

BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, DC

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IN THE MATTER OF:)	
)	
DESERT ROCK ENERGY COMPANY, LLC)	PSD APPEAL NOS. 08-03, 08-04,
)	08-05 & 08-06
PSD PERMIT NO. AZP 04-01)	
)	
)	
)	

**MOTION REQUESTING RECONSIDERATION OF
MOTION TO PARTICIPATE AND
PERMISSION TO FILE AMICUS CURIAE BRIEF OUT OF TIME**

The American Coalition for Clean Coal Electricity (“ACCCE”) respectfully requests this Board reconsider ACCCE’s Motion to Participate filed on May 19, 2009. In support of this motion ACCCE states as follows:

1. On January 22, 2009 this Board set forth a briefing schedule for parties and nonparties, which provided in part that all Amicus/Nonparty Briefs were due no later than March 5, 2009.
2. On April 27, 2009, Region IX of the United States Environmental Protection Agency (“EPA”) filed in the above captioned proceeding its Motion for Voluntary Remand. The EPA’s Motion for Voluntary Remand was filed 53 days after the deadline to file Amicus/Nonparty Briefs.
3. Prior to the filing of the Motion for Voluntary Remand, EPA had defended the issuance of the permit issued to Desert Rock Energy Company, LLC (“DREC”) on July 31, 2008 to construct a coal fired power plant (the “Permit”). With EPA’s filing of its Voluntary Motion for Remand, the agency materially changed the circumstances of the

appeal pending before this Board. ACCCE elected not to participate prior to EPA's filing of its Motion for Voluntary Remand because EPA had not taken a position that could be of harm to ACCCE's members, as EPA has now done. Upon EPA's filing of its Motion for Voluntary Remand, the interests of all of ACCCE's members were directly affected by the outcome of this appeal, which has necessitated ACCCE's participation.

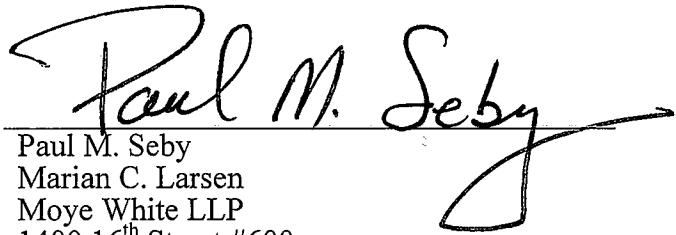
4. As detailed in ACCCE's Motion to Participate, the Motion for Voluntary Remand, if granted, will significantly alter the process by which EPA may consider and evaluate PSD permits. The potential adverse precedential effect of this change is significant and will disrupt the PSD permitting process.

5. The Board would gain substantive value from the insights that ACCCE plans to offer, if ACCCE were allowed to file a brief in opposition of EPA's Motion for Voluntary Remand. ACCCE is a national non-profit organization formed to educate the public about the benefits of affordable, reliable and environmentally compatible coal-fueled electricity. ACCCE is uniquely qualified to speak to the burdens that will be borne by the coal-fueled electricity industry as a whole if the Motion for Voluntary Remand is granted. No other participant in this appeal represents the interests of so many entities and organizations related to the coal-fueled electricity industry.

6. ACCCE is not requesting that it be afforded any additional time by which to file a brief in opposition of EPA's Motion for Voluntary Remand. ACCCE does not wish to delay or disturb this Board's consideration of the appeal and is prepared to file its brief with the Board on June 11, 2009, the date on which Diné Power Authority and DREC have until to file their response to EPA's Motion for Voluntary Remand.

For these reasons ACCCE respectfully requests this Board promptly reconsider its Order denying ACCCE's Motion to Participate and permit ACCCE to file out of time a brief in opposition to EPA's Motion for Remand no later than June 11, 2009.

Respectfully submitted this 21st day of May, 2009

A handwritten signature in black ink that reads "Paul M. Seby". The signature is written in a cursive style with a long, sweeping tail that extends to the right.

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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing **MOTION REQUESTING RECONSIDERATION OF MOTION TO PARTICIPATE AND PERMISSION TO FILE AMICUS CURIAE BRIEF OUT OF TIME** in the matter of Desert Rock Energy Company, LLC, PSD Appeal Nos. 08-03, 08-04, 08-05 & 08-06, were sent this 21st day of May via First Class Mail and Facsimile to the following persons:

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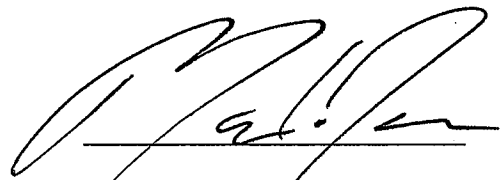
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