



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 2
290 BROADWAY
NEW YORK, NY 10007-1866

OCT - 1 2015

Mr. Patrick Mahoney
President
Energy Answers, LLC
79 North Pearl Street
Albany, New York 12207

Re: Prevention of Significant Deterioration (PSD) of Air Quality
Request for a PSD Permit Extension for the Energy Answers Arecibo Puerto Rico
Renewable Energy Project

Dear Mr. Mahoney:

EPA is in receipt of your letters dated July 26, 2015 and August 14, 2015 requesting an extension of the final PSD permit for the proposed Energy Answers Arecibo, LLC (Energy Answers) facility. We have reviewed the information you provided, considered nationally issued guidance on PSD permit extensions, and determined that an extension of 18 months is warranted in this case.

Background

On April 10, 2014, EPA Region 2 issued a final and effective PSD permit decision for construction of the Energy Answers Arecibo Puerto Rico Renewable Energy Project. EPA regulations at 40 CFR 52.21 (r) (2) provide that the permit will become invalid if construction is not commenced within 18 months of your receipt of the final permit decision. Given the April 10, 2014 permit issuance date, and your receipt of the permit on that date, the 18-month period will end on October 10, 2015. However, 40 CFR 52.21 (r) (2) also provides that EPA may extend the 18-month period for commencement of construction upon a satisfactory showing that an extension is justified.

Following issuance of the final PSD permit decision for Energy Answers, Sierra Club de Puerto Rico, et al., filed a petition for judicial review on July 16, 2014 in the D.C. Circuit Court. While no specific condition of the PSD permit was challenged, the petitioners argue that when EPA granted the PSD permit, it erroneously concluded that nonattainment New Source Review did not apply. The case has already been fully briefed but the Court has not yet scheduled oral argument.

Discussion

EPA's interpretation of the permit extension provision of 40 CFR 52.21(r) (2) is discussed in EPA's Memorandum dated January 31, 2014, titled "Guidance on Extension of Prevention of

Significant Deterioration (PSD) Permits under 40 CFR 52.21(r) (2)" (Extension Memorandum). This Memorandum clarifies what EPA considers adequate justification for such an extension and indicates that a request for extension should be evaluated on a case-by-case basis. However, for first-time PSD permit extension requests, the Memorandum specifically cites ongoing litigation and "inability to secure financial resources necessary to commence construction," as relevant factors in determining whether adequate justification has been provided. The memorandum also references "significant or unusual economic impediments (including inability to secure financial resources necessary to commence construction)" as relevant factors that may justify a first-time extension.

Your August 14, 2015 letter indicates that the ongoing litigation "precludes the completion of financing and release of construction funds for the Project" and "precludes the execution of the design-build construction contract." We are mindful of the fact that the D.C. Circuit case might not be decided until as late as next summer and recognize, as your August 14, 2015 letter notes, the time necessary to complete the financing after a decision. Your August 14, 2015 letter also references, among other factors, the impact of Puerto Rico's economic situation on the project which has required your company to adopt new strategies for financial viability including a request for the use of a federally-backed loan program from the United States Department of Agriculture Rural Utilities Service that requires an Environmental Impact Statement. These details, along with others in your letter, provide adequate justification under the Extension Memorandum for a permit extension without any revisions or reconsideration of the substantive conditions of the permit. Therefore, EPA is extending the Energy Answers PSD permit for an additional 18-month period, until April 10, 2017.

The Memorandum encourages the permitting authority to notify the public once it has issued the permit extension, particularly where there has been significant public interest in the permit. Given the large number of commenters on the Energy Answers PSD permit, Region 2 will be posting this decision to extend the Energy Answers PSD permit on its website and placing notice of this decision in a local newspaper.

In conclusion, EPA has determined that Energy Answers has provided adequate justification for its request for an 18-month extension, consistent with what EPA has described as an adequate justification in the Extension Memorandum. Therefore, EPA extends the effective date of the Energy Answers' PSD permit until April 10, 2017. Please note that this action does not alter the substantive PSD permit conditions found in Enclosure I and the Enclosure II-General Permit Conditions which were included with the April 10, 2014 PSD permit. Also note that in the event that Energy Answers does not commence construction by April 10, 2017, Region 2 is not inclined to grant another extension. As observed by EPA in the Extension Memorandum, "it is significantly more likely that technology and air quality considerations will become outdated when construction does not begin until 36 months or longer" after the final PSD permit is issued.

If you have any questions regarding this letter, please call me at (212) 637-3736 or Steven Riva,
Chief, Permitting Section, Air Programs Branch, at (212) 637-4074.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Filippelli".

John Filippelli, Director
Clean Air and Sustainability Division

cc: Luis Sierra, Puerto Rico Environmental Quality Board
Jose Font, EPA Region 2, Caribbean Environmental Protection Division