

process lasts, the greater the risks to system reliability and APS's ability to address its customers' interconnection of distributed renewable resources.

Expedited review is also justified legally. The CAA recognizes that Prevention of Significant Deterioration ("PSD") permits are time-sensitive, and this principle is reflected in numerous places. The CAA sets a one-year time limit from when a complete PSD application is filed until when the final decision on the PSD permit is issued, including administrative appeals to the Board. Likewise, the Board's regulations and policies emphasize the time-sensitivity of PSD administrative appeals.

Thus, APS requests the Board expedite a decision on this PSD appeal to the greatest extent practicable.

BACKGROUND

On April 14, 2014, APS applied for a PSD permit to replace two existing 110 MW steam generators with five new 100 MW natural gas simple-cycle turbines at its Ocotillo Power Plant. MCAQD's Response to Comments, Exhibit A, at 1. The PSD permitting authority here is the MCAQD, which is delegated by EPA to issue PSD permits in Maricopa County in Arizona. After nearly a year of extensive review of the application and supporting materials, MCAQD released a draft permit for public comment, including a draft Technical Support Document, on March 4, 2015. *Id.* at 3. In April of 2015, Sierra Club filed comments on the draft permit. *See* Exhibit 4 to Sierra Club's Petition for Review.

After considering the comments on the draft permit, MCAQD requested APS provide responses and submit a revised PSD permit application for the Ocotillo project. APS submitted its amended application in September of 2015, which included an "updated GHG BACT analysis and emergency generator information." Amended Application, Exhibit B, at 1. On December 8,

2015, MCAQD confirmed the amended application was complete. Letter from Henry Krautter, Permit Engineer, MCAQD Air Quality Department, to Dennis Irvin, Plant Manager, APS Ocotillo Power Plant (Dec. 8, 2015), Exhibit C, at 1. MCAQD released a revised draft permit for public comment on December 15, 2015, along with a revised Technical Support Document. MCAQD's Response to Comments, Exhibit A, at 4. No comments were received on the revised draft permit. *Id.* at 1.

MCAQD issued PSD Permit PSD16-01 to APS on March 22, 2016. Simultaneously, MCAQD issued its response to the public comments received in April 2015. The final permit contained no substantive changes from the revised draft permit. *Id.* at 1. PSD Permit PSD 16-01 authorizes the following project:

Install five new natural gas-fired GE Model LMS100 simple cycle gas turbines (GTs) and associated equipment, including a hybrid Partial Dry Cooling System and two 2.5 MW emergency generators. Retire the existing steam electric generating units 1 and 2 and associated cooling towers before commencing commercial operation of the new GTs. The existing GT1 and GT2 will no longer have dual-fuel capability and will only burn Pipeline Natural Gas.

Final Permit, Exhibit D, at 9.

On April 21, 2016, Sierra Club filed a petition for review of PSD Permit PSD16-01. The petition seeks review of two discrete issues. The first challenges the BACT analysis for greenhouse gases, and the second challenges MCAQD's response to Sierra Club's April 2015 comments on the original draft permit. Sierra Club's Petition for Review, at 11.

ARGUMENT

I. Time is of the Essence for the Ocotillo Modernization Project.

Prompt review is important in this case. The Ocotillo Modernization Project is critical to ensuring continued reliability, especially as more renewable generation sources are added to the

grid. This project provides fast-ramp capability, which is already needed for APS to ensure the reliability of the system and meet National Electric Reliability Corporation (“NERC”) standards for frequency response capability. *See* MCAQD’s Response to Comments, Exhibit A, at 12 (“The Project is being proposed to provide quick start and power escalation capability over the range of 25 MW to 500 MW to meet changing and peak power demands and mitigate grid instability caused by the intermittency of renewable energy generation.”); *id.* at 15 (stating that APS currently has 1,206 MW of renewable generation, of which 300-400 is rooftop solar in the Phoenix metropolitan area and Maricopa County).¹ This need is further amplified by the steady increase of renewable energy connected to the APS grid, especially rooftop solar systems. *Id.* at 11 (stating the capability this project provides “is not only very important for normal grid stability, but also absolutely necessary to integrate with and fully realize the benefits of distributed energy, such as, solar power and other renewable resources”). In fact, APS currently receives approximately 1,300 applications for new rooftop solar installations each month, with over 1,000 of these applications resulting in an eventual interconnection to the APS grid, and APS expects the pace of these installations to only accelerate.

In order to integrate these growing renewable energy resources, which are intermittently available and not subject to dispatch controls, APS needs additional fast-ramp generation capacity to cover sudden drops in renewable output without risking reliability. *See id.* at 15 (noting 46 MW additional renewable generation in development by APS). Therefore, additional delays to this project threaten the existing and future reliability of the system and endanger the ability of APS to manage the introduction of additional renewable energy, particularly distributed solar systems, to the generation mix supplied by APS. *See id.* at 3 (“The proposed

¹ This reflects approximately 3% of APS’s customer base.

LMS100 GTs have the quick start and power escalation capability that is necessary to meet changing power demands and mitigate grid instability caused by the intermittency of renewable energy generation.”).

Timely construction is also essential because the project is integral to the geographic balancing of load serving capability. Load serving capacity in the region has or will decrease as the result of coal-fired generation retirements. For example, Cholla Unit 2 retired just this past October, and retirements or reductions in capacity are expected at Navajo Generating Station sometime by 2019. The available transmission and distribution infrastructure are built and operated on the current geographic balance of generation. If this review is not expedited, however, and this project is further delayed, those systems will not work as intended and could suffer negative imbalances.

Significantly, 2019 is also the year that APS must complete construction of this project under the terms of its Certificate of Environmental Compatibility, which was granted for this project on September 19, 2014. Certificate of Environmental Compatibility, Exhibit E, at 3 (condition of CEC is that project must be “operable and connected to the grid” within five years from the date the CEC was approved). Without the ability to begin construction soon, APS may come uncomfortably close to this deadline or be at risk of exceeding it. Construction on the project cannot begin until the permit is final, thereby increasing the likelihood that APS will be unable to complete construction and have this generation available by the time Navajo Generating Station substantially reduces its capacity.

Further, delay would have financial impacts to APS and rate-payers. Prolonged construction would increase the costs of the overall project, as would any replacement power that APS must purchase to cover the reliability needs while this project is under construction. These

costs will be passed on to the rate-payers. It is in the public interest for the Board to conduct its review here as expeditiously as is prudent, so that the generation resources already planned to address the existing and future demand (and corresponding reliability issues) can do so at the lowest cost to the customers of APS.

II. Expedited Review is Warranted by the PSD Deadline in the CAA and by EAB Regulations and Policy.

In addition to the project-specific reasons to expedite this appeal, both the letter and spirit of the Clean Air Act's one-year limit are implicated here. *See* 42 U.S.C. § 7475(c) ("Any completed permit application . . . shall be granted or denied not later than one year after the date of filing of such completed application."). The clock begins to run on the date a complete application was filed. *Id.* This Congressionally-mandated deadline is critically important. S. Rep. No. 95-127, at 32 (1977), reprinted in 3 Comm. on Env't and Public Works, Legislative History of the Clean Air Act Amendments of 1977, at 1406 (1978) ("The committee does not intend that the permit process to prevent significant deterioration should become a vehicle for inaction and delay. . . . Nothing could be more detrimental to the intent of this section and the integrity of this act than to have the process encumbered by bureaucratic delay.>").

EAB's review is included in the one-year period. 40 C.F.R. §§ 124.15(b); 124.19(l)(2); *Avenal Power, LLC v. U.S. EPA*, 787 F. Supp. 2d 1, 3-4 (D.D.C. 2011). Thus, EAB has adopted procedures and policies to ensure the prompt disposition of PSD appeals. EAB's Standing Order states that "NSR permits are time-sensitive because new source construction cannot begin prior to receiving a final permit. . . . Due to the time-sensitive nature of NSR appeals, the Board gives its highest priority to the timely resolution of NSR cases relative to other matters on the Board's docket." Revised Order Governing Petitions on Review of Clean Air Act New Source Review Permits at 2 (Mar. 27, 2013). The Standing Order thus enables the Board to "use scheduling and

status conferences to expedite the filing of briefs, the narrowing of issues on appeal, and the resolution of cases.” *Id.* at 4. Correspondingly, EAB’s regulations include several provisions to “facilitate expeditious resolution of NSR appeals,” such as a presumption against the filing of reply or sur-reply briefs, 40 C.F.R. § 124.19(c)(1), and a presumption against oral argument, 40 C.F.R. § 124.19(h). *See also* 40 C.F.R. § 124.19(n) (stating that EAB “may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication of issues arising in an appeal under this part.”); *In re La Paloma Energy Center, LLC*, PSD Appeal No. 13-10, Order Scheduling Status Conference/Expedited Oral Argument (E.A.B. Jan. 15, 2014) (recognizing Board’s inherent discretion to manage its permit appeal docket by ruling on motions).

The permitting process has been thorough and lengthy for the Ocotillo permit. APS filed its initial application in April 2014. MCAQD worked diligently to evaluate the application and supporting materials and issued the initial draft permit and TSD on March 4, 2015.² After considering the comments received, MCAQD requested a revised application from APS and then issued a revised draft permit and TSD. This was done to assure that all issues were fully and comprehensively addressed.

Given the length of time that has already passed on this PSD permit, APS requests that the Board expedite its review to the maximum extent practicable. Expedited review here will fulfill and respect the Congressional purpose of the PSD program, the language of 42 U.S.C. § 7475(c), the Board’s regulations, and the Board’s Standing Order. This appeal appears to be the only PSD permit appeal currently pending before the Board. As such, APS requests that it receive priority under the Board’s Standing Order. In addition, there are only two discrete issues

² The one-year clock likely began to run on this date. Although no formal completeness determination had been issued, the issuance of a draft permit signifies that MCAQD deemed APS’s application to be complete as of that date because it had made a preliminary determination that the permit should be approved. *See* Maricopa County APCR § 303.2.

in this appeal, making it ripe for expedited review. Briefing should be complete by May 12, 2016. At that point, the Board may proceed to evaluate the petition on the merits, with a final decision as soon as feasible.

This case does not present obstacles that would impede expedited review. The issues are narrow, dealing only with the scope of the BACT analysis for greenhouse gases and with the adequacy of MCAQD's response to Sierra Club's comments on the initial draft permit. These are not issues of first impression. The challenged BACT analysis is strikingly similar to analyses the Board has upheld in other cases. *See, e.g., In re La Paloma*, PSD Appeal No. 13-20, Slip Op. (EAB Mar. 14, 2014), 16 E.A.D. ____ (upholding EPA Region 6 determination that adding solar thermal energy component to gas-fired plant would redefine source); *In re Pio Pico Energy Ctr.*, PSD Appeal Nos. 12-04 through 12-06, Slip Op. (EAB Aug. 2, 2013), 16 E.A.D. ____ (finding no error in permit issuer's ruling out combined-cycle gas turbines in place of simple cycle turbines for a proposed peaking and load-shaping source). *See also* EPA Region 6 Response to Public Comments for the South Texas Electric Cooperative, Inc.–Red Gate Power Plant PSD Permit for Greenhouse Gas Emissions, PSD-TX-1322-GHG (Nov. 2014), <http://www.epa.gov/region6/6pd/air/pd-r/ghg/stec-redgate-resp2sierra-club.pdf>Nov%2014 (stating that requiring energy storage options in lieu of, or in combination with, reciprocating internal combustion engines would redefine source).

Moreover, the Board routinely reviews challenges to the adequacy of the permitting authority's response to comments. *See, e.g., In re Prairie State Generating Co.*, PSD Appeal No. 05-05, 2006 EPA App. LEXIS 38 (EAB Aug. 24, 2006); *In re Steel Dynamics, Inc.*, 9 E.A.D. 165, 191 (EAB 2000). The briefs should leave few, if any, issues requiring further

clarification. If there are any unanswered questions, expedited oral argument is appropriate to clarify these issues.

CONCLUSION

WHEREFORE, APS respectfully requests that the Board expedite Sierra Club's petition for review. In so doing, APS requests the Board deny or strictly limit any motions for an extension of time, requests the Board deny any motion to file a reply brief, and requests the Board decline to hold oral argument unless required for clarification of vital issues to the petition for review.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

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