(b)(2)(i). A significant net emissions increase occurs when post-project potential emissions exceed pre-project actual emissions by certain rates. 40 C.F.R. §§ 52.21(b)(3) and (b)(23) (defining “net emissions increase” and “significant” emission rates).

A PSD permit must require that a source meet BACT limits on emissions, as well as meet other requirements. 40 C.F.R. § 52.21(j); *see also e.g.* 40 C.F.R. § 52.21(k) (requiring that a permit ensure a source does not cause or contribute to air pollution in violation of any NAAQS and other air quality standards). Where a major source undergoes a major modification, BACT limits apply to each pollutant for which a significant net emissions increase would occur. 40 C.F.R. § 52.21(j)(3). Upon issuance of a PSD permit, a source must operate in compliance with the terms of its permit, as well as in accordance with its permit application. 40 C.F.R. § 52.21(r)(1).

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<sup>1</sup> Unless otherwise noted, we refer to the most up-to-date version of 40 C.F.R. § 52.21.

Where a source is “not in compliance with all applicable requirements at the time of permit issuance,” a Title V permit must include a “schedule of compliance.” 40 C.F.R. § 71.5(c)(8)(iii)(C); *see also* 42 U.S.C. §§ 7661b(b)(1) and 7661c(a) (requiring Title V permits to contain a “schedule of compliance”). This schedule must include, among other things, “an enforceable sequence of actions with milestones, leading to compliance with any applicable requirements.” *Id.*; *see also* 42 U.S.C. § 7661(3) (defining “Schedule of compliance” to mean “a schedule of remedial measures, including an enforceable sequence of actions or operations, leading to compliance[.]”). Such a schedule “shall resemble and be at least as stringent as that contained in any judicial consent decree or administrative order to which the source is subject.” *Id.*

## FACTUAL BACKGROUND

The Bonanza Plant is a 500-megawatt coal-fired power located in Uintah County, Utah. It is located 28 miles southeast of Vernal, Utah and lies within the exterior boundaries of the Uintah and Ouray Indian Reservation. *See* Administrative Record (“AR”) Doc. 138 at Attachment 2, p. 1 (Title V permit, description of facility).<sup>2</sup> The Plant is a stationary source of air pollution consisting of a single coal-fired boiler, a 604-foot tall smokestack, coal handling and conveying systems, and other pollutant emitting activities. *Id.*

The Plant releases significant amounts of harmful air pollution, including criteria pollutants, hazardous air pollutants, and greenhouse gases. On an annual basis, the Bonanza Power Plant has the potential to emit 1,968 tons of sulfur dioxide (“SO<sub>2</sub>”), 9,228 tons of nitrogen

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<sup>2</sup> We cite Administrative Record Documents in accordance with the index and record produced by EPA Region 8 in conjunction with issuance of the final Bonanza Power Plant Title V permit. This record is available on EPA’s website at [http://www2.epa.gov/sites/production/files/2014-12/documents/deseret\\_bonanza\\_titlev\\_administrative\\_record.pdf](http://www2.epa.gov/sites/production/files/2014-12/documents/deseret_bonanza_titlev_administrative_record.pdf) (last accessed Jan. 7, 2015).

oxides (“NO<sub>x</sub>”), 574 tons of particulate matter (“PM<sub>10</sub>”), 68 tons of hazardous air pollutants, and more than three million tons of carbon dioxide (“CO<sub>2</sub>”). *See* AR Docs. 082 at 5 (disclosing potential to emit for criteria pollutants and hazardous air pollutants) and 134 at 8 (disclosing total greenhouse gas emissions). According to the EPA’s Toxic Release Inventory, in 2013 the Plant’s smokestack released 17,259 pounds of sulfuric acid, 17,148 pounds of hydrochloric acid, 7,222 pounds of hydrofluoric acid, 30 pounds of lead, and 1.9 pounds of mercury, as well as other toxic emissions. *See* Exhibit 1, EPA, “Toxic Release Inventory Data for Bonanza Power Plant,” website available at [http://oaspub.epa.gov/enviro/tris\\_control.tris\\_print?tris\\_id=84078BNNZP12500](http://oaspub.epa.gov/enviro/tris_control.tris_print?tris_id=84078BNNZP12500) (last accessed Jan. 7, 2015). The Plant currently operates with no add-on controls for NO<sub>x</sub> emissions, a baghouse to control particulate matter emissions, and a scrubber to control SO<sub>2</sub> emissions.

Due to its location within the exterior boundaries of the Uintah and Ouray Indian Reservation, the Bonanza Plant has never been subject to Clean Air Act jurisdiction by the State of Utah. Instead, it has been and continues to be subject to federal jurisdiction under the Clean Air Act, meaning the EPA—and only the EPA—has been and continues to be empowered to regulate air pollution from the Plant. That the Bonanza Plant is located within Indian Country, and therefore subject to federal jurisdiction, has been confirmed since at least 1985 and reconfirmed since then through additional court rulings. *See* AR Doc. 134 at 32-34 (response to comments regarding federal jurisdiction).

Because it is a major emitting facility, the Bonanza Plant has been permitted under the PSD program of the Clean Air Act. Deseret first obtained a PSD permit from the EPA on February 4, 1981. *See* AR Doc. 002. This permit authorized the construction and operation of the Plant. The EPA later “reissued” the PSD permit on February 2, 2001, largely reincorporating

the limits from the 1981 PSD permit. *See* AR Doc. 026. Any “major modification” of the Plant triggers the need for a new PSD permit prior to construction and operation. AR Doc. 138 at 65 (Title V permit condition 6.f).

Title V permitting for sources within Indian Country initially became effective March 2, 1999 and required that EPA take final action on permit applications by March 2, 2001. 40 C.F.R. §§ 71.4(b)(2) and (3). In March of 2000, Deseret submitted its first Title V permit application to EPA for review. *See* AR Doc. 082 at 2. In August of 2002, a draft Title V permit was circulated for public comment in August of 2002. AR Doc. 082 at 3. Deseret submitted an updated application to EPA on April 3, 2012. *See* AR Doc. 049. The EPA finally issued Deseret’s Title V permit on December 5, 2014. *See* AR Doc. 138.

The need for final action on Deseret’s Title V permit application has been critical in light of clear signs that the Bonanza Plant has been operating out of compliance with the Clean Air Act. Specifically, the facility has been operating out of compliance with PSD requirements for years in at least two key ways. First, Deseret undertook a major modification of the Plant without first obtaining a requisite PSD permit in accordance with 40 C.F.R. § 52.21. As acknowledged by the EPA, Deseret undertook a “ruggedized rotor” project in 2000 that led to a significant increase in NO<sub>x</sub> emissions. AR Doc. 082 at 47. The result is that the Bonanza Plant has not been operating in compliance with PSD requirements, particularly with BACT limits for NO<sub>x</sub> emissions in accordance with 40 C.F.R. § 52.21(j)(3).

Second, Deseret has been regularly operating the Bonanza Plant out of compliance with its PSD permit applications and with the terms of its PSD permit, in violation of 40 C.F.R. § 52.21(r)(1). Specifically, the Plant has been operated at much higher heat input rates (i.e., coal consumption rates) than were originally represented to EPA and that formed the basis for prior



findings that operation would not cause or contribute to violations of NAAQS or PSD increment standards in accordance with 40 C.F.R. § 52.21(k)(1). This is of particular concern given that all the emission limits applicable to the Bonanza Plant are expressed as a “pound per million Btu” (“lb/mmBtu”) rate, meaning that more Btus means more pounds of pollution. More pounds means more tons of emissions on an annual basis.

In issuing the Title V permit for the Bonanza Plant, the EPA did not include provisions to bring the Bonanza Plant into compliance with PSD or otherwise include any schedule of compliance to address outstanding violations. With regards to the “ruggedized rotor” project and the significant increase in NO<sub>x</sub> emissions, EPA argues that it simply made an administrative “error.” AR Doc. 134 at 3. The agency argues the proper mechanism for addressing this outstanding noncompliance is to issue a “corrected” PSD permit, rather than a schedule of compliance in the Title V permit. With regards to limits on heat input, the EPA asserts that “there is no limit on heat input rate.” AR Doc. 134 at 30.

### **THRESHOLD REQUIREMENTS**

This Petition for Review is timely filed in accordance with 40 C.F.R. § 71.11(l)(1). In a December 2, 2014 letter sent on December 5, 2014 via e-mail and U.S. Post to WildEarth Guardians and other parties, EPA Region 8 stated that petitions for review of the Bonanza Plant Title V permit must be filed by January 7, 2014. *See* AR Doc. 136. Part 71 regulations provide that petitions for review must be filed within 30 days of receiving notice from the EPA “unless a later date is specified in that notice[.]” 40 C.F.R. § 71.11(l)(1). Given that EPA specified in its notice that petitions must be filed by January 7, 2015, this petition is thus timely filed.

Guardians further satisfies the threshold requirements for filing a petition for review under 40 C.F.R. § 71.11(h). Regulations provide that, “[A]ny person who filed comments on the draft permit or participated in the public hearing may petition the Environmental Appeals Board to review any condition of the permit decision.” 40 C.F.R. § 71.11(l). In this case, WildEarth Guardians submitted comments on the draft Bonanza Plant Title V permit on June 16, 2014. *See* AR Doc. 110. Thus, WildEarth Guardians has the right to file this appeal.

Furthermore, the issues raised in this petition were raised by Guardians during the public comment period and therefore were preserved for review. This petition presents three primary issues, namely whether EPA violated the Clean Air Act by: 1) Issuing the Title V permit without including a schedule of compliance to address ongoing noncompliance with PSD permitting requirements; 2) Issuing the Title V permit without including a schedule of compliance to address ongoing noncompliance with presumed heat input rates; and 3) Issuing the Title V permit without appropriately defining the major source subject to permitting such that PSD and Title V permitting requirements are complied with. These issues were all raised in thorough detail in Guardians’ comments. *See* AR Doc. 110 at 2-22, 22-26, and 27-29. Thus, the EAB has jurisdiction to fully review this Petition and issue a decision accordingly.

## **ARGUMENT**

The decision to issue the Title V permit for the Bonanza Plant should be reversed and either vacated or remanded by the EAB. As will be explained, the decision is based on a “finding of fact or conclusion of law which is clearly erroneous.” 40 C.F.R. § 71.11(l)(1)(i).

**I. The Title V permit Fails to Ensure the Bonanza Plant Operates in Compliance with PSD Requirements under the Clean Air Act and to Include a Schedule of Compliance to Bring the Bonanza Plant into Compliance**

There is no question that Deseret undertook a major modification of the Bonanza Plant without first obtaining a PSD permit and has since failed to operate in compliance with applicable requirements under 40 C.F.R. § 52.21. In spite of ongoing violations, the EPA did not include a schedule of compliance in the Title V permit to bring the Plant into compliance with PSD and otherwise ensure that operations are in full accord with all applicable requirements.

It is critical to first point out that EPA does not dispute that the Bonanza Plant underwent a major modification in 2000. As the agency discloses, a “ruggedized rotor project” was completed at that time, representing a physical change in the Plant that caused a “significant net increase in actual NO<sub>x</sub> emissions[.]” AR Doc. 082 at 36-37.<sup>3</sup> The ruggedized rotor project consisted of a series of interrelated upgrades at the Bonanza Plant that aimed to increase the capacity to burn coal. AR Doc. 082 at 43-44. Although Deseret asserted there would be no significant net increase in emissions, this assertion was based on a fatally flawed analysis of pre-project emissions. EPA explains, “[Deseret] failed to use actual pre-project emissions as the baseline” and instead inappropriately relied on pre-project potential emissions. *Id.* at 35. As EPA concluded, “the 2000 ruggedized rotor project should have undergone PSD review for NO<sub>x</sub>, including a BACT analysis.” *Id.* at 49.

It is further undisputed that Deseret did not apply for or obtain a PSD permit for its major modification. The Bonanza Plant did not undergo the requisite BACT analysis for NO<sub>x</sub>

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<sup>3</sup> To aid the EAB in understanding in more detail the ruggedized rotor project, a description prepared by Deseret is attached to this Petition for Review as Exhibit 2. While stamped “CONFIDENTIAL,” this document was fully released by EPA Region 8 to Guardians under the Freedom of Information Act (FOIA No. 08-FOIA-00029-12). Although this description illustrates the full scope of the ruggedized rotor project, it inaccurately asserts that the project would “significantly reduce NO<sub>x</sub> emissions.” Exhibit 2 at 2.

emissions or any other analysis otherwise required by the Clean Air Act. As EPA acknowledges, the emission limits that currently apply to the Bonanza Plant “do not represent the outcome of a required BACT determination.” AR Doc. 082 at 49. To this end, there is no question that the Plant is currently operating out of compliance with all applicable requirements.

Nevertheless, EPA disagrees that it was required to address in any way this ongoing noncompliance in the Bonanza Plant Title V permit. Although originally the agency proposed to include a schedule of compliance in the draft Title V permit, such a schedule was stripped from the final. *See* AR Doc. at 1 (noting the change from draft to final). According to the agency, the failure of Deseret to obtain and operate in compliance with the requisite PSD permit is actually the result of EPA’s own “mistake.” AR Doc. 082 at 43. Accordingly, EPA believes the proper course of action is to issue a “corrected” PSD permit, which the agency proposed on December 3, 2014. *See* Exhibits 3 and 4, EPA, Statement of Basis and Draft Air Pollution Control Prevention of Significant Deterioration permit to Construct, PSD-UO-000004-2014.003 (Dec. 4, 2014), available online at [http://www2.epa.gov/sites/production/files/2014-12/documents/deseret\\_bonanza\\_-\\_unit\\_1\\_psd\\_-\\_sob\\_12-3-14.pdf](http://www2.epa.gov/sites/production/files/2014-12/documents/deseret_bonanza_-_unit_1_psd_-_sob_12-3-14.pdf) (last accessed Jan. 7, 2015) and [http://www2.epa.gov/sites/production/files/2014-12/documents/deseret\\_bonanza\\_-\\_unit\\_1\\_psd\\_-\\_draft\\_correction\\_permit\\_12-3-14.pdf](http://www2.epa.gov/sites/production/files/2014-12/documents/deseret_bonanza_-_unit_1_psd_-_draft_correction_permit_12-3-14.pdf) (last accessed Jan. 7, 2015). Unfortunately, EPA’s preferred course of action squarely defies Title V.

The basis for EPA’s preferred course of action stems from the agency’s belief that in reissuing the PSD permit for the Bonanza Plant in 2001, it erred by “rel[ying] on a faulty analysis conducted by the State [of Utah] and [by not] conduct[ing] a complete, independent analysis of whether the ruggedized rotor project was subject to PSD review based on the regulations in place at that time[.]” AR Doc. 082 at 36. To this end, EPA somehow believes that

the 2001 PSD permit condones or otherwise shields Deseret from PSD liability. This perspective, however, is misplaced.

To begin with, the 2001 PSD permit was issued clearly based on Deseret's inaccurate representation to both EPA and the State of Utah that the ruggedized rotor project would decrease NO<sub>x</sub> emissions. *See e.g.* Exhibit 2 at 2 (Deseret's representation that the ruggedized rotor project would "significantly" reduce NO<sub>x</sub> emissions). As the 2001 permit states, "This Permit is issued in reliance upon the accuracy and completeness of the information set forth in the application to the State of Utah and that provided by EPA." AR Doc. 026 at 6. The accuracy and completeness of the information, however, was clearly erroneous and EPA cannot be at fault for reasonably relying on purportedly legitimate data. In fact, PSD rules in place at the time put the responsibility on Deseret to submit accurate information necessary to determine the applicability of PSD. *See* 40 C.F.R. § 52.21(n) (2000) (requiring sources to "submit all information necessary to perform any analysis or make any determination required under this section."). EPA cannot be expected to second-guess all information submitted by sources and nothing in the PSD rules indicates that permitting authorities shoulder such a burdensome duty.<sup>4</sup> On the contrary, the duty to comply with PSD, including the duty to accurately calculate pre-project actual and post-project potential emissions, falls squarely on the shoulders of sources.

Guardians acknowledges that the 2001 permit states that it "pertains" to the 2000 ruggedized rotor project. AR Doc. 026 at 6. However, the permit clearly only pertains insofar as Deseret asserted the project was not a major modification. Again, as EPA expressly

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<sup>4</sup> The Clean Air Act in fact appears to carry a significant presumption that sources will strive to submit accurate data. Notably, the law actually provides for criminal penalties for "[a]ny person who knowingly makes any false material statement, representation, or certification in, or omits material information from, or knowingly alters conceals, or fails to file or maintain any notice, application, record, report, plan, or other document required pursuant to this chapter to be either filed or maintained." 42 U.S.C. § 7413(c)(2)(A).

acknowledged, it accepted Deseret's representations at the time as valid. While permitting the ruggedized rotor project, it did so under the reasonable belief that PSD was not previously triggered. For the EPA to assert that simply by "pertaining" to the 2000 ruggedized rotor project, the PSD permit universally shields Deseret for its misdeeds is completely groundless.

Indeed, permits do not and cannot serve to shield liability in such an extreme way. If sources could submit inaccurate information and legitimize illegal actions by securing permits, it would completely undermine the PSD permitting program and foster an unhealthy atmosphere of rampant noncompliance. It is telling the 2001 permit itself expressly states that it "does not release the Permittee from any liability for compliance with other applicable federal and Tribal environmental law and regulations, including the Clean Air Act." AR Doc. 026 at 23.

Regardless, the 2001 PSD permit, mistaken or not, simply does not override the fact that Deseret undertook a major modification of the Bonanza Power Plant without applying for, obtaining, and complying with a PSD permit. The issuance of the 2001 permit did not somehow erase Deseret's liability or otherwise remedy the noncompliance. This is plainly confirmed by the EPA's own move to "correct" the 2001 PSD permit. To this end, the 2001 permit did not override the EPA's duty to issue a Title V permit that assured compliance with PSD and included an appropriate schedule of compliance.

To be certain, it could be argued that in issuing a "corrected" PSD permit, the EPA is functionally complying with Title V. Although Guardians' position is that EPA lacks legal authority to issue a novel "corrected" PSD permit, the fact remains that the agency's chosen path does not remotely substitute for compliance with Title V. For one thing, Deseret must submit an application for a PSD permit in accordance with 40 C.F.R. § 124.3(a)(1). Not only is the duty to submit an application an applicable requirement under the Clean Air Act, but an application is

also necessary to ensure proper EPA review and disposition of the permit pursuant to 40 C.F.R. §§ 124.3(c) and (c). Furthermore, if EPA would have drafted a permit in accordance with Title V, a schedule of compliance with remedial measures and an enforceable sequence of actions, such as deadlines, would have been included to bring the Bonanza Plant into compliance with PSD. Currently, no remedial measures are actually required in the Title V permit and EPA is under no deadline to complete its “corrected” PSD permit or to incorporate any new requirements into the Title V permit.<sup>5</sup>

EPA asserts that it is “not appropriate or equitable” to address PSD compliance in the Title V permit. However, considerations of “equitability” and “appropriateness” do not trump the agency’s foremost duty to assure a Title V permit ensures compliance with applicable requirements under the Clean Air Act. *See* 42 U.S.C. § 7661c(a) (Title V permits “shall” include “conditions necessary to assure compliance with applicable requirements”). The failure of EPA Region 8 to issue a Title V permit that assures the Bonanza Plant operates into compliance with applicable PSD requirements and that includes a legally required schedule of compliance is therefore based on a finding of fact or conclusion of law which is clearly erroneous. The EAB must either vacate the Title V permit or remand to the agency and order that the Title V permit be revised to ensure the Bonanza Plant operates in full compliance with the Clean Air Act.

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<sup>5</sup> We also are concerned that the “corrected” PSD permit does not appear on track to bring the Bonanza Plant into full compliance with PSD. According to EPA, a new permit is not being issued. Rather, the agency is only “correcting” a previously issued permit. To this end, EPA has proposed to issue the permit based on an analysis of “what would have been required of the Deseret plant at the time of the [2001] permitting action.” Exhibit 3 at 8. Accordingly, EPA has proposed a new emission rate for NO<sub>x</sub> that is actually higher than what is currently considered BACT. As the EPA acknowledges, current selective catalytic reduction systems can achieve emission rates of 0.05 lbs./mmBtu on a 30-day basis. *Id.* at 47. However, the agency has proposed to require Deseret to meet a NO<sub>x</sub> emission rate of 0.28 lbs/mmBtu over 30 days as BACT. *Id.* at 73.

**II. The Title V permit Fails to Ensure the Bonanza Plant Operates in Compliance with Represented Heat Input Rates Set forth in Deseret's PSD Permit Application and to Include a Schedule of Compliance to Bring the Plant into Compliance**

In issuing the Title V permit, EPA inappropriately rejected Guardians' comments that the Bonanza Plant is operating out of compliance with heat input rates represented in Deseret's PSD permit application, in violation of 40 C.F.R. § 52.21(r)(1), an applicable requirement. In doing so, the agency failed to acknowledge ongoing violations of heat input rates, to include a schedule of compliance to address the ongoing violations, and to otherwise ensure the Plant operates in compliance with represented heat input rates.

Heat input, which is measured on a mmBtu/hour basis, is basically a measure of coal consumption. It is significant given that emission limits for the Bonanza Plant are based upon heat input. For example, PM<sub>10</sub> emissions are limited to no more than 0.0286 lbs. per mmBtu, SO<sub>2</sub> emissions are limited to no more than 1.2 pounds per mmBtu, and NO<sub>x</sub> emissions are limited to 0.55 lbs. per mmBtu. The higher the heat input, or coal usage, the more emissions come from the Plant. The EPA has explicitly acknowledged that at the Bonanza Plant, an increase in heat input capacity would lead to an expected "increase in NO<sub>x</sub> emissions." AR Doc. 082 at 44.

Here, in applying for its original PSD permit, Deseret represented that the Bonanza Plant would be operated at a "design heat input" rate of 4,055 mmBtu/hour. AR Doc. 002 at Application Analysis 2 (PDF page 27). As the company noted in a 1994 letter to the State of Utah, this presumed heat input rate of 4,055 mmBtu/hour, which was represented in a 1980 application, was "used for air quality modeling." Exhibit 5, Letter from Deseret to Russell A. Roberts, Executive Secretary, Utah Air Quality Board, "Response to Utah Division of Air Quality's PSD Applicability/Major Modification Determination" (December 9, 1994) at 2. In



other words, based on an assumed heat input rate of 4,055 mmBtu/hour, Deseret represented, and the EPA agreed in issuing the 1981 PSD permit, that operation of the Bonanza Plant would comply with all applicable PSD requirements, such as the protection of NAAQS.

This heat input rate was and continues to be enforceable pursuant to 40 C.F.R. § 52.21(r), which states that a source must operate in accordance “with the application submitted pursuant to this section” or be subject to “appropriate enforcement action.” Although EPA has asserted the 2001 PSD permit “replaced” the 1981 PSD permit, it does not appear that this rendered Deseret’s 1980 permit application null and void. For one thing, Deseret never submitted a new application to EPA in conjunction with the 2001 PSD permit that would otherwise supplant its 1980 permit application. Additionally, EPA expressly stated in the 2001 permit that Deseret’s “original Permit applications,” including its 1980 application, are among the documents that “constitute the basis for the conditions” in the permit. AR Doc. 4.

As the permit application assumed the plant would operate at a 4,055 mmBtu per hour heat input rate, Deseret was and continues to be obligated to operate the Bonanza Plant consistent with this assumption in accordance with 40 C.F.R. § 52.21(r)(1). This is especially true given that compliance with PSD requirements was premised upon the 4,055 mmBtu per hour heat input rate. If Deseret were allowed to exceed this heat input rate, then there would be no assurance that the Bonanza Plant would not jeopardize the NAAQS or other air quality standards, or comply with other applicable PSD requirements.

Despite the fact that Deseret has been bound to operate the Bonanza Plant consistent with a heat input rate of 4,055 mmBtu per hour, a review of data reported by the company to the EPA’s Air Markets Program Database (available online at <http://ampd.epa.gov/ampd/> (last viewed Jan. 7, 2015)) indicates that this heat input rate has been and continues to be violated

thousands upon thousands of times. Essentially, Deseret has been burning more coal than it has represented it would.

As Guardians disclosed in its comments, just in 2013, the 4,055 mmBtu/hour heat input rate was violated 6,658 times. AR Doc. 110 at 24. These violations show no sign of relenting. Although Deseret has yet to submit all its 2014 data to EPA's Air Markets Program Database, an assessment of heat input just from January 1<sup>st</sup> to March 31<sup>st</sup> indicates the 4,055 mmBtu/hour rate was violated more than 2,000 times, more than 90% of the Plant's operating hours. *See* Exhibit 6, Heat Input Data for Bonanza Plant from EPA Air Markets Program Database, Jan. 1, 2014-March 31, 2014. During this time, heat input frequently exceeded 5,000 mmBtu/hour and peaked at 5,304.2 mmBtu for an hour on March 28, 2014. It appears more likely than not that Deseret was in violation of this heat input rate when the Title V permit was issued.

In the alternative, it could be that a higher heat input rate of 4,578 mmBtu/hour may apply. Deseret has represented on numerous occasions and EPA has acknowledged the heat input capacity of the Bonanza Plant's boiler to be 4,578 mmBtu per hour. *See* AR Doc. 026 at 2 (boiler rated "at about 4578 MMBTU/hr); *see also* AR Doc. 082 at 2, AR Doc. 138 at 9 ("heat input capacity of about 4,578 MMBtu/hr"). This heat input capacity was initially presented in Deseret's application to the State of Utah for the ruggedized rotor project and "approved" in 1998. *See* AR Doc. 014 at 3. As part of this "permitting" action, the heat input capacity was "raised" from 4,381 to 4,578 mmBtu/hr. *Id.* The EPA's 2001 permit "pertains" to this permitting action and could be interpreted to have accordingly incorporated Deseret's application to the State of Utah. AR Doc. 026 at 3. Even in its most recent Title V permit application, Deseret stated, "As referenced in the State of Utah Approval Order DAQE-186-98 dated March 16, 1998 and the PSD permit PSD-UO-0001-2001:00 dated February 2, 2001, potential

emissions are calculated based on average heat input of about 4,578 mmBtu/hr[.]” AR Doc. 049 at D-5.

However, even if a heat input rate of 4,578 mmbtu/hr is presumed to the capacity of the Bonanza Plant, Deseret regularly violates even this limit. Between January 1 and March 31 of 2014 alone, this limit was violated more than 1,700 times. *See* Exhibit 6.

Unfortunately, the Title V permit does not address these ongoing violations of 40 C.F.R. § 52.21(r)(1), whether based on the 4,055 mmbtu/hr heat input rate or the 4,578 mmBtu/hour rate. The permit is not written to ensure that this applicable requirement is met and does not contain a schedule of compliance to bring the Bonanza Plant into compliance. In response to this issue, EPA primarily responded that it does not believe that an exceedance of any heat rate would constitute a violation, asserting “[t]here is no limit on heat input rate in the 2001 PSD permit (nor in the 1981 PSD permit[.]].” AR Doc. 134 at 30. However, the issue here is not whether there is an explicit limit in the PSD permits, the issue here is whether Deseret is bound to adhere to its PSD permit application. According to 40 C.F.R. § 52.21(r)(1), the company is bound to operate in accordance with its application. The rule explicitly requires sources to comply both with the terms of their PSD permits *and* with their application. The EPA’s refusal to acknowledge this applicable requirement only underscores the shortcoming of the Title V permit.

EPA finally asserts that it cannot limit heat input because it “does not have the authority to create such a limit.” AR Doc. 134 at 30. This simply misses the point. The issue here is not whether a new limit should be adopted, but whether the Title V permit assures Deseret operates the Bonanza Plant consistent with 40 C.F.R. § 52.21(r)(1), an applicable requirement.

Necessarily, the Title V permit must, in some way, limit the heat input rate in order to ensure the

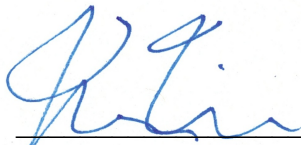
Plant is operated in compliance with PSD rules and include a schedule of compliance to achieve this outcome.

The failure of EPA Region 8 to issue a Title V permit that assures the Bonanza Plant operates in compliance with represented heat input rates in accordance with 40 C.F.R. § 52.21(r)(1) and that includes a legally required schedule of compliance to bring the facility into compliance is based on a finding of fact or conclusion of law which is clearly erroneous. Thus, the EAB must either vacate the permit or remand to the agency and order that the Title V permit be revised to ensure the Bonanza Plant operates in full compliance with the Clean Air Act.

### **CONCLUSION**

The Title V permit for the Bonanza Plant fails to ensure compliance with applicable requirements under the Clean Air Act. WildEarth Guardians requests the EAB review whether the EPA erred in its factual and legal conclusions by not adequately addressing outstanding PSD compliance issues. Guardians requests the EAB either vacate the Title V permit based on the aforementioned deficiencies or remand to the EPA to address the aforementioned deficiencies and approve a Title V permit that fully complies with the Clean Air Act.

Respectfully submitted this 7<sup>th</sup> day of January 2015



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## TABLE OF EXHIBITS

1. EPA, “Toxic Release Inventory Data for Bonanza Power Plant,” website available at [http://oaspub.epa.gov/enviro/tris\\_control.tris\\_print?tris\\_id=84078BNNZP12500](http://oaspub.epa.gov/enviro/tris_control.tris_print?tris_id=84078BNNZP12500) (last accessed Jan. 7, 2015).
2. Deseret Generation and Transmission Co-operative, “Request for Approval Order for DG&T Bonanza Unit (1) Emission Limits and Ruggedized Rotor Project, Uintah County” (Aug. 4, 197).
3. EPA, Statement of Basis, Draft Air Pollution Control Prevention of Significant Deterioration permit to Construct, PSD-UO-000004-2014.003 (Dec. 4, 2014), available online at [http://www2.epa.gov/sites/production/files/2014-12/documents/deseret\\_bonanza\\_-\\_unit\\_1\\_psd\\_-\\_sob\\_12-3-14.pdf](http://www2.epa.gov/sites/production/files/2014-12/documents/deseret_bonanza_-_unit_1_psd_-_sob_12-3-14.pdf) (last accessed Jan. 7, 2015).
4. EPA, Draft Air Pollution Control Prevention of Significant Deterioration permit to Construct, PSD-UO-000004-2014.003 (Dec. 4, 2014), available online at [http://www2.epa.gov/sites/production/files/2014-12/documents/deseret\\_bonanza\\_-\\_unit\\_1\\_psd\\_-\\_draft\\_correction\\_permit\\_12-3-14.pdf](http://www2.epa.gov/sites/production/files/2014-12/documents/deseret_bonanza_-_unit_1_psd_-_draft_correction_permit_12-3-14.pdf) (last accessed Jan. 7, 2015).
5. Letter from Deseret to Russell A. Roberts, Executive Secretary, Utah Air Quality Board, “Response to Utah Division of Air Quality’s PSD Applicability/Major Modification Determination” (December 9, 1994).
6. Heat Input Data for Bonanza Plant from EPA Air Markets Program Database, Jan. 1, 2014-March 31, 2014.

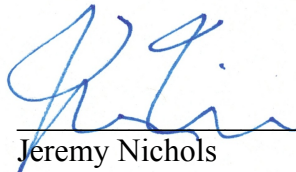
## CERTIFICATE OF SERVICE

I certify that on January 7, 2015, I served this Petition for Review electronically via the Environmental Appeals Board's eFiling system. This Petition will also be served by priority U.S. mail within one business day to:

U.S. Environmental Protection Agency  
Clerk of the Board, Environmental Appeals Board  
1200 Pennsylvania Ave., NW  
Washington, D.C. 20460

Deseret Power Electric Cooperative  
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South Jordan, UT 84095

Shaun McGrath  
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1595 Wynkoop  
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