

# BRACEWELL & GIULIANI

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February 12, 2009

By Messenger

U.S. Environmental Protection Agency  
Clerk of the Board  
Environmental Appeals Board  
Colorado Building  
1341 G Street, N.W., Suite 600  
Washington, DC 20005

Re: Desert Rock Energy Company, LLC  
PSD Appeal No. 08-03, 08-04, 08-05 & 08-06  
PSD Permit No. AZP 04-01

Dear Clerk of the Board:

Enclosed please find an original and five copies of an OPPOSITION TO NGO PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF for filing on behalf of Desert Rock Energy Company, LLC, in the above-referenced matter. Please feel free to contact me if you have any questions.

Very truly yours,

Bracewell & Giuliani LLP



Jeffrey R. Holmstead

Enclosure

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

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In re: )  
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Desert Rock Energy Company, LLC )  
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PSD Permit No. AZP 04-01 )  
)  
\_\_\_\_\_ )

PSD Appeal Nos. 08-03, 08-04,  
08-05 & 08-06

**OPPOSITION TO NGO PETITIONERS' MOTION  
FOR EXTENSION OF TIME TO FILE REPLY BRIEF**

Desert Rock Energy Company, LLC ("Desert Rock Energy"), by its attorneys, respectfully brings this Opposition to NGO Petitioners' Motion for Extension of Time to File Reply Brief. In bringing their motion for an extension of time, NGO Petitioners<sup>1</sup> fail to present good cause that necessitates filing their reply brief later than February 13, 2009, as ordered by this Board.

In support of its opposition to NGO Petitioners' motion, Desert Rock Energy states the following:

1. Desert Rock submitted its PSD permit application to EPA Region 9 on February 22, 2004. AR 6. EPA Region 9 deemed the application administratively complete on May 21, 2004. AR 14.

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<sup>1</sup> "NGO Petitioners" consist of Center for Biological Diversity, Diné Care, Environmental Defense Fund, Grand Canyon Trust, Natural Resources Defense Council ("NRDC"), San Juan Citizens' Alliance, Sierra Club, and Wild Earth Guardians.

2. On July 31, 2008, EPA issued a Prevention of Significant Deterioration ("PSD") permit to Desert Rock Energy. AR 122.

3. On August 14, 2008, NGO Petitioners filed a petition with this Board to review the PSD permit issued to Desert Rock Energy. Petition for Review, Motion for Extension of Time to File Supplemental Brief, and Motion for Stay of Certain Issues Pending the Board's Decision in *In Re Deseret Power Electric Cooperative* (Aug. 14, 2008). On August 15, 2008, the State of New Mexico also filed a petition to review. State of New Mexico's Petition for Review and Request for Oral Argument (Aug. 15, 2008). Additional petitions for review were filed on September 2, 2008 by the Center for Biological Diversity and on September 5, 2008 by Leslie Glustrom. Center for Biological Diversity Petition for Review (Sept. 2, 2008); Leslie Glustrom Petition for Review with Attachments (Sept. 5, 2008).

4. On January 22, 2009, this Board issued an Order granting review of the petition. The Board also set a briefing schedule that ordered the State of New Mexico and NGO Petitioners to submit their respective reply briefs on or before February 13, 2009.

5. On February 4, 2009, the Board granted Petitioner Leslie Glustrom's motion for leave to file a reply brief in this matter. The Board ordered that Ms. Glustrom's reply brief be filed on or before February 13, 2009.

6. On February 10, 2009, Petitioner State of New Mexico filed a Motion for Extension of Time to File Reply Brief. The State of New Mexico's request was based upon two unrelated medical emergencies that occurred to the counsel for the State of New Mexico. Desert Rock Energy did not oppose this motion due to its nature as a medical emergency.

7. On February 11, 2009, NGO Petitioners filed a Motion for Extension of Time to File Reply Brief, requesting that the deadline for their reply brief and that of Petitioner Leslie

Glustrom be extended to February 20, 2009, "in order to ensure consistency in the overall briefing schedule."

8. In contrast to Petitioner State of New Mexico, which required an extension for medical emergencies in order to allow counsel time to recuperate, NGO Petitioners have shown no good cause that requires an extension of time to file their reply brief. The medical emergencies of counsel for the State of New Mexico have not impacted NGO Petitioners' ability to prepare their reply briefs and therefore no additional time should be granted to these parties. For this reason, Desert Rock Energy opposes this motion.

9. However, if the Board grants NGO Petitioners' motion and extends their deadline and that of Petitioner Leslie Glustrom to file their reply briefs to February 20, 2009, Desert Rock respectfully requests that it be granted a corresponding extension of 7 days to file its surreply. Given the expected immediate action by the Board on the NGO Petitioners' motion, Desert Rock did not have appropriate time to consult with other counsel to obtain their position on this request.

Respectfully submitted,



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February 12, 2009

CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing OPPOSITION TO NGO PETITIONERS' MOTION FOR EXTENSION OF TIME TO FILE REPLY BRIEF in the matter of Desert Rock Energy Company, LLC, PSD Permit No. AZP 04-01 were served by United States First Class Mail on the following persons, this 12<sup>th</sup> day of February 2009:

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