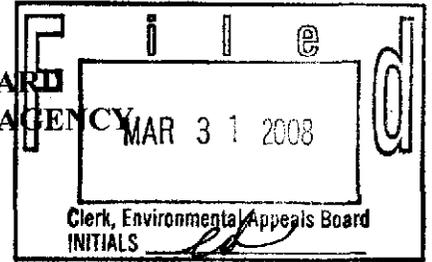


**BEFORE THE ENVIRONMENTAL APPEALS BOARD
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C.**



In re:)
)
)
Deseret Power Electric Cooperative)
)
)
PSD Permit No. PSD-OU-0002-04.00)
)
)

PSD Appeal No. 07-03

ORDER SCHEDULING ORAL ARGUMENT

On August 30, 2007, the United States Environmental Protection Agency, Region 8 ("Region") issued a prevention of significant deterioration ("PSD") permit (number PSD-OU-0002-04.00) to Deseret Power Electric Cooperative ("Deseret") for the construction of a new waste-coal-fired electric generating unit at Deseret's existing Bonanza Power Plant, located near Bonanza, Utah. On October 1, 2007, Sierra Club filed a petition, pursuant to 40 C.F.R. § 124.19(a), requesting that the Environmental Appeals Board review the Region's decision to issue the PSD permit. On November 2, 2007, the Region filed a response to Sierra Club's petition for review, and on November 16, 2007, Deseret filed a motion requesting authorization to file a brief in response to Sierra Club's petition (with a copy of the proposed response attached).

By Order dated November 21, 2007, the Board granted Deseret's motion to file a response, and the Board granted review of one of the two issues raised in Sierra Club's petition for review. Sierra Club's petition raised two issues: first, Sierra Club argued that the Region

erred by failing to require a best available control technology (“BACT”) limit for control of CO₂ emissions; and, second, Sierra Club argued that the Region erred by failing to consider certain “alternatives” to the proposed facility that are similar to alternatives recommended by U.S. EPA Region 9 in another proceeding. The Region’s response to public comments regarding the first of these two issues included a discussion of the U.S. Supreme Court’s decision in *Massachusetts v. EPA*, ___ U.S. ___, 127 S.Ct. 1438 (2007). The Board granted review of only the first issue.¹ The Board’s Order also set forth a briefing schedule to allow briefing and argument from interested persons as provided in 40 C.F.R. § 124.19(c). Pursuant to that briefing schedule (as extended by subsequent order), the Board has received briefs from Sierra Club and several amici in support of Sierra Club’s contention that the Region erred in not requiring a CO₂ BACT limit, and the Board has received briefs from the Region, Deseret, and several amici in opposition to Sierra Club’s contention.

Upon review of the appellate briefs the Board has received to date,² the Board has decided that oral argument may assist it in its deliberations of this matter. Accordingly, Sierra Club, Deseret, and the Region are hereby invited to participate in oral argument in this matter. The Board will decide at a later time whether to invite any of the amici to participate in presenting oral argument and will issue a subsequent order allocating time among the parties to present argument.³ The oral argument will begin at 10:00 a.m. on Thursday, May 29, 2008, in

¹ The Board continues to hold Sierra Club’s second issue under advisement.

² Pursuant to the Board’s previous orders in this matter, persons who filed briefs in support of Sierra Club’s contention may file reply briefs on or before Friday, April 25, 2008,

³ Participants are reminded that the Board will entertain argument only on the issue on which the Board granted review.

the Administrative Courtroom, U.S. Environmental Protection Agency, EPA East Building, Room 1152, 1201 Constitution Avenue, N.W., Washington, D.C. The participants shall notify the Clerk of the Board in writing by Monday, May 19, 2008, of the names of counsel who will present argument. Counsel who wish to participate in this oral argument via video-conferencing shall contact the Clerk of the Board, at 202-233-0122, no later than Wednesday, May 14, 2008, to make arrangements for use of the Administrative Court Room's video-conference equipment.

So ordered.

Dated: 3/31/08

ENVIRONMENTAL APPEALS BOARD

By: 

Edward E. Reich
Environmental Appeals Judge

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Order Scheduling Oral Argument in the matter of Deseret Power Electric Cooperative, PSD Appeal No. 07-03, were sent to the following persons in the manner indicated:

By Inter-Office Mail:

Brian L. Doster
Kristi M. Smith
Elliot Zenick
Air and Radiation Law Office
Office of General Counsel
Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

By Pouch Mail:

Sara L. Laumann
Office of Regional Counsel (R8-ORC)
Environmental Protection Agency, Region 8
1595 Wynkoop Street
Denver, CO 80202-1129

By First Class Mail:

David Bookbinder, Esq.
Sierra Club
400 C Street, N.E.
Washington, DC 20002

James H. Russell, Esq.
35 W. Wacker Drive
Chicago, IL 60601

Steffen N. Johnson, Esq.
Susan A. MacIntyre, Esq.
Luke W. Goodrich
Winston & Strawn, LLP
1700 K Street, NW
Washington, DC 20006

Michael McCally, M.D. Ph.D.
Executive Director
Physicians for Social Responsibility
1875 Connecticut Ave., N.W., Suite 1012
Washington, D.C. 20009

Kristen Welker-Hood, D.Sc. M.S.N. R.N.
Director of Environment and Health Prog.
Physicians for Social Responsibility
1875 Connecticut Ave., N.W., Suite 1012
Washington, D.C. 20009

Joanne Spalding, Esq.
Sierra Club
85 Second Street, Second Floor
San Francisco, CA 94105

Kimberly Massicotte, Esq.
Matthew Levine, Esq.
Assistant Attorneys General
P.O. Box 120, 55 Elm Street
Hartford, Connecticut 06106

Gerald D. Reid, Esq.
Assistant Attorney General
Department of the Attorney General
State House Station #6
Augusta, Maine 04333-0006

James R. Milkey, Esq.
Assistant Attorney General
Environmental Protection Division
One Ashburton Place
Boston, MA 02108

Kassia R. Siegel
Center for Biological Diversity
P.O. Box 549
Joshua Tree, CA 92252

Katherine D. Hodge, Esq.
Hodge Dwyer Zeman
3150 Roland Avenue
Post Office Box 5776
Springfield, Ill 62705-5776

Edward Lloyd, Esq.
The Environmental Law Clinic
Morningside Heights Legal Services, Inc.
Columbia University School of Law
435 West 116th Street
New York, NY 10027

Michael J. Myers, Esq.
Morgan A. Costello, Esq.
Assistant Attorneys General
Environmental Protection Bureau
The Capitol
Albany, NY 12224

Susan L. Durbin, Esq.
Deputy Attorney General
California Department of Justice
1300 I Street, P.O. Box 9442550
Sacramento, CA 94244-2550

Tricia K. Jedele, Esq.
Special Assistant Attorney General
Department of Attorney General
150 South Main Street
Providence, RI 02903

Kevin O. Leske, Esq.
Scot Kline, Esq.
Assistant Attorneys General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001

Peter S. Glaser, Esq.
Troutman Sanders LLP
401 9th Street, N.W., #1000
Washington, D.C. 20004

Maureen Martin, Esq.
W3643 Judy Lane
Green Lake, Wisconsin 54941

Russell S. Frye, Esq.
FryeLaw PLLC
1101 30th St., N.W., Suite 220
Washington, D.C. 20007-3769

Rae E. Cronmiller, Esq.
Environmental Counsel
National Rural Electric Cooperative Assoc.
4301 Wilson Boulevard
Arlington, VA 22203

Kenneth A. Reich, Esq.
Richard A. Sugarman, Esq.
WolfBlock LLP
One Boston Place, 40th Floor
Boston, MA 02108

Norman W. Fichthorn, Esq.
Allison D. Wood, Esq.
James W. Rubin, Esq.
Hunton & Williams LLP
1900 K Street, N.W.
Washington, DC 20006

Dated: MAR 31 2008



Annette Duncan
Secretary