



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 2

290 BROADWAY

NEW YORK, NY 10007-1866

APR 10 2017

Mr. Mark J. Green
Vice President
Energy Answers Arecibo, LLC
The Atrium Business Center, Suite 229
530 Constitution Avenue
San Juan, Puerto Rico 00901-2304

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. Green:

We are in receipt of your March 21, 2017, letter requesting a five-month extension, to September 10, 2017, of the final Prevention of Significant Deterioration (PSD) permit for the proposed Energy Answers Arecibo, LLC (Energy Answers) facility. We have reviewed the information you provided and decided to grant your request for a limited five-month extension.

Background

EPA Region 2 issued a final and effective PSD permit to Energy Answers on April 10, 2014. Pursuant to 40 CFR §52.21(r)(2), the PSD permit would have expired on October 10, 2015 if Energy Answers neither commenced construction nor received a permit extension from EPA. After receiving Energy Answers' timely request for a permit extension, EPA Region 2 granted an 18-month extension of the PSD permit on October 1, 2015 which will expire on April 10, 2017. Energy Answers' March 21, 2017 letter requests an additional five months, until September 10, 2017, to commence construction.

Discussion

In your letter, you explain that Energy Answers' ability to commence construction has been constrained by the Environmental Impact Statement (EIS) review on a federal loan for the facility being conducted by the USDA Rural Utilities Service (RUS) pursuant to the National Environmental Policy Act (NEPA). In particular, you indicate that if Energy Answers commences on-site construction beyond very limited site activities prior to issuance of the RUS Record of Decision (ROD), the project could become ineligible for the RUS loan. We confirmed with the RUS today that your financing would indeed be jeopardized if Energy Answers starts construction before the ROD is issued. Your letter also states that the NEPA onsite construction restriction has delayed issuance of the previously approved Conditional Letter of Map Revision (CLOMR) from FEMA and, in turn, the Puerto Rico Planning Board Siting Consultation. Therefore, it appears that finishing the RUS process is critical to completing several steps that prevent the project from commencing construction.

Your letter indicates that issuance of the RUS ROD will take place within a matter of days to a few weeks of the April 10, 2017 PSD permit deadline for commencing construction, and then Energy Answers will be able to quickly embark on the remaining actions that must be taken before construction can commence. The timeline provided in your letter reflects that, over the next five months, there will be continued progress toward commencing construction and that the remaining milestones represent the final stages of a lengthy NEPA review process that has, to date, spanned 28 months. In addition, your timeline further indicates that Energy Answers will soon begin limited test pile/foundation work and enter into an Engineering Procurement and Construction (EPC) contract.

EPA's PSD regulation at 40 CFR §52.21 states that EPA may allow a permit extension "upon a satisfactory showing that an extension is justified." As reflected 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), the PSD regulation "does not specify that any particular criteria must be satisfied" and therefore EPA maintains discretion to make PSD permit extension decisions on a case-by-case basis.

There are a number of factors that lead us to conclude that a five-month extension is justified. These factors include the above-referenced delays in Energy Answers' ability to construct due to the RUS process and your representations regarding the imminent issuance of the RUS ROD, execution of the EPC contract and limited test pile/foundation work. In addition, the specific milestones you have provided represent continued steady progress toward commencing construction (including EPC contract execution, FEMA on-site work and test piles, and RUS ROD issuance, FEMA CLOMR issuance, RUS loan commitment letter issuance, fill and foundation work, and notification to EPA of construction start) and your representation that there will be a relatively short time-span before your planned commence construction date.

EPA has discretion to decide whether, and under what terms, to grant or deny a permit extension. One of the terms that EPA must decide is whether or not to require a substantive re-analysis of the PSD permit requirements. As explained in EPA's October 1, 2015 letter granting your previous request for an 18-month extension. EPA's Extension Memorandum notes that 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 PSD permit issuance. While the Extension Memorandum states that, "in most cases a request for a second extension of the commencement of construction deadline should include a substantive re-analysis" of the PSD permit requirements, the Memorandum contemplates situations when a re-analysis might not be required. In light of the specific circumstances presented by your current extension request for an abbreviated 5-month extension, as described above, EPA Region 2 has decided not to require re-analysis at this time.

In addition to considering the information in Energy Answers' March 21 letter, EPA Region 2 did an independent review of whether there have been any new developments in control technology by checking both the RACT/ BACT/LAER Clearinghouse and the latest Energy Recovery Council Directory of Waste to Energy Facilities. We also surveyed state permitting websites and other sources to see if new control technologies have been utilized for similar waste to energy facilities in the United States. Based on this limited review, we are not aware of any

examples of more stringent emission limits or new control technologies with respect to the municipal waste combustors and the ancillary equipment that have been permitted since Energy Answers' final effective permit was issued. We are also not aware of any construction or modification of major sources of emissions in the project area since issuance of Energy Answers' PSD permit and therefore have no reason to believe that the conclusions made on the air quality impact analysis at the time of permitting are not still valid.

EPA also took into consideration that a new National Ambient Air Quality Standard (NAAQS) for ozone was promulgated in 2015 after the final and effective PSD permit was issued to Energy Answers. We note that the existing ambient ozone concentrations in Puerto Rico are well below the NAAQS (as has historically been the case in Puerto Rico) and that the additional ozone precursor emissions from the proposed Energy Answers facility are low in comparison to recent studies performed by EPA on ozone precursors (as well as precursors to secondarily formed PM_{2.5} [see December 2, 2016 draft guidance link at https://www3.epa.gov/ttn/scram/guidance/guide/EPA-454_R-16-006.pdf]). Therefore, we have no reason to expect any concerns from this facility related to the new NAAQS. In addition, EPA notes that the Guideline on Air Quality Models (40 CFR Part 51 Appendix W) was revised and published by EPA on January 17, 2017 (but is not yet effective) and that there have been updates to the AERMOD modeling system. These revisions and updates serve largely to enhance and refine model predictions. We have no reason to believe that these revisions would change the conclusions made at the time of permit issuance that the NAAQS and increments continue to be protected.

Given the abbreviated five-month extension requested by Energy Answers, combined with all the factors discussed above and no apparent changes to the BACT and air quality analyses, EPA has concluded that BACT re-analysis is not required. This conclusion is consistent with the Extension Memorandum's recognition of the "delay or significant resource burden that may result from substantive re-analysis in the context of even a relatively brief extension request." When Region 2 issued the October 1, 2015 extension letter, we indicated that we would not be inclined to grant another 18-month extension without a re-analysis. However, given the relatively brief extension requested by Energy Answers, the time and resource burden of conducting a re-analysis combined with the other factors discussed above and the discretion afforded EPA, an abbreviated extension without re-analysis is justified.

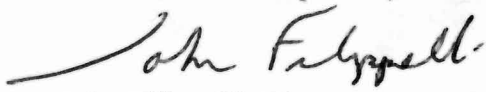
The Extension Memorandum states that when a substantive re-analysis is not conducted, "the EPA does not see the ... basis for providing an opportunity for public comment on the extension." The Memorandum encourages the permitting authority, however, to notify the public once it has issued the permit extension, particularly where there has been significant public interest in the permit. In light of the public interest in the Energy Answers PSD permit, we will post this decision to extend the commence construction deadline on Region 2's website and provide notice of this decision in a local newspaper.

In conclusion, EPA Region 2 is exercising its discretion to grant an abbreviated five-month extension of Energy Answers' Clean Air Act PSD permit, until September 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. Given the tight schedule for the project over the next five months, we ask that you provide us with monthly updates of your progress toward commencing construction.

If you have any questions regarding this letter, please call me at (212) 637-3736 or Suilin Chan, Chief, Permitting Section, Air Programs Branch, at (212) 637-4019.

Sincerely,

A handwritten signature in black ink that reads "John Filippelli". The signature is written in a cursive style with a long, sweeping underline that extends to the left.

John Filippelli, Director
Clean Air and Sustainability Division