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January 17, 2008

VIA ELECTRONIC MAIL AND CERTIFIED MAIL

The Honorable Stephen L. Johnson
Administrator
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, DC 20460

Re: Notice of Intent to Sue EPA for Its Failure to Act on Desert Rock PSD Permit
as required by the Clean Air Act

Dear Mr. Johnson:

I am writing on behalf of Desert Rock Energy Company, LLC, an indirect wholly-owned subsidiary of Sithe Global Power, LLC (Sithe) and successor of Steag Power, LLC – the initial applicant for a Prevention of Significant Deterioration (PSD) permit for the Desert Rock Energy Project (permit number: AZP 04-01). In accordance with section 304 of the Clean Air Act, 42 U.S.C. §7604(a)(2), this letter shall serve as formal notice of Sithe's intent to file suit against the U.S. Environmental Protection Agency (EPA) for EPA's failure to perform its mandatory duty under the Clean Air Act to issue the PSD permit for the Desert Rock Project in a timely fashion. Section 165 of the Clean Air Act requires EPA to take final action on a PSD permit within 12 months after receiving a complete permit application. 42 U.S.C. §7475(c). As you are aware, EPA found the Desert Rock PSD permit application to be complete on May 21, 2004. Thus, by statute, EPA was required to act on the permit almost three years ago.

Section 304 of the Clean Air Act authorizes civil actions against the Administrator to compel him or her to perform any act or duty that is not discretionary under the Clean Air Act. 42 U.S.C. §7604(a)(2). The Administrative Procedure Act, 5 U.S.C. § 706, as well as Section 304 of the Clean Air Act, also authorizes lawsuits to compel EPA to take actions, such as permitting decisions, that have been unreasonably delayed. This letter provides the necessary notice required before such actions can be filed, which may occur sixty (60) days (for a mandatory duty suit) and one-hundred and eighty (180) days (for a suit based on EPA's unreasonale delay) from the date of this letter. 42 U.S.C. § 7604. If Sithe finds it necessary to file any such action, it will seek all appropriate relief, including injunctive, declaratory, monetary, and any other relief as may be awarded by a court of competent jurisdiction.

Sithe and its predecessors began working with EPA in 2003 to obtain a PSD permit for Desert Rock, and we have been working cooperatively with EPA since that time. Throughout this period, we have also worked closely with the Navajo Nation, which actually approached Sithe about developing the Desert Rock Project on tribal land. The permit application was submitted to EPA in February 2004, and EPA issued a letter finding the application to be complete on May 21, 2004. More than two years later, in July 2006, EPA issued a proposed permit for public comment. The public comment period ended on November 13, 2006.

Sithe understands that developing a PSD permit for a source like Desert Rock is a complicated undertaking. But there is no reasonable justification for the process to have dragged on for almost three years beyond the statutory deadline for acting on the permit. At the outset, before the application was prepared and submitted, we met with EPA permitting officials to be sure that we understood all the substantive requirements and procedural steps that would be necessary to secure a permit, and how long each step would take. We have carefully followed the path laid out by the Agency. At EPA's request, we engaged in extended consultations with the Federal Land Managers, especially the National Park Service, which eventually concluded that Desert Rock will not have any adverse environmental impact.

For internal planning purposes, we assumed a much longer schedule than the one projected by the Agency in our initial meetings, based on the likelihood that there might be unexpected delays. Now, however, the permitting process has taken much longer than even our worst-case estimates.

Sithe's senior management has a long history of successfully developing power projects throughout the world, but we have never been subjected to this kind of permitting delay. When the Company began to consider the feasibility of the Desert Rock project, it was well aware that it would need to make substantial investments before the plant would become operational and start to repay that investment. The Company was willing to make this investment – already more than \$20 million – because of its faith in the U.S. legal and regulatory system. Sithe officials believed that, if they followed the steps laid out in EPA's rules and met all the other legal requirements imposed on new plants, including the obligation to install state-of-the-art emission controls, then EPA would also follow the rules and issue a permit in a timely fashion. The Company has not only followed the rules, but has gone beyond what the law requires to protect the environment. We are proud to say that Desert Rock will be the cleanest coal-fired power plant in the country. Yet the Company still does not have a PSD permit that, by law, it should have received almost three years ago.

President Joe Shirley, Jr., the elected leader of the Navajo Nation, recently sent a letter (attached) urging you, in the strongest possible terms, to issue the permit without further delay. He discussed the importance of Desert Rock to the Navajo economy, noting that the Plant, once it begins operating, will provide approximately one-third of the annual

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operating budget for the Navajo Nation. As he notes in his letter, for every *month* the permit is delayed, the Navajo Nation loses more than \$5 million in tax revenue.

Please keep in mind that we did not approach the Navajo Nation with the idea of developing a power plant on tribal land. Seeking economic development for its people, the Navajo Nation specifically created the Diné Power Authority (DPA) to develop energy resources on Navajo land. After interviewing a number of potential developers, DPA selected Sithe as the one that would best reflect tribal values and best address the economic needs of the Navajo Nation.

Although the career staff at EPA has worked diligently to finalize the permit, we cannot help but have the impression that, at more senior levels within the Agency, there is no sense of urgency about getting the permit out – and a complete disregard for the Agency's statutory obligation to make permitting decisions within 12 months of receiving a complete application. This disregard has been grossly unfair to Sithe and the Navajo Nation.

After all the hard work by Sithe and EPA permitting officials, Sithe is disappointed that EPA has not yet completed the permitting process that we both started almost five years ago. We respectfully request that you issue the permit without further delay. We sincerely hope that it will not be necessary for us to bring a lawsuit to force the Agency to issue a permit that, by law, it should have issued almost three years ago. Unless EPA acts within the 60-day notice period, we are prepared to file a complaint seeking all appropriate remedies from a court of competent jurisdiction.

Very truly yours,

Bracewell & Giuliani LLP



For Jeffrey R. Holmstead

cc: Wayne Nastri, Regional Administrator, EPA Region 9
Roger Martella, EPA General Counsel
Robert Meyers, EPA Principal Deputy Assistant Administrator for Air and Radiation
Martin B. Rosenberg, President, Sithe Global Power, LLC
Dirk Straussfeld, Executive Vice President for Development, Sithe Global Power, LLC
Jeremiah P. Sheehan, General Counsel, Sithe Global Power, LLC

Attachment



DR. JOE SHIRLEY, JR.
President

BEN SHELLY
Vice President

September 20, 2007

Mr. Stephen L. Johnson
Administrator
United States Environmental Protection Agency
Ronald Reagan Building
1300 Pennsylvania Avenue N.W.
Washington, DC 20004

Re: *Desert Rock Energy Center (AZP 04-01)*

Dear Administrator Johnson:

As the elected leader of the Navajo Nation and the Navajo people, I want to take this opportunity to thank everyone at EPA for continuing their hard work to issue a final PSD permit for the Desert Rock Energy Center.

As you are probably aware, the Navajo Nation through its Diné Power Authority has been working closely with EPA Region 9 staff for almost four years to insure that EPA received all of the information necessary to prepare a complete and accurate permit application. As you are also probably aware, in early 2005 I wrote to EPA Region 9 Administrator Wayne Nastri and confirmed in the strongest possible terms that the Navajo Nation needs EPA's dedicated assistance to conclude air permitting activities for the Desert Rock Energy Center "in the very near future." At that point in time over two years ago, the draft 2004-2005 statistics for the Navajo economy were about to be published. We suspected that Navajo economic conditions had worsened from prior years and that without projects like the Desert Rock Energy Center these conditions would continue to decline.

Unfortunately, our assumptions were proven to be correct. The 2005-2006 assessment of the Navajo economy showed that unemployment on the Navajo Nation soared to a record 49% in 2005 and raw data shows this figure may exceed 50% today. Compare this to Washington DC unemployment for July 2007 at 6.0% (seasonally adjusted rate is 5.7% for July, 2007; in June 2005, the DC area showed its worst rate at 7.5%). The Navajo unemployment rate is about seven times higher than the 2005 low for Washington DC. The per capita income on the Navajo Nation is \$8,240.00, about four times less than the US rate. The Census 2000 found that 43% of Navajo individuals were living below the poverty level.

As someone who has visited the Navajo Nation, I am sure you would agree that it is no longer acceptable that Navajos live in depression-era conditions while other US citizens outside of federal reservations live under much better conditions. Large-scale projects like the Desert Rock Energy Center are essential to correcting this imbalance. During the first year of operations, the Desert Rock Energy Center will bring \$54 million in annual revenues

to the Navajo Nation. Revenues from the Desert Rock Energy Center will go directly to the Navajo Treasury and will be distributed to a wide range of indispensable programs for the Navajo people such as fire, police, health care, education, drug abuse treatment and counseling, environmental protection and other social services. Every month that the Desert Rock Energy Center is delayed, the Navajo Nation loses approximately \$ 4.5 million per month, and our programs continue to suffer.

The Navajo Nation is very proud of Diné Power Authority and Sithe Global Power LLC and their work to ensure that the Desert Rock Energy Center is a model of environmental quality and efficiency. As the permit application shows, the Desert Rock Energy Center will be the cleanest coal-fired power plant in the United States, ten times cleaner than nearby plants and setting a new baseline for future coal-fired generation. Through state-of-the-art hybrid dry cooling, the Desert Rock Energy Center conserves precious water resources and uses approximately 85% less water than nearby plants with traditional cooling technology.

Desert Rock will generate approximately one-third of the Navajo Nation's currently declining annual operating budget for the Navajo Nation. In addition, Desert Rock will create between 2,000 and 3,000 construction jobs at peak development. As the elected leader of the Navajo People, I believe it is also important to mention that the project construction and operation will be realized by Union labor respecting Navajo Preference in Employment. Construction of the Desert Rock Energy Center will take approximately four (4) years. In addition to significant additional service jobs and a wide range of secondary employment, upon commencement of operations, the Desert Rock Energy Center will train and employ 200+ individuals and the related coal mining operation will employ another 200+ individuals. Again, every month that the project is delayed, these family-wage jobs, and the benefits and opportunities these jobs bring to Navajo families, are not realized by the people who need them the most.

Beyond employment and revenues, the Desert Rock Energy Center, as a private investment project, offers the unique opportunity for significant Navajo Nation ownership (25% outright, up to an aggregate of 49% depending on extent of other equity investment). Desert Rock Energy Center is an "added value" project to the Navajo Nation. Navajo coal, water, land, and labor will stay on the Navajo Nation to produce greater revenues for the Navajo people. Desert Rock Energy Center benefits will supplement, and in some cases, replace the revenues which are being lost from the shutdown of mining operations and impacts to other projects such as the recent closure of the Mohave Generating Station (fueled by Navajo coal) and the pending closure of the Pittsburgh and Midway mine.

Simply put, your attention to this matter is critical. We understand and appreciate the challenging job that EPA staff is doing to prepare a complete record for its decision on this permit. All we ask is that EPA leaders like yourself and Region 9 Administrator Natri act without delay to complete the permit review and analysis, and issue the final permit as soon as possible to avoid further burden to the Navajo Nation.

In closing, I would like to share the following remarks of Senator John McCain, speaking before the Navajo Nation Council on January 18, 1996:

“Each of us shares a strong commitment to promote and defend tribal sovereignty, tribal self governance, and tribal self sufficiency. But my friends, these things we hold dear, will wither and die unless they are watered by a strong Reservation economy that produces a decent standard of living for all of our people. Unfortunately, as you well know, economic development success stories in Indian Country are still the exception and not the rule.”

Administrator Johnson, I ask that you do everything within your power to help Region 9 issue this permit as soon as possible in accordance with all applicable law. Thank you for your consideration of these matters.

Sincerely,


Dr. Joe Shirley, Jr.,
THE NAVAJO NATION

xc: Wayne Nastei, Administrator, US EPA Region 9