

2008 OCT -9 AM 11:16

ENVIR. APPEALS BOARD

Douglas C. MacCourt
Direct Dial: 503-226-8672
E-Mail: dcm@aterwynne.com

October 8, 2008

VIA UPS OVERNIGHT

U.S. Environmental Protection Agency
Clerk of the Board
Environmental Appeals Board
Colorado Building
1341 "G" Street, N.W., Suite 600
Washington, D.C. 20005

Re: Desert Rock Energy Company, LLC
PSD Appeal Nos. 08-03 and 08-04
PSD Permit No. AZP 04-01

Dear Clerk of the Board:

Enclosed are an original and five copies of a Motion to Participate on behalf of Diné Power Authority, LLC, in the above referenced matter. Also enclosed is an extra copy of the Motion to Participate, along with a self-addressed, stamped envelope, which we ask that you file stamp and return to our office.

Please feel free to contact me if you have any questions.

Very truly yours,



Douglas C. MacCourt

Enclosures

cc: Service List
Diné Power Authority

384832/1/MJS/100334-0005

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

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ENVIR. APPEALS BOARD

IN THE MATTER OF:

DESERT ROCK ENERGY COMPANY, LLC

PSD PERMIT NO. AZP 04-01

PSD APPEAL NOS. 08-03 and 08-04

MOTION TO PARTICIPATE

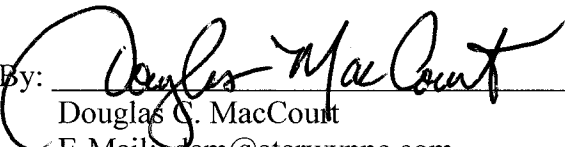
Diné Power Authority (“Diné Power”) requests leave to participate in the above captioned proceeding. Diné Power has notified all parties of this Motion. The Environmental Protection Agency (“EPA”) headquarters, EPA Region 9, and the Applicant, do not oppose participation by Diné Power in this EAB Proceeding. The State of New Mexico and the Center for Biological Diversity have indicated that they will remain neutral and not take a position on this Motion. The Natural Resources Defense Council, Clean Air Task Force, Environmental Defense Fund, Grand Canyon Trust, San Juan Citizens Alliance, Sierra Club, WildEarth Guardians, Leslie Glustrom, and Diné Care, have indicated that they reserve their rights to object in the future to Diné Power’s participation.

Diné Power was established by the Navajo Nation Council pursuant to Resolution CN-87-85 and CJA-2-96, codified at 21 Navajo Nation Code (NNC) § 201, *et seq.*, as an enterprise of the Navajo Nation. Diné Power is an instrumentality of the Navajo Nation, subject to the control of oversight authorities delegated by the Navajo Nation Council. Pursuant to this authority, the Navajo Nation Council authorized and approved Diné Power to develop the Desert Rock project. Diné Power, along with the Navajo people who may receive jobs, income and other benefits from the project, is the ultimate beneficiary of the Desert Rock project.

The permit at issue in this matter relates to a coal-fired power plant on land held by the United States Government in trust for the benefit of the Navajo Nation. Diné Power is a sponsor and co-developer of the plant on Navajo trust land along with Desert Rock Energy Company, LLC ("Desert Rock"). In addition, Diné Power was a co-plaintiff with Desert Rock in a recent action pursuant to section 304(a) of the Clean Air Act ("CAA"), 42 U.S.C. § 7604(a), which resulted in EPA issuing the permit. *See Desert Rock Energy Company, LLC, et al. v. U.S. Environmental Protection Agency, et al.*, U.S. District Court for the Southern District of Texas, Houston Division, Civil Action No. 4:08-CV-872. On August 20, 2008, Desert Rock filed a similar motion to participate in this proceeding in accordance with Section III.D.4 of the Environmental Appeals Board ("EAB" or "Board") Practice Manual. On August 21, 2008, the EAB granted Desert Rock's motion. For the reasons set forth therein, and in its capacity as co-developer and ultimate beneficiary of the plant, and co-plaintiff in the underlying EPA action, Diné Power respectfully requests that it, too, be allowed to participate.

DATED this 8th day of October, 2008.

ATER WYNNE LLP
222 SW Columbia, Suite 1800
Portland, Oregon 97201-6618

By: 
Douglas C. MacCourt
E-Mail: dcm@aterwynne.com
Michael J. (Sam) Sandmire
E-Mail: mjs@aterwynne.com
Tel: 503/226-1191; Fax: 503/226-0079

Attorneys for Diné Power Authority

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing MOTION TO PARTICIPATE on the following:

Jeffrey R. Holmstead
Richard Alonso
Bracewell & Giuliani LLP
2000 K Street, N.W.
Washington, D.C. 20006
Attorneys for Desert Rock Energy
Company, LLC

Nicholas Persampieri
Earthjustice
1400 Glenarm Place, Suite 300
Denver, CO 80202

Brian Doster
U.S. Environmental Protection Agency
Office of General Counsel
Air and Radiation Law Office
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Kevin Lynch
Environmental Defense Fund
Climate and Air Program
2334 N. Broadway
Boulder, CO 80304

John Barth
P.O. Box 409
Hygiene, CO 80533

Amy R. Atwood, Senior Attorney
Public Lands Program
Center for Biological Diversity
P.O. Box 11374
Portland, OR 97211-0347

Seth T. Cohen
Assistant Attorney General
Office of the Attorney General of
New Mexico
Water, Environment and Utilities Division
P.O. Drawer 1508
Santa Fe, NM 87504-1508

Ann Brewster Weeks
Clean Air Task Force
18 Tremont Street, Suite 530
Boston, MA 02108

Deborah Jordan
Director, Air Division (ATTN: AIR-3)
EPA Region 9
75 Hawthorne Street
San Francisco, CA 94105-3901

Patrice Simms
Natural Resources Defense Council
1200 New York Avenue NW, Suite 400
Washington, D.C. 20005

Leslie Barnhart
Eric Ames
Special Assistant Attorneys General
New Mexico Environment Dept.
P.O. Box 26110
Santa Fe, NM 87502-6110


Leslie Glustrom
4492 Burr Place
Boulder, CO 80303

CERTIFICATE OF SERVICE

Mark Wenzler
Director, Clean Air and Climate
Programs
National Parks Conservation
Association
1300 19th Street NW, Suite 300
Washington DC 20036

by mailing; hand delivery; facsimile a true and correct copy thereof to said parties on the date stated below.

DATED this 8th day of October, 2008



Douglas C. MacCourt
Attorneys for Diné Power Authority

CERTIFICATE OF SERVICE

ATER WYNNE LLP
222 SW COLUMBIA, SUITE 1800
PORTLAND, OR 97201-6618
(503) 226-1191

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