

JUN 07 2005

BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING

Terri A. Lorenzon, Director  
Environmental Quality Council

In the Matter of the Appeal of Air Quality )  
Permit No. CT-1352A (Corrected), ) Docket No. 02-2601  
Two Elk Generating Station – Unit 1 )

Motion to Dismiss

Petitioner Two Elk Generating Partners (TEGP) hereby moves the Environmental Quality Council (EQC) to dismiss this matter and affirm Permit No. CT-1352B for the following reasons.

1. On October 23, 2002, TEGP filed a petition for EQC review of a decision by the Wyoming Department of Environmental Quality (DEQ) that Permit No. CT-1352A (Corrected) had terminated. DEQ had determined that TEGP failed to commence construction prior to August 20, 2002, as required by the permit. TEGP disagreed, and so appealed to the EQC.

2. Prior to hearing, TEGP and DEQ reached a settlement in this matter, and entered into a Joint Stipulation they filed with the EQC on May 28, 2003. At the request of the parties, the EQC entered an "Order Approving Joint Stipulation for Disposition of Contested Case." The terms of the approved stipulation, in brief, were that the permit should be modified to extend the deadline for commencing construction and to reduce certain emissions limitations. In its Order, EQC retained jurisdiction over the matter for purposes of determining compliance with the terms of the Joint Stipulation.

3. In accordance with the Joint Stipulation and the EQC Order, DEQ issued a modified air quality permit, Permit No. CT-1352B, on May 29, 2003. Under this permit, TEGP was required to commence construction before May 29, 2005.

4. Prior to May 29, 2005, TEGP completed the construction of the foundation for the main stack, and entered into a binding written contract to purchase a site-specific main boiler, which contract is not contingent upon any additional notice to proceed or exercise of an option. TEGP submitted documentation of the commencement of construction to the DEQ. TEGP has, therefore, commenced construction as required by Condition 4 of Permit No. CT-1352B.

5. Now that construction has commenced and the parties have complied with and fulfilled the terms of the Joint Stipulation, there is no reason for the EQC to continue its jurisdiction over this matter, and it should be dismissed.

For these reasons, TEGP moves the EQC to issue an order: (1) confirming that TEGP has commenced construction as required by Condition 4 of Permit No. CT-1352B; (2) affirming that Permit No. CT-1352B remains valid and binding upon TEGP; and (3) dismissing this matter and terminating the EQC's continued jurisdiction over it.

Dated this 7<sup>th</sup> day of June, 2005.



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ATTORNEYS FOR PETITIONER  
TWO ELK GENERATING PARTNERS

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7<sup>th</sup> day of June, 2005, the foregoing Motion to Dismiss was served by hand delivery to Nancy E. Vehr, Wyoming Attorney General's Office, 123 Capitol Building, Cheyenne, WY 82002.

  
Michael W. H.