

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

In Re:)	
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)	
Four Corners Power Plant)	NPDES Appeal No. 18-02
NPDES Renewal Permit: NN0000019)	
Arizona Public Service Company (Applicant))	
)	
)	

**ARIZONA PUBLIC SERVICE COMPANY’S RESPONSE TO REGION IX’S
MOTION TO PARTIALLY DISMISS PETITION FOR REVIEW; MOTION TO
ESTABLISH REVISED BRIEFING SCHEDULE**

The Arizona Public Service Company (“APS”), applicant for the above-described permit, files this response in support of the United States Environmental Protection Agency (“EPA”) Region IX’s (“the Region”) Motion to Partially Dismiss Petition for Review; Motion to Establish Revised Briefing Schedule filed on October 9, 2018 (“Region IX Motions”).¹ Docket Index #10.

As set forth in the Region’s October 5, 2018, letter, Docket Index #9 and Attach. 1 to Region IX Motions, Docket Index #10, APS understands that, pursuant to 40 C.F.R. § 124.19(j), the Region has withdrawn Permit Section I.A.5 (addressing certain effluent limitations for Internal Outfall 01E) and Permit Section I.B.3 (addressing certain cooling water intake provisions), and that the Region will modify these provisions, as appropriate. In light of the Region’s withdrawal of those two Permit provisions, APS agrees that Petitioners’ claims as to those provisions are moot, and supports the Region’s motion to dismiss them. *See, e.g., In re Star Sewer & Water Dist. Wastewater Treatment Plant, NPDES Permit No. ID 0023591, NPDES Appeal No. 15-07, 2015 WL 4611951, at *2, (EAB July 28, 2015) (dismissing petition as moot*

¹ Along with this Response, APS files a Notice of Appearance for the purpose of participating as a party in this appeal.

where region planned to prepare new draft permit); *In re City of Keene Wastewater Treatment Facility, NPDES Permit No. NH0100790*, NPDES Appeal No. 07-18, Order Noticing Partial Withdrawal of Permit and Dismissing Portion of Petition for Review As Moot (EAB Dec. 5, 2007) (dismissing as moot portions of petition challenging permit limits after permitting authority provided notice that it was withdrawing those limits and preparing a new draft permit addressing those limits). APS is prepared to implement the remaining permit terms by November 5, 2018, pursuant to 40 C.F.R. § 124.16(a)(2).

The Environmental Appeals Board (“EAB” or “Board”) “may do all acts and take all measures necessary for the efficient, fair, and impartial adjudication” of issues arising in an appeal. 40 C.F.R. § 124.19(n). Consistent with this authority, and to promote judicial economy and efficiency, APS also supports the Region’s Motion to Establish Revised Briefing Schedule to allow sufficient time for the Region to complete the permit modification process and enable the EAB to review the entire Permit at the same time. It would be highly inefficient for briefing to proceed on the other issues raised in the Petition while EPA is planning to change the permit. *See, e.g., In re Peabody Western Coal Co., CAA Appeal No. 10-01, 14 E.A.D. 712, 720* (EAB Aug. 13 2010) (The permit issuer’s right to withdraw all or part of the permit “allows permit issuers to take back permits recognized as deficient in some way during the early stages of litigation, before substantial Board and litigant resources are expended on adjudicating such cases, thereby conserving scarce resources.”); *In re Desert Rock Energy Co., LLC, PSD Appeal Nos. 08-03, 08-04, 08-05, & 08-06, 14 E.A.D. 484, 497* (EAB Sept. 24, 2009) (“[I]t would be highly inefficient for the Board to issue a final ruling on a permit when the Agency is contemplating changes to that permit.”). APS agrees that the interests of judicial economy and

administrative efficiency would be best served by modifying the briefing schedule as proposed by the Region.

Respectfully submitted,

/s/ Kerry L. McGrath

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Dated: October 10, 2018

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing ARIZONA PUBLIC SERVICE COMPANY'S RESPONSE TO REGION IX'S MOTION TO PARTIALLY DISMISS PETITION FOR REVIEW; MOTION TO ESTABLISH REVISED BRIEFING SCHEDULE was served via e-mail this 10th day of October, 2018, upon the persons listed below:

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