

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

In re:

Deseret Power Electric Cooperative,  
Bonanza Power Plant,

Permit No. V-UO-000004-00.00

Appeal Nos. CAA 15-01; CAA 15-02

**UNOPPOSED MOTION OF DESERET GENERATION & TRANSMISSION  
CO-OPERATIVE FOR LEAVE TO PARTICIPATE AS INTERVENOR  
AND TO RESPOND TO THE PETITIONS**

Permittee Deseret Generation & Transmission Co-operative (“Deseret”)<sup>1</sup> respectfully asks the Environmental Appeals Board (“Board”) for leave to participate as intervenor in the above-captioned proceeding in response to the Petitions submitted by WildEarth Guardians and Sierra Club (collectively, “Petitioners”) on January 7, 2015. The Petitions challenge the Title V Operating Permit issued by Environmental Protection Agency Region 8 (“EPA”) for Deseret’s Bonanza Power Plant, located on land deemed to lie within the undiminished boundaries of the Uintah & Ouray Indian Reservation in eastern Utah. Petitioners have requested that the Board remand the Title V permit to EPA with instructions to include additional requirements and/or to vacate the permit. Counsel for Deseret has conferred with counsel for Petitioners and EPA. All parties do not oppose this Motion.

The Board’s practice is to allow permit holders to intervene in and respond to third-party challenges to their permits. Although EPA’s Part 71 regulations governing Title V permit appeals do not explicitly address intervention by a permittee, the Board “typically allow[s] permittees not already a party to the proceeding to participate as intervenors.” EAB Practice

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<sup>1</sup> Deseret notes that the Title V permit at issue here—and, as a result, the caption of this case—incorrectly identifies “Deseret Power Electric Cooperative” as the permit applicant. Deseret Generation & Transmission Co-operative is the permit applicant and the owner of the Bonanza Power Plant.

Manual at 48 n.50 (citing cases); *see, e.g., In re: BP America Production Co.*, CAA Appeal No. 10-04 at 1 (EAB Dec. 20, 2010) (granting permittee leave to participate in third-party Title V permit appeal). Indeed, EPA recently revised its regulations governing appeal of final permit decisions under 40 C.F.R. § 124.19 to specifically provide a mechanism for a permittee to respond to a petition for review of its permit. 78 Fed. Reg. 5281, 5286 (Jan. 25, 2013); 40 C.F.R. § 124.19(b)(3). Here, Deseret should be permitted to intervene in these appeals on the following grounds.

1. Deseret has a direct and substantial interest in this appeal because Deseret is the owner of the Bonanza Plant and is the permit holder. Deseret's interests could be impaired by the outcome of this appeal if, as Petitioners request, new or additional obligations are imposed or the permit is vacated. Deseret's interests that could be impaired by this appeal include, among others, its large financial investment in the Bonanza Plant, its commitment to Deseret employees who work at the Bonanza Plant, and Deseret's many contractual obligations regarding the Bonanza Plant.

2. Deseret's participation in this proceeding will provide information and a perspective that would not be presented by the other parties to this appeal. Deseret has intimate knowledge of the Bonanza Plant, its construction and operation over time, its permitting history under both EPA and the Utah Division of Air Quality, and the ruggedized rotor project that EPA approved for the Bonanza Plant in 2001. This information may be relevant to Petitioners' claims on appeal that Deseret's Title V permit does not address all applicable requirements for the Bonanza Plant.

3. Although both EPA and Deseret will vigorously defend EPA's Title V permit decision, Deseret's economic and other interests in the Bonanza Plant differ from those of the

public represented by EPA. In similar cases, courts have found that it is “on its face impossible” for a government agency to adequately represent both the general interests of the public and the private interests of affected individuals. *Utahns for Better Transp. v. U.S. Dep’t of Transp.*, 295 F.3d 1111, 1117 (10th Cir. 2002) (internal quotation marks omitted). Here, Deseret’s participation is necessary to adequately represent its own interests in defending against the Petitions.

4. No party will be prejudiced by Deseret’s participation in these appeals. Deseret would participate and respond on the schedule established by the Board for EPA.

WHEREFORE, Deseret respectfully requests that the Board grant it leave to participate as intervenor in the above-captioned appeals and to file a response to the Petitions.

Respectfully submitted,

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*Counsel for Deseret Generation & Transmission  
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Dated: January 27, 2015

## CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of January, 2015 the foregoing Unopposed Motion of Deseret Generation & Transmission Co-Operative for Leave to Participate as Intervenor and to Respond to the Petitions, in the matter of *In re: Deseret Power Electric Cooperative, Bonanza Power Plant, Permit No. V-UO-000004-00.00*, Appeal Nos. CAA 15-01; CAA 15-02, was filed electronically with the Clerk of the Environmental Appeals Board using the EAB eFiling System, and that a copy of the foregoing was served by United Parcel Service on each of the following parties in this matter:

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