

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

In re:)	
)	
GENERAL ELECTRIC COMPANY)	RCRA Appeal Nos. 16-01, 16-02,
)	16-03, 16-04, and 16-05
)	
Modification of RCRA Corrective Action)	
Permit No. MAD002084093)	

**GENERAL ELECTRIC COMPANY’S OPPOSITION TO HOUSATONIC
REST OF RIVER MUNICIPAL COMMITTEE’S MOTION FOR
EXTENSION OF TIME TO FILE AMICUS BRIEFS**

The General Electric Company (GE) opposes the Housatonic Rest of River Municipal Committee’s February 14, 2017 Motion for Extension of Time to File Amicus Briefs because such an extension would facilitate the circumvention of this Board’s prior orders in this matter, giving the Municipal Committee the opportunity to submit an additional brief to which none of the other parties to this proceeding, including GE, would be able to reply. The Municipal Committee’s motion is also untimely given the Board’s prior long-standing scheduling orders. Finally, to the extent that the Municipal Committee purports to seek an extension of the current deadline for amicus briefs on behalf of unspecified third parties, the Municipal Committee has no standing to make such a motion.

If the Board grants the Municipal Committee’s motion, GE should have adequate time to file a reply to that brief (as discussed below), and the relief granted should apply only to the Municipal Committee.

The basis for GE’s position is as follows:

On January 22, 2017, the Municipal Committee filed a motion requesting both that the Board set a common deadline for replies to the responses filed to the petitions by the Municipal Committee, GE, and others in the Rest-of-River matter, and that the time for those replies be extended. That Municipal Committee's motion made no reference to the possibility that, despite the fact that it had submitted a petition of its own, it might also seek to file an amicus brief as an "interested party" pursuant to 40 C.F.R. § 124.19(e).

In response to the Municipal Committee's January motion, as well as a motion by the EPA Region, the Board entered an order establishing an orderly schedule for what the Board, and all other parties, understood to be the briefing remaining in this matter – *i.e.*, the filing of response briefs (including with respect to the Municipal Committee's and GE's petitions) on February 14, 2017, and the filing of reply briefs (including by the Municipal Committee and GE) by March 27, 2017. Since the Municipal Committee did not mention the filing of an amicus brief, the Board's order did not set a schedule for the filing of amicus briefs by any of the parties to the proceeding.

On the same date that response briefs were due, the Municipal Committee filed a motion announcing its plans to file an amicus brief in support of part of the Region's remedy, and requesting an extension of time to do so until the same date established by the Board's order for the filing of reply briefs. The Municipal Committee, which is already a party, has offered no explanation of what it would say in that amicus brief, nor has it explained why it waited until the response briefs were already filed to share with the Board and the other parties to these proceedings its intention to submit what is, in essence, another response brief. GE recognizes that the Board's rules generally allow any "interested party" to submit an amicus brief. 40 C.F.R. § 124.19(e). However, as this Board has already noted on several occasions, the Rest-of-

River matter involves “unusual circumstances” in terms of the complexity of the issues, the number of petitions, and the extensive record. *See, e.g.*, EAB orders in this case dated November 22, 2016 and January 24, 2017. The Board has accounted for the uniqueness of this case in its scheduling orders. Therefore, equity and economy require that the Municipal Committee not be rewarded for its lack of earlier candor about its intentions by an extension of time to file an amicus brief in addition to the other pleadings anticipated in this matter.

If the Municipal Committee’s motion is granted, one, and only one, of the petitioners in this case, the Municipal Committee, would be permitted to file what is in effect a response to one or more of the petitions after all of the other responses to petitions have been filed, and at the same time as any replies – without GE or any of the other petitioners having the opportunity to reply to the arguments in that brief. That is unjust and inconsistent with the spirit and substance of the Board’s prior orders.

If the Board chooses to grant the Municipal Committee the requested extension of time to file an amicus brief in addition to its petition and reply, GE must have a sufficient opportunity to reply.¹ GE’s counsel have already made travel and vacation plans for the last week of March, when briefing was to have been completed pursuant to the Board’s prior orders. Therefore, if the Board grants the Municipal Committee’s motion, GE requests a total of three weeks – until April 17, 2017 – to submit a reply to the Municipal Committee’s additional brief.

¹ In other cases, the Board has allowed for replies or responses to amicus briefs. *See, e.g., In re Town of Newmarket Wastewater Treatment*, NPDES Appeal No. 12-05 (EAB order, Feb. 7, 2013); *In re Peabody Western Coal Co.*, CAA Appeal No. 11-01 (EAB order, Sept. 21, 2011); *In re BP America Production Company, Florida River Compression Facility*, CAA Appeal No. 10-04 (EAB order, March 11, 2011).

Respectfully submitted,

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Dated: February 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February, 2017, I served one copy of the foregoing General Electric Company's Response to Housatonic Rest of River Municipal Committee's Motion for Extension of Time to File Amicus Briefs on each of the following:

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