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

In the matter of:

**SEVIER POWER COMPANY, APPROVAL
ORDER NO.: DAQE-AN125290003-12, dated
October 25, 2012**

**RECOMMENDED DECISION
Re: REQUEST FOR AGENCY
ACTION**

Administrative Law Judge: Carol Clawson

April __, 2013

This matter was initiated by a Request for Agency Action filed on behalf of the Sevier Citizens for Clean Air and Water, Inc. (“Sevier Citizens”). Sevier Citizens filed its Request on November 21, 2013. On February 15, 2013, the Executive Director of the Utah Department of Environmental Quality appointed me to act as an Administrative Law Judge in the matter pursuant to Utah Code §19-1-301(5) and (6) and §19-1-301.5(5). The appointment charges me to conduct a permit review adjudicative proceeding in this matter in accordance with Utah Code Ann. § 19-1-301.5 and Utah Admin. Code R305-7. Because the Sevier Citizens failed to file a Petition to Intervene as required by the governing statute and rules, the ALJ recommends that the matter be DISMISSED.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

On October 25, 2012, the Department approved an Order granting a permit to Sevier Power for a gas fired power plant application. Approval Order No.: DAQE-AN125290003-12. On November 21, 2013, the Sevier Citizens for Clean Air and Water,

Inc. filed a Request for Agency Action. The Request attached the factual and legal points and arguments supporting the request that were raised during the public comment period. Sevier Citizens did not file a Petition to Intervene.

Utah Code Section 19-1-301 and Rule 305-7 govern all adjudicative procedures conducted by the Environmental Quality Code, Utah Code Ann. Title 19. Utah Admin Code R305-7-101(1). The Code defines a “party to mean:

- (i) the director who issued the permit order being challenged in the permit review adjudicative proceeding;
- (ii) the permittee;
- (iii) the person who applied for the permit, if the permit was denied; or
- (iv) a person granted intervention by the administrative law judge.

Utah Code §19-1-301.5(1)(c).

Only a party or “a person who is seeking to intervene under Subsection (7) may file a request for agency action seeking review of a permit order.” *Id.* at 301.5(6)(a). A non-party may not participate in a permit review adjudicative proceeding unless the person is granted the right to intervene. *Id.* at 301.5(7)(a). Subsection (7) governs the right to intervene. It states:

A person who seeks to intervene in a permit review adjudicative proceeding under this section shall, within 30 days after the day on which the permit order being challenged was issued, file:

- (i) a petition to intervene . . .

§19-1-301.5(7)(b). *See also* R305-7-204 (requiring a Petition to Intervene to be filed within 30 days after the challenged permit was issued).

The Department’s administrative rules govern the ALJ’s discretion in this extension of filing deadlines. Utah Admin. Rule R305-7-105. That Rule directs us to

Rule 305-7-108(2), which governs the ALJ's authority to extend time to file a Request for Agency Action or Petition to Intervene. Rule 305-7-108 specifically prohibits the modification of the requirements for a timely filing of a Request for Agency Action or for a timely filing of a Petition to Intervene under R305-7-204(2) and 205 in a permit review adjudicative proceeding. R305-7-108(2)(a) and (c).

In other words, in order for a permit review adjudicative proceeding to be initiated by a non-party such as Sevier Citizens, the non-party must file *both* a Petition to Intervene and a Request for Agency Action within 30 days after the day on which the Permit Order being challenged was issued. In this case, Sevier Citizens filed a timely Request for Agency Action but failed to file a Petition to Intervene. The ALJ does not have discretion to modify the deadline to file a Petition to Intervene.

RECOMMENDED ORDER

Based on the record and Sevier Citizens' failure to file a timely Petition to Intervene in this matter, the ALJ recommends that the Notice of Agency Action be DISMISSED.

NOTICE FOR OPPORTUNITY TO COMMENT

Parties *may* file comments to this Recommended Decision with the Executive Director within ten business days of issuance of this Decision in accordance with the requirements of Rule 305-7-213(4). Comments shall not exceed 15 pages. A party may file a response to another party's comments, not to exceed five pages within five business days of the date of the service of the comments.

DATED THIS 1st day of April, 2013



CAROL CLAWSON
Administrative Law Judge

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of April 2013, a true and correct copy of the foregoing **RECOMMENDED ORDER Re: REQUEST FOR AGENCY ACTION** was served by e-mail upon the following:

Marcus Taylor (marcustaylor@qwestoffice.net)

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