

1 NDEP. By statute, NDEP is clearly within its authority to issue a permit renewal when there is
2 “full or substantial compliance” with the terms of the original permit. NRS 445A.495(1). *See*
3 *also* Great Basin Mine Watch v. Nevada, 2006 WL 1668890 (April 19, 2006).

4 As has been repeatedly argued by both Defendant and Intervenor, the Appellant is simply
5 on a fishing expedition. A fishing expedition it could have commenced as early as October 21,
6 2009, when NDEP issued its “Public Notice of Proposed Action” proposing the issuance of
7 Intervenor’s Permit renewal subject to certain effluent limitations and special conditions. The
8 Division set a 30-day period for receiving public comment, which ended November 30, 2009.
9 Due to the continued public interest in the Permit, NDEP also conducted a public hearing on the
10 topic of re-issuance of the Permit on June 3, 2010, in Moapa, Nevada. On June 24, 2010, the
11 Division issued its Notice of Decision re-issuing the Permit to Intervenor (the “NOD”). Within
12 the NOD NDEP responds to public comments raised during and before the June 3rd public
13 hearing. Among the comments received and responded to by NDEP in its June 24th NOD were
14 detailed comments submitted by the Appellant. In fact, more than 50% of the contents of the
15 NOD are dedicated to responding to Appellant’s comments on the draft Permit. NOD at 5-12.

16 The Permit was issued by NDEP on June 24, 2010, with an effective date of June 25,
17 2010. On July 2, 2010, Appellant filed its appeal request in this proceeding, though requested
18 additional time to develop its specific arguments. On July 21, 2010, the Commission responded
19 to Appellant’s appeal request and agreed to hold the appeal in abeyance “pending actions by
20 [counsel for Sierra Club] to further quantify the nature of the appeal and/or negotiate resolution
21 of outstanding issues with NDEP and/or NV Energy.”

22 In the absence of any further pleadings by the Appellant to expand on the nature of its
23 appeal, on September 10, 2010, NDEP requested that the Commission order pre-hearing briefs
24 concerning the issues to be presented. By Order dated September 22, 2010, the Commission
25 ordered the appeal hearing to take place November 4 and 5, 2010.

26 On October 6, 2010, Appellant submitted a motion seeking (1) to compel production of
27 certain documentation not part of the record of this permit proceeding; (2) to delay these
28 proceedings for an additional three weeks beyond the date they receive the documentation they

1 are requesting in (1) above; and (3) a preliminary injunction to suspend the Permit and halt
2 construction of new wastewater treatment ponds. While the Appellant's various motions were
3 denied by this Commission, the Appellant was successful in showing that there were perhaps
4 some miscommunications in interpreting Appellant's various requests for decades of
5 documentation. While it would appear that NDEP has fully or substantially complied with the
6 Commission's October 27th Order, Appellant once again comes before this Commission and
7 implicitly threatens to not show up to the ordered November 4th Hearing unless further actions
8 are taken to appease them.

9 Intervenor will not take this Commission's time at this juncture to respond to the
10 substance of Appellant's latest salvo of allegations, other than to state that NV Energy has
11 clearly not violated any term of the Commission's October 27th Order (a point that is clear from
12 the face of the October 27th Order).

13 Intervenor submits this Response only to offer to the Commission that there is nothing
14 preventing Appellant from raising its alleged concerns at the Hearing, and if it feels appropriate,
15 appealing any decisions of this Commission in Nevada district court – a venue that is far less
16 willing to entertain Appellant's procedural and legal tactics.

17 Should Appellant elect not to appear at the scheduled Commission Hearing on November
18 4th, Intervenor will be prepared to make its appropriate Motion to Dismiss this action.

19 Respectfully submitted this 1st day of November, 2010.

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21 **NEVADA POWER COMPANY**

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23 _____
24 Thomas C. Woodworth
25 Assistant General Counsel
26 NV Energy
27 6226 West Sahara Ave, MS 03A
28 Las Vegas, NV 89146
(702) 402-5694

CERTIFICATE OF SERVICE

I certify that on November 1, 2010, I served a copy of the foregoing document to the following by electronic means, as well as by U.S. Mail, postage prepaid:

Dan Galpern
Staff Attorney
Western Environmental Law Center
1216 Lincoln Street
Eugene, OR 97401
(541) 485-2471 x114
galpern@westernlaw.org
***Attorney for Sierra Club*

Megan Anderson
Staff Attorney
Western Environmental Law Center
208 Paseo del Pueblo Sur, Unit 602
Taos, NM 87571
(575) 613-4195
Anderson@westernlaw.org
***Attorney for Sierra Club*

Carolyn E. Tanner
Deputy Attorney General
State of Nevada
Office of Attorney General
5420 Kietzke Lane, Suite 202
Reno, NV 89511
***Attorney for NDEP*

Bill Frey
Senior Deputy Attorney General
State of Nevada
Office of Attorney General
100 N. Carson Street
Carson City, NV 89701
(775) 684-1229
brey@ag.nv.gov
***Attorney for NDEP*

Christopher W. Mixson, Esq.
Wolf, Rifkin, Shapiro, Schulman & Rabkin, LLP
3556 East Russell Rd.
Las Vegas, NV 89120
Ph: 702-341-5200
Fx: 702-341-5300
cmixson@wrslawyers.com
***Attorney for Sierra Club*



Thomas Woodworth
Assistant General Counsel
NV Energy
6226 West Sahara Ave, MS 03A
Las Vegas, NV 89146