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Mr. Michael B. Owens
Air Technical Assistance Unit
US EPA Region 8 ("Region 8")
999 18th Street, Suite 300
Denver, Colorado 80202-2466

Dear Mr. Owens:

Deseret has received and has read the comments submitted on behalf of the National Park Service ("NPS") in response to the proposed Title V operating permit currently under consideration by Region 8. Deseret would like to respond to these comments and to reiterate several points that have been raised previously in other permitting contexts.

NPS is essentially asserting that the March 16, 1998 Approval Order issued by the Utah Division of Air Quality ("DAQ") was defective because, as asserted by NPS, a comparison of 1998 historical actual emissions with future potential/allowable emissions "might have resulted, on paper, in an emissions increase." NPS asks that the Title V operating permit should be delayed by EPA Region 8 on that basis. Deseret strongly resists any delay or other disruption in issuing the Title V permit. Without going into an exhaustive explanation why NPS' position is legally and factually flawed, the following summarizes some of the major reasons why the comments tendered by NPS should not result in any such delay in the Title V permit.

Based on recent judicial decisions by the Tenth Circuit Court of Appeals, EPA Region 8 concluded it was appropriate and necessary for EPA to issue a new PSD permit for the Bonanza Plant to replace the prior permitting historically performed first jointly by EPA and DAQ, and then for an interim period by DAQ. In fulfillment of the PSD provisions of the Clean Air Act, EPA Region 8 proposed to issue a PSD permit to Bonanza pursuant to public notice and comment procedures (see 42 USC Sec. 7475(a)(2) and 5 USC Sec. 553(b & c). See also 40 CFR Sec. 52.21(q) and 40 CFR Part 124.10). The PSD permit No. PSD-UO-001-2001:00 was issued in February 2001, after all applicable public comment periods had been fully completed. [1]

As part of the public comment process preceding the issuance of the 2001 PSD permit, Deseret understands that the NPS was specifically notified of the proposed permitting action and that an opportunity to comment on the propriety of any permitting action, *specifically including the Approval Order process which covered the so-called Ruggedized Rotor project,* was then afforded

[1] In response to the PSD Permit Invitation for Public Comment, Deseret issued its comments which included, among other things, Deseret's disclaimer concerning the status of the 10th Circuit's ruling on the status of the plant site and other areas as included within the definition of "Indian Country." Specifically, Deseret noted that it has reserved any issues concerning the continuing vitality of the 10th Circuit's ruling in light of later. directly contrary guidance given by the U.S. Supreme Court, which the 10th Circuit, citing reasons of mootness, declined to apply to the parties involved in the specific litigation before it. As neither Deseret nor EPA were parties to that lawsuit, and therefore are presumably not bound by the mandate issued in that particular proceeding, Deseret reserves its right, at any subsequent time, to challenge the status of the area on which the Bonanza Plant is located. Deseret hereby incorporates and renews its prior comments on this point.

NPS and others. Notwithstanding the specific notification received by NPS, the comment period closed and the PSD permit was duly issued. Neither NPS nor any other entity, agency, or person commented or raised any concerns at that time as to the propriety and efficacy of the 1998 Approval Order process nor was the PSD permit challenged on any basis. The PSD Permit was issued by Region 8. No objections or appeals were taken from this final action by EPA Region 8. Accordingly, the new PSD permit is at present the permit which effectively governs air quality issues at Bonanza. Any prior procedural "defects" that may or may not have existed are necessarily cured.

The challenge to Deseret's existing air permit(s) which NPS suggests in its comments is inappropriate to raise in the context of the Title V permit process. At most, the Title V program contemplates only that the operating permit will include, in one place, all applicable air quality requirements for a particular source, including substantive emission standards and monitoring requirements. (See, e.g., 42 USC Sec. 7661a and 7661c(f)). By contrast, the issue raised by NPS is at best a PSD issue which should have been raised in the PSD approval process. The NPS comment is irrelevant and "out of order" in this Title V application.

Even if the comments were to be considered in the context of some other forum, NPS has effectively waived any argument against Bonanza's existing air permits when it failed to participate in the prior EPA PSD Process. At the time that EPA undertook to issue the February 2001 PSD permit in compliance with all CAA procedures, NPS had a legal obligation after receiving legal and actual notice of that proceeding, to participate in the public process and raise its arguments at that time. NPS failed to do so. Even if NPS were to raise some objection in a different procedural context (as opposed to the Title V permit application process which is not the appropriate forum in all events), federal courts have consistently declined demands for additional opportunity for comment when prior opportunities have been afforded federal agencies on a particular issue. (See, e.g., National Exchange Carrier Association, Inc., v. Federal Communications Commission, 253 F.3d 1, 4 (D.C. Cir. 2001)(citing the extensive EPA cases to the effect that opportunity to comment should be denied where "a new round of notice and comment would not provide the [complainant] its 'first opportunity...to offer comments' upon the order"); See also 151 ALR Fed. 445 listing numerous cases where federal courts have upheld EPA action, in the face of a legal challenge, as complying with federal notice and comment procedures)).

A third reason exists why NPS' comments cannot form the basis for delaying the Title V permit. The Proper Time for NPS or others to challenge any alleged DAQ Procedural Approval Order defect has long since expired. In essence, NPS argues that alleged procedural defects in connection with the issuance of a state permit (Approval Order) issued over four years ago should be relevant to the issuance of a federal permit at present. Utah state law, which applies in determining whether the state action can now be timely challenged or not, bars any claim of defect in the State issued Approval Order at this late date. For example, under the Utah Administrative Procedures Act, NPS had 30 days to challenge the final permit issued by DAQ (U.C.A. 63-46b-14). Arguably, even had NPS, EPA, or any others chosen to challenge the permit under the Utah Administrative Rulemaking Act, the time for any such challenge expired two years after the permit was issued (U.C.A. 63-46a-14). A challenge of any nature at this late date fails for precisely the same reason.

The comments offered by NPS also miss the mark for another very relevant reason. NPS' apparent view that a potential for "Net Emissions Increase" in 1998 would have or should have required PSD review is simply wrong. Traditionally, EPA has applied a stringent "actuals to allowables" test in order to determine whether a potential net emissions increase has occurred necessitating PSD review of a major modification at an air emissions source (40 C.F.R. Sec. 52.21(b)(2)). However, with regard to electrical power plants, this test was changed as a result

of the 1990 Wisconsin Electric Power Company ("WEPCO") decision by the U.S. Court of Appeals for the 7th Circuit. At the time of the 1998 Approval order, and subsequently, when the 2001 PSD Permit issued, DAQ and EPA were satisfied that no increase occurred as a direct result of the project that had been the subject of the 1998 Approval Order. NPS comments are premised solely on a simplistic attempt to compare "actuals to allowable," a standard that does not apply in any event. Accordingly, NPS argument is misplaced.

Finally, a review of actual emissions data at Bonanza will demonstrate that there is no reason to believe, as NPS asserts, that "actual emissions may have increased by 'significant' amounts" as a result of the rotor project. Taking actual emissions data from 1998 as the baseline year (the most recent fully completed year for which data would have been available prior to the project), and comparing actual emissions for each subsequent period, the actual emissions at the plant have not experienced any sort of "significant increase" as NPS incorrectly hypothesizes.

The Bonanza Plant continues to receive wide recognition as one of, if not the very cleanest coal-fired power project currently operating in the United States. *See, e.g., Power Magazine*. August 2002 (rating Bonanza in the top 5 plants nationally for SO2 control; "Plants that ... are doing a particularly good job of SO2 control include ... Deseret Generation & Transmission's Bonanza plant (0.06 lb/Mbtu)." Bonanza should by no means be the target for any unsupported suppositions or unfounded allegations of "significant amounts" of increased emissions, as seems to be the implication from the NPS comments. Moreover, the serious factual and legal flaws that would be raised by questioning the legitimate permitting process that has thus far taken place cannot be ignored, and should not delay or complicate the Title V process.

Based on the foregoing, Deseret believes it is not necessary and would be improper to delay, defer, or alter in any manner the Title V permit process. Please feel free to contact the undersigned at (801) 619-6500 or any of the Deseret staff should you have any questions or if we can provide additional information to further assist you.

Very truly yours,

David F. Crabtree
Vice President, General Counsel

cc. Richard Long
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