

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

In the Matter of Tucson Electric Power Irvington/H. Wilson Sundt Generating Station	Appeal No. PSD 18-02  Pima County Department of Environmental Quality PSD Permit No. 1052
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**MOTION FOR EXPEDITED REVIEW**

Pursuant to 40 C.F.R. § 124.19(f) and section IV.D.8 of the Environmental Appeals Board (“EAB” or “Board”) Practice Manual, permittee Tucson Electric power (“TEP”) respectfully files this motion requesting expedited review in this appeal. TEP has conferred with the other parties pursuant to 40 C.F.R. § 124.19(f)(2) and represents that Respondent Pima County Department of Environmental Quality (the “County”) does not oppose the motion and Petitioner Sierra Club does not support the motion.

As discussed below, it is imperative for the U.S. Environmental Protection Agency (“EPA” or “Agency”), acting through the County and this Board, to issue a final decision on TEP’s permit application without further delay. The Clean Air Act’s (“CAA”) one-year deadline for final action on TEP’s Prevention of Significant Deterioration (“PSD”) permit application—which includes this appeal—has already passed. *See* 42 U.S.C. § 7475(c). Prompt commencement and completion of TEP’s Irvington/H. Wilson Sundt Generating Station expansion project (the “Project”) is critical to ensure continued electric reliability in TEP’s service territory. The Project is necessary to support increasing quantities of variable generation from renewable resources scheduled to come online in the near future, and the longer that the permitting and review process lasts, the greater the risks to system reliability. While the older,

less responsive existing units at the plant can reliably back up the renewable generation currently integrated into TEP's system, they lack the ramping capability to follow the load swings that will result from scheduled additions of wind and solar generating capacity. The fast ramping capacity to be added in this Project must be online prior to full integration of these intermittent resources in order to follow these load swings and provide system voltage and frequency support. Accordingly, expedited review is warranted here to allow this Project to commence and to give effect to Congress's desire to minimize delay in PSD permit proceedings.

### **BACKGROUND**

On August 1, 2017, TEP applied for a PSD permit and a revision to its Class I permit<sup>1</sup> to carry out the Project. The Project would replace two existing 81 megawatt ("MW") steam generating units with up to 10 new natural gas-fired reciprocating internal combustion engines ("RICE"), each with a nominal net generating capacity of 19 MW (for a total of up to 190 MW), at TEP's Irvington/H. Wilson Sundt Generating Station in Tucson, Arizona. Application at 1-1, Pet. Ex. 3. The permitting authority for the Project is the County, which issues PSD permits pursuant to EPA-delegated authority for Pima County, Arizona.<sup>2</sup> The County deemed TEP's application complete on August 23, 2017.<sup>3</sup>

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<sup>1</sup> A Class I permit is a combined construction and operation permit issued under an approved state Title V permitting program. *See* 66 Fed. Reg. 63,175 (Dec. 5, 2001).

<sup>2</sup> *See* Agreement for Delegation of Source Review under the Federal Prevention of Significant Deterioration (PSD) Program Set Forth in 40 CFR 52.21 by the United States Environmental Protection Agency, Region 9 to the Pima County Air Quality Control District (June 5, 2018), *available at* [https://www.epa.gov/sites/production/files/2018-06/documents/pima\\_psd\\_delegation\\_agreement-2018-06-05.pdf](https://www.epa.gov/sites/production/files/2018-06/documents/pima_psd_delegation_agreement-2018-06-05.pdf).

<sup>3</sup> *See* Pima County Dep't of Env'tl. Quality Air Quality Permit Application Completeness Checklist for Class I (Aug. 23, 2017), *available at* [http://webcms.pima.gov/UserFiles/Servers/Server\\_6/File/Government/Environmental%20Quality/Air/TEP%20PSD%20Webpage/17-08-23-Administrative-Completeness-Checklist.pdf](http://webcms.pima.gov/UserFiles/Servers/Server_6/File/Government/Environmental%20Quality/Air/TEP%20PSD%20Webpage/17-08-23-Administrative-Completeness-Checklist.pdf).

The County released a draft permit and technical support document for public comment on February 9, 2018. Sierra Club filed comments on that draft permit on March 29, 2018. Sierra Club Comments, Pet. Ex. 1. Following the notice and comment period, the County issued a final permit, technical support document, and response to comments on August 8, 2018. *See* Pet. Ex. 2, 4, 5. Sierra Club filed its petition for review on September 7, 2018. The petition raises one narrow issue: whether the permit’s cap on total nitrogen oxide (“NOx”) emissions from the RICE units of 170 tons per year is practically enforceable. Pet. at 3.

## **ARGUMENT**

### **I. Time Is of the Essence for the Project.**

Prompt review is of the utmost importance for TEP and its customers. Completion of the Project is critical to ensuring continued reliability within the TEP system. The Project’s purpose is to provide fast ramping capacity to support the integration of additional intermittent renewable generation. Any delay caused by this appeal could jeopardize TEP’s ability to bring this fast ramping capacity on line in time to support new renewable energy sources that are already scheduled to become operational before the end of 2020.

As part of its long-term strategy to build a more responsive and sustainable resource portfolio, TEP plans to continue expanding its solar and wind generation with a goal of delivering at least 20 percent of its retail load from renewable sources by 2024 and 30 percent by 2030. Application at 2-1 & 2-2, Pet. Ex. 3. TEP anticipates adding about 800 MW of new utility-scale renewable energy capacity by 2030, and also supports increased development of distributed generation. *Id.* at 2-1. In the near term, 355 MW of solar and wind capacity is scheduled to be added to TEP’s system by the end of 2020. TEP, Renewable Buildout Forecast (Sept. 12, 2018) (Attachment 1).

Due to their intermittent nature, these renewable resources and distributed generation technologies increase intra-hour variability within the TEP system, necessitating more ramping capacity in order to maintain the minute-to-minute balance of load and generation and to maintain frequency and voltage control across the system. Application at 2-1, Pet. Ex. 3. To date, TEP has managed this variability by carrying higher levels of spinning reserves on the system from its existing generation assets and by adding some energy storage systems. *Id.* But the limited turndown capacity of many of TEP's existing generation assets, such as the two existing steam generating units that will be retired as part of the Project, results in costly and inefficient over-dispatch of these resources. *Id.* at 2-2. And in light of the planned renewable capacity additions discussed above and TEP's upcoming retirement of 508 MW of coal-fired capacity, additional fast ramping capacity is needed. *Id.*

The RICE units TEP has proposed to construct as part of this Project will serve that need. These units are uniquely designed to dispatch flexibly in order to meet changes in load: they can withstand multiple start-ups within a day, can reach full load within two to four minutes (from a warm or cold start, respectively), and once operational, can ramp from 30 to 100 percent load in just 40 seconds. *Id.* at 2-4. Each unit can idle at loads as low as 30 percent of design capacity, allowing them to stand ready to react immediately to renewable generation reductions and to satisfy minimum local generation requirements indefinitely. *Id.* Thus, these RICE units are an essential part of integrating additional renewable energy resources into TEP's generation mix, and additional delays to the Project could threaten the current and future reliability of the system.

In order to support current system needs and scheduled renewable additions, the proposed RICE units must be operational by Fall 2019. As the EAB is well aware, "new source construction cannot begin prior to receiving a final permit" and "a permit decision does not

become effective until [an] appeal is resolved.” Revised Order Governing Petitions for Review of Clean Air Act New Source Review Permits at 2 (Mar. 27, 2013) (“2013 NSR Standing Order”). Further, to the extent any delay arising from this appeal prevents TEP from completing all 10 RICE units in time, TEP does not have the option of simply operating the subset of RICE units that it is able to complete. The permit requires TEP to permanently shut down the facility’s two 81 MW steam generating units before commencing commercial operation of the first RICE unit. Final PSD Permit at Part B Condition V.E.1, Pet. Ex. 2. Thus, TEP cannot start up *any* of the RICE units until it has completed a sufficient number to replace the capacity lost by retiring the steam generating units.

Finally, delay would have financial impacts for TEP and its customers. The need to complete construction of the Project on a compressed schedule in order to complete it in time for TEP’s planned renewable capacity additions would increase the overall Project costs, as would any replacement power that TEP must purchase to cover its reliability needs while the Project is under construction. These costs will be passed on to the rate-payers. It is in the public interest for the EAB to conduct its review here as expeditiously as is possible, 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 TEP’s customers.

## **II. Expedited Review Is Warranted by the CAA’s One-Year Deadline and by EAB Regulations and Policy.**

Section 165(c) of the CAA requires a final decision on a PSD permit “not later than one year after the date of filing” a complete application. 42 U.S.C. § 7475(c). EAB’s review is included in that one-year period. *Avenal Power Center, LLC v. U.S. EPA*, 787 F. Supp. 2d 1, 3-4 (D.D.C. 2011); 40 C.F.R. §§ 124.15(b); 124.19(l)(2). This statutorily-mandated deadline is critically important and reflects Congress’s concern that the PSD program could delay much-

needed construction projects. S. Rep. No. 95-127, at 32 (1977), reprinted in 3 Comm. on Env't & Public Works, Legislative History of the Clean Air Act Amendments of 1977, at 1406 (1978) (“[T]he States and Federal agencies must do all that is feasible to move quickly and responsibly on permit applications . . . 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.”).

As noted above, the County deemed TEP’s PSD permit application for the project complete on August 23, 2017. Thus, the statutory deadline for final action on TEP’s application has already passed. Any further delay represents exactly the type of inaction Congress sought to prohibit by enacting section 165(c) of the CAA. To give effect to Congress’s mandate, the Board should take final action on this appeal as promptly as possible.

In addition, the EAB’s own regulations and policies favor expediting review in this case. “Due to the time-sensitive nature of [new source review (“NSR”)] appeals, the Board gives its highest priority to the timely resolution of NSR cases relative to other matters on the Board’s docket.” 2013 NSR Standing Order at 2. The EAB accordingly may “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; *see also In re La Paloma Energy Center, LLC*, PSD Appeal No. 13-10, Order Scheduling Status Conference/Expedited Oral Argument (EAB Jan. 15, 2014) (recognizing Board’s inherent discretion to manage its permit appeal docket by ruling on motions). Further, EPA has adopted regulations to “streamline and make more efficient the appeal process” for PSD permits, 78 Fed. Reg. 5,281 (Jan. 25, 2013), including by establishing 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, *id.* § 124.19(h). *See also id.* § 124.19(n) (stating 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”).

The Board can and should resolve this case quickly. Pursuant to the 2013 NSR Standing Order, TEP requests that this appeal receive priority over the non-NSR appeals pending before the Board. And while there appear to be two other NSR appeals on the Board’s docket, this matter is the easiest to resolve. One appeal involves issues that arguably implicate important policy considerations, requiring oral argument, *In re Palmdale Energy, LLC*, PSD Appeal No. 18-01 (EAB filed May 29, 2018), while the other may require additional time and resources by the Board to resolve a “disagreement about the scope of the issue on appeal,” *see* Order Granting Motion for Leave to File Reply, *In re Andarko Uintah Midstream, LLC*, NSR Appeal No. 18-01 (EAB Sept. 6, 2018).

By contrast, the sole issue raised in this appeal is narrow and routine. Petitioners simply claim that the permit’s cap on total NO<sub>x</sub> emissions from the RICE units is not practically enforceable. This is not an issue of first impression: there is ample precedent governing practical enforceability to quickly resolve Petitioners’ claim. And the challenged emission limit and monitoring, recordkeeping, and reporting provisions are strikingly similar to provisions that the EAB or the Administrator have upheld in other cases. *See, e.g., In re Shell Offshore, Inc.*, 15 E.A.D. 536, 546-67 (EAB 2012) (upholding limits on potential to emit based on applying relevant emission factors to amount of fuel combusted on a rolling basis); *In re Pope & Talbot, Inc.*, Petition No. VIII-2006-04, at 4-6 (Adm’r Mar. 22, 2007) (finding rolling emission limits in addition to prescribed emission factors and appropriate monitoring and recordkeeping were sufficient to restrict potential to emit). The parties can adequately address this issue in their

initial briefs, without any need for a reply or oral argument.<sup>4</sup> Likewise, because EPA policy on practical enforceability is well-defined, there is no need for supplemental briefing from EPA Region 9 or other EPA offices. *Compare* Order Requesting EPA’s Office of General Counsel, Office of Air & Radiation, & Region 9 to File a Joint Brief, *In re Arizona Public Service Company Ocotillo Power Plant*, PSD Appeal No. 16-01 (May 13, 2016).

**CONCLUSION**

WHEREFORE, TEP respectfully requests that the EAB expedite Sierra Club’s petition for review and resolve this matter as soon as possible after the filing of response briefs by the County and the Permittee. In so doing, TEP requests that the EAB summarily deny any motions that may cause delay, such as a motion for leave to file a reply brief, and to deny any requests for oral argument.

DATE: September 20, 2018

Respectfully submitted,

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<sup>4</sup> Indeed, as TEP will argue in its response brief, Sierra Club’s petition is not even sufficient on its face to allege a “finding of fact or conclusion of law that is clearly erroneous, or an exercise of discretion or an important policy consideration” warranting EAB review as required by 40 C.F.R. § 124.19(a)(4).



**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Motion for Expedited Review were served through email, with all parties consenting to electronic service, to the following recipients on this 20th day of September, 2018:

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