

BEFORE THE
UTAH AIR QUALITY BOARD

In the Matter of:	*	
	*	Order re Petition to Intervene
Unit 3, Intermountain Power Service Corporation, Millard County, Utah	*	
DAQE-AN0327010-04	*	

On March 5, 2008, parties and participants appeared before the Utah Air Quality Board in the above-entitled matter for hearing on the petition to intervene by the Intermountain Power Project Unit 3 Development Committee (“Committee”). Joro Walker appeared for the Sierra Club. Christian Stephens appeared for the Executive Secretary. Michael Keller appeared for the Committee. Utah Air Quality Board members present were Ernest Wessman, Stephen C. Sands, Wayne M. Samuelson, H. Craig Petersen, James R. Horrocks, Nan Bunker, Kathy Van Dame, Joel E. Elstein, Richard Sprott, and Darrell Smith. Mr. Wessman, Ms. Van Dame, Mr. Sands, and Mr. Sprott recused themselves. Fred Nelson acted as counsel for the Board.

1. By pleading dated November 15, 2004, the Utah Chapter of the Sierra Club (“Sierra Club”) filed a Request for Agency Action seeking review of the October 15, 2004 decision by the Executive Secretary of the Utah Air Quality Board to issue an Approval Order granting a permit to Intermountain Power Service Corporation (“IPSC”) to construct and operate an additional coal-fired power plant Unit #3 at the Intermountain Power Plant in Millard County, Utah (“Approval Order”).

2. On July 20, 2007, counsel for IPSC, Holme Roberts and Owen, withdrew from the proceeding.

3. On August 1, 2007, VanCott, Bagley, Cornwall and McCarthy filed a notice of appearance on behalf of the Committee.

4. On September 5, 2007, the Board, by stipulation of Sierra Club and the Executive Secretary, stayed the proceeding.

5. On January 22, 2008, the Committee petitioned the Utah Air Quality Board to intervene in the proceeding stating that it supported and desired to continue to defend the Approval Order asserting that while the AO was issued in the name of IPSC, the Approval Order has always been held by IPSC on behalf of the Committee. The Committee subsequently filed an affidavit of Doug Hunter in support of its petition.

6. Sierra Club on February 19, 2008, filed its opposition to the Committee's petition to intervene.

7. On February 28, 2008, and the Committee filed a reply attaching further supporting documents.

Parties and Intervention

The rules of the Board provide that a petition to intervene must meet UCA Section 63-46b-9 that requires a demonstration "that the petitioner's legal rights or interests are substantially affected by the formal adjudicative proceeding, or that the petitioner qualifies as an intervenor under any provision of law." The Board shall grant a petition to intervene if it determines that

"(a) the petitioner's legal interests may be substantially affected by the formal adjudicative proceeding; and

"(b) the interests of justice and the orderly and prompt conduct of the adjudicative proceedings will not be materially impaired by allowing the intervention."

Further, the Board rules provide that “[n]o person may initiate or intervene in an agency action unless that person has standing. Standing shall be evaluated using applicable Utah case law.” UAC Section R307-103-6(3). The Utah Supreme Court in *Utah Chapter of the Sierra Club v Utah Air Quality Board*, 2006 UT 74, 148 P.3d 960 (Utah 2006), held that there are two tests to establish standing, either one of which, if met, is sufficient.

Under the traditional test, petitioner must allege that it has suffered or will suffer some distinct and palpable injury that gives it a personal stake in the outcome of the legal dispute. To determine whether a petitioner alleges it has suffered or will suffer a distinct and palpable injury involves a three-step inquiry:

- a. The petitioner must assert that it will be adversely affected by the challenged action.
- b. Petitioner must allege a causal relationship between the injury to the petitioner, the challenged actions, and the relief requested.
- c. The relief requested must be substantially likely to redress the injury claimed.

Extensive fact-finding and presentation of evidence to determine petitioner’s interests and causation are generally not required. Alleging a sufficient interest and causation that are plausible is adequate.

If a petitioner does not meet the traditional test, it may still have standing under an alternative test if it can demonstrate that it is an appropriate party asserting a matter of great public importance. Inasmuch as the Board concludes that the Committee meets the traditional test, there is no reason to further discuss the alternative test.

Intervention of the Committee

The Board finds that the Committee has alleged a sufficient interest and causal

relationship to meet the traditional test. The Committee asserts that even though the Approval Order was issued in IPSC's name, IPSC is acting on behalf of the Committee as development manager for IPP Unit 3. The Committee further asserts that its members include the Utah Association of Municipal Power systems ("UAMPS") and PacifiCorp which have financially committed to, and have expended, substantial sums of money in the development of Unit 3, hold rights to develop and pursue Unit 3, and hold ownership rights to the Approval Order. The Committee presented an affidavit of Doug Hunter, General Manager of UAMPS, and correspondence and contract documents to support its allegations. Actions of the Board with respect to the Approval Order could potentially affect the Committee's interests. These alleged facts warrant granting the Committee the opportunity to defend against the Sierra Club's assertions and to defend the Approval Order.

Sierra Club argues that the Committee does not own the Approval Order and that even if it does, it cannot proceed to build IPP Unit 3 because of contractual constraints citing, in part, the existence of litigation and public statements that raise ongoing issues concerning ownership and rights with respect to the Unit 3 project. The Board does not make a ruling on or take a position on the interpretation of the contract provisions, the ability of the Committee to proceed with the Unit 3 project, or other disputes with respect to the Unit 3 project. The Board finds only that the Committee has made plausible assertions of ownership and development rights in the Approval Order sufficient to meet the Utah Supreme Court test for standing in this proceeding.

Order

The Board, therefore, grants intervention to the Committee by a vote of six in favor (Horrocks, Bunker, Peterson, Samuelson, Smith, and Elstein), and none opposed.

DATED this _____ day of May, 2008.

Utah Air Quality Board

CERTIFICATE OF SERVICE

I hereby certify that on this _____ day of May, 2008, I caused a copy of the forgoing Order re Petition to Intervene to be mailed by United States Mail, postage prepaid, to the following:

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