

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

	)	
In re:	)	
Arizona Public Service Co.	)	NPDES Appeal No. 18-02
NPDES Permit No. NN0000019	)	
	)	

**ORDER REGARDING REQUEST FOR EXTENSION OF TIME  
AND SERVICE BY E-MAIL**

On August 1, 2018, the Environmental Appeals Board (“Board”) received from U.S. Environmental Protection Agency Region 9 (“Region”) an unopposed motion for an extension of time to file a response to a petition for review filed on July 16, 2018, by Dine’ Citizens Against Ruining the Environment, San Juan Citizens Alliance, Amigos Bravos, Center for Biological Diversity, and Sierra Club (collectively “Petitioners”). Petitioners challenge the National Pollutant Discharge Elimination System (“NPDES”) permit that the Region issued on June 12, 2018, to the Arizona Public Service Company (“APS”) authorizing discharges from the Four Corners Power Plant. Currently, the Region’s response is due no later than August 20, 2018. *See* 40 C.F.R. § 124.19(b)(2); *id.* § 124.20. Petitioners’ reply brief is due fifteen (15) days following service of the response. 40 C.F.R. § 124.19(c)(2).

The Region requests a two-month extension of time to file its response brief and the required information from the administrative record no later than October 19, 2018, as well as an extension of time for APS to file its notice of appearance and response brief no later than October 19, 2018. *See* Region IX’s Unopposed Motion for Extension of Time to File Responses and Replies (Aug. 1, 2018) (“Motion”). The Region also requests a six-week extension of time

for Petitioners to file their reply brief no later than December 14, 2018. Counsel for Petitioners, APS, and the Region “agree to the extensions requested in this Motion.” *Id.* at 2.

In support of the motion, the Region avers that the “substantively complex, substantial, distinct, and varied range of issues” presented in the petition for review require “careful consideration,” including analysis of technical arguments. *Id.* The Region also states that to prepare its response, the Region must coordinate and consult with various offices within EPA, including the Office of General Counsel, and that several matters Petitioners raise involve legal or technical issues that are presently in litigation or the subject of an EPA rulemaking. *Id.*

The Region does not indicate whether it has consulted with the Office of General Counsel or the Office of Water to date regarding the extended briefing schedule the Region proposes. *See Procedures for Coordination OE-OGC-Regions Environmental Appeals Board* (Jan. 25, 1993) (stating the importance of initiating consultation as early as possible with Headquarters offices and articulating EPA’s long-standing policy that consultation typically occurs during the 30-day period following a petitioner’s substantive filing). In addition, the Region offers no explanation for why Petitioners require an additional six weeks to file a reply, given that a reply brief is normally due fifteen (15) days following service of the response brief and that Petitioners may not raise new issues or arguments in their reply. *See* 40 C.F.R. § 124.19(c)(2).

The Board requests that the Region, in consultation with Petitioners and APS, supplement its filing to assist in the Board’s evaluation of the motion for extensions of time to file the responses and reply. The supplemental filing should: (1) state whether EPA’s Office of General Counsel and Office of Water concur with the proposed briefing schedule; and (2) explain why the extension of time for the response briefs necessitates an additional six weeks beyond what the regulation provides for Petitioners to file their reply brief. This additional information must

be filed no later than **Thursday, August 9, 2018**. In addition, the Board suspends the current response deadline in this matter pending the Board's resolution of the Region's motion.

The Region, on behalf of the parties, also notified the Board that "all parties to this matter have agreed to accept service of filings by electronic mail only, with no hard copy service by mail or similar means." Motion at 3. Pursuant to 40 C.F.R. § 124.19(i)(3)(iii), the Board may also use e-mail (Clerk\_EAB@epa.gov) to serve orders and decisions in this matter at the addresses provided by the parties. Parties shall promptly file a notice in this matter informing the Board and the other parties if their e-mail address changes.

So ordered.

**ENVIRONMENTAL APPEALS BOARD**

Dated: August 2, 2018

By:   
Mary Beth Ward  
Environmental Appeals Judge

**CERTIFICATE OF SERVICE**

I certify that copies of the foregoing *Order Regarding Request for Extension of Time and Service by E-mail* in the matter of Arizona Public Service Co., NPDES Appeal No. 18-02, were sent to the following persons in the manner indicated:

**By E-mail:**

John Barth  
Attorney at Law  
P.O. Box 409  
Hygiene, CO 80533  
(303) 774-8868  
barthlawoffice@gmail.com  
*Attorney for Petitioners*

Kerry McGrath  
Hunton Andrews Kurth LLP  
2200 Pennsylvania Avenue, NW  
Washington, DC 20037  
(202) 955-1519  
KMcGrath@HuntonAK.com  
*Attorney for Arizona Public Service Co.*

Thomas M. Hagler  
Office of Regional Counsel  
EPA Region 9 (MC ORC-2)  
75 Hawthorne Street  
San Francisco, CA 94105  
(415) 972-3945  
hagler.tom@epa.gov  
*Attorney for EPA Region 9*

**CC by E-mail:**

Steve Neugeboren  
Associate General Counsel  
EPA Office of General Counsel  
Mail Code 2355A  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
neugeboren.steven@epa.gov

Benita Best-Wong  
Acting Principal Deputy Assistant Administrator  
EPA Office of Water  
Mail Code 4501T  
1200 Pennsylvania Avenue, NW  
Washington, DC 20460  
best-wong.benita@epa.gov

Dated: August 2, 2018



---

Eurika Durr  
Clerk of the Board