

---

**BEFORE THE EXECUTIVE SECRETARY  
UTAH DEPARTMENT OF ENVIRONMENTAL QUALITY  
DIVISION OF AIR QUALITY**

---

In the matter of:

**REVOLUTION FUELS, LLC  
COAL TO LIQUID FACILITY AIR  
QUALITY APPROVAL ORDER (DAQE-  
AN154900001-16)**

**NOTICE OF FURTHER  
PROCEEDINGS AND FIRST  
PREHEARING ORDER**

September 23, 2016

Administrative Law Judge  
Bret F. Randall

---

This matter is before me pursuant to appointment by the Executive Director of the Utah Department of Environmental Quality dated August 18, 2016. The appointment charges me to conduct a permit review adjudicative proceeding in this matter based on the administrative record and not as a trial *de novo*, in accordance with Utah Code Ann., § 19-1-301.5 and Utah Admin. Code R305-7.

Having granted intervention to the Sierra Club and having considered the Sierra Club's Petition for Review, I issue the following Notice of Further Proceedings and First Prehearing Order pursuant to Section 63G-4-201(3)(d) and (e), Utah Code Ann., and R305-7-206, Utah Administrative Code.

Based on the foregoing, it is hereby ordered as follows:

1. These special adjudicative proceedings are governed by Utah Code Ann. § 19-1-301.5 and R305-7, Utah Admin. Code, as amended.

2. Pursuant to Utah Code Section 19-1-301.5(10)(a), the ALJ is required to review and respond to a petition for review in accordance with Utah Code Subsections 63G-4-201(3)(d) and (e), following the relevant procedures for formal adjudicative proceedings.

3. Having reviewed the Petition for Review, I find, pursuant to Utah Code Ann. § 63G-4-201(3)(d), that further proceedings are required to determine the agency's response.

3. The Sierra Club is designated as the Petitioner and the Executive Director of the Division of Air Quality and Revolution Fuels, LLC are designated as Respondents.

4. Respondents shall file and serve a response to the Petition for Review within thirty (30) days of the date of this notice, in accordance with Utah Code Ann. § 63G-4-201(3)(e)(iii)(D).

6. The Director shall file and serve the Administrative Record within 40 days of the date of the appointment of the ALJ, in accordance with Utah Code Ann. § 19-1-301.5(8)(a)(i).

7. According to Utah Code Ann. § 19-1-301.5(8), the statutory schedule shall apply to these proceedings unless the parties agree. Pursuant to UAC R305-7-8, I would like to undertake a scheduling and status conference forthwith to address case scheduling generally as well as the retroactive amendment to the standard of review that the Executive Director is required to apply in these proceedings, as set forth in Utah Code Ann. § 19-1-301.5(14)(b). In 2015, the Utah Legislature replaced the traditional administrative law-based "substantial evidence" standard of review with a clear error standard of review. I find this change to be rather perplexing. The clear error standard of review is not traditionally applied in administrative law. It may be argued that the clear error standard of review is less deferential than the substantial evidence standard. It may also be argued that it simply vests more discretion

in the Executive Director. The legislature's modification of the standard of review may call into question the effect of relevant precedents and case law upon which the parties have relied in these proceedings. To the extent that Respondents contend that no substantive change in the standard of review was intended, I question why the legislature changed the standard of review at all. Because this inquiry involves the statutory standard of review that the Executive Director is required to apply, my focus will be on the intent of the legislature based on objective evidence rather than the Respondents' litigation position. Because the standard of review will directly impact the parties' briefing on this matter on the merits, I find that it would be appropriate, in the interest of judicial economy, to conduct a special hearing focusing solely on the standard of review (as well as associated scheduling matters) prior to the time that briefing on the merits begins. This proposed procedure may also impact the statutory schedule for briefing on the merits, but should not impact the timing for the filing of the administrative record or dispositive motions based on preservation issues. I request that the parties confer and suggest, via email communication copied to all parties of record, a hearing date, time, and location as well as any stipulation as to briefing.<sup>1</sup> I expect this hearing to be of record.

8. All filings and service shall be by electronic mail in searchable pdf format, as described in R305-7-104.

9. Filings with the Administrative Law Judge shall be addressed to brandall@djplaw.com.

11. Service of documents in this matter will not be made upon the Executive Director.

---

<sup>1</sup> I would anticipate the submission of simultaneous pre-hearing briefs as to the standard of review issues discussed here. Briefing is not required, however.

12. All documents that are filed or served shall also be filed with the Administrative Proceedings Records Officer at DEQAPRO@utah.gov.

13. Every filing shall contain the filing date in the upper right hand corner or in the right hand box of the caption.

14. The parties may contact my Administrative Assistant, Cathy Frandsen, concerning procedural matters by telephone at (801) 415-3000 or by email at cfrandsen@djplaw.com.

DATED this 23<sup>rd</sup> day of September, 2016.



---

BRET F. RANDALL  
Administrative Law Judge

**CERTIFICATE OF SERVICE**

I hereby certify that on this 20th day of September, 2016, a true and correct copy of the foregoing **NOTICE OF FURTHER PROCEEDINGS AND FIRST PREHEARING ORDER** was served by e-mail upon the following:

Administrative Proceedings  
Records Officer  
Utah Department of  
Environmental Quality  
**DEQAPRO@utah.gov**

Joro Walker  
Charles R. Dubuc, Jr.  
Western Resource Advocates  
150 S. 600 East, Suite 2A  
Salt Lake City, UT 84102  
**jwalker@westernresources.org**  
**rdubuc@westernresources.org**

Andrea Issod  
Sierra Club Environmental Law Program  
2101 Webster Street, Suite 1300  
Oakland, CA 94612  
**Andrea.issod@sierraclub.org**

Christian Stephens  
Marina Thomas  
Assistant Attorney Generals  
160 E. 300 South  
P.O. Box 140873  
Salt Lake City, UT 84114-0873  
**CSTEPHENS@utah.gov**  
**marinathomas@utah.gov**

Michael A. Zody  
Jacob A. Santini  
Parsons Behle & Latimer  
201 S. Main Street, Suite 1800  
Salt Lake City, UT 84111  
**mzody@parsonsbehle.com**  
**jsantini@parsonsbehle.com**



---