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**BEFORE THE ENVIRONMENTAL QUALITY COUNCIL  
STATE OF WYOMING**

Terri A. Lorenzon, Director  
Environmental Quality Council

Sierra Club and PRBRC Appeal of DEQ )  
Construction Continuance and Commencement ) Docket No. 07-2802  
Determinations, and Permit Deadline Extensions )  
Re: Two Elk Power Plant )

**TWO ELK GENERATION PARTNERS, LIMITED PARTNERSHIP'S  
PETITION TO INTERVENE**

Pursuant to WYO. R. CIV. P. 24, Wyoming Department of Environmental Quality ("DEQ") Rule of Practice and Procedure ("R.P.P.") Chapter II, Section 7, and the March 3, 2006 Environmental Quality Council Order on Intervention, Two Elk Generation Partners, Limited Partnership ("TEGP"), a limited partnership organized under the laws of Wyoming, respectfully requests that the Environmental Quality Council ("Council") grant it party status in this proceeding. Permit CT-1352B, a construction permit for the Two Elk Plant issued by the DEQ Air Quality Division, is at issue in this case. As the permittee that holds and is subject to the requirements of Permit CT-1352B, TEGP is an indispensable party to this case. TEGP respectfully requests that the Council approve the attached Order authorizing it to intervene in this proceeding. In further support of its request, TEGP states as follows:

1. The DEQ Rules of Practice and Procedure provide that "[a]ny person . . . interested in the determination of a proceeding . . . pending before the Council may petition for leave to intervene in such proceeding prior to or at the date of hearing." II R.P.P. § 7. The petition must "set forth the grounds of the proposed intervention, [and] the position and interest of the petitioner in the proceeding." *Id.* Finally, leave to intervene will only be granted if the petitioner is adversely affected by the action or has a statutory right under the Wyoming Administrative Procedure Act or the Environmental Quality Act. *Id.*

2. The Council has found and concluded that permittees are indispensable parties to cases in which their permit is challenged, at issue, or in jeopardy and that they shall be joined in accordance with W.R.C.P. 19. Environmental Quality Council Order on Intervention (March 3, 2006) (“Order on Intervention”) Findings ¶¶ 4, 6, 7, 8, Conclusion ¶ 1. Because of the nature of their interest in proceedings affecting their permit or interest, a permittee should be a party to the case. *Id.* Findings ¶ 7. Accordingly, the Council has ordered that “[a]ll persons who are indispensable parties to a contested proceeding before the EQC shall be joined as a party. *Id.* Order ¶ 1.

3. TEGP, as the permittee that holds and is subject to the requirements of Permit CT-1352B, is the primary party in interest in this matter. On November 21, 2007, DEQ concluded that TEGP has not discontinued construction at the Two Elk Plant for a period of 24 months or more, and that Permit CT-1352B accordingly remains valid. Petitioners challenge that conclusion, and seek to invalidate the permit. Further, Petitioners challenge prior DEQ decisions relating to the validity of the permit. Thus, Permit CT-1352B is challenged and placed in jeopardy by this appeal.

4. Pursuant to the Council’s Order on Intervention, TEGP is an indispensable party to this proceeding and “should be a party to the case.” *Id.* Findings ¶¶ 4, 7 & Conclusion ¶ 1. TEGP therefore requests that it be joined as a party to this proceeding consistent with the Order on Intervention. *Id.* Order ¶ 1.

5. TEGP notes that the Council has ordered that the presiding member of the Council may join an indispensable party to a case without having the matter decided by the full Council. *Id.* Order ¶ 2.

6. TEGP also satisfies the requirements for intervention under the Council rules, II

**CERTIFICATE OF SERVICE**

On this 1<sup>st</sup> day of February 2008, in accordance with the requirements of Chapter I, Section 3(b) of the Department of Environmental Quality Rules of Practice and Procedure and Rule 5 of the Wyoming Rules of Civil Procedure, I caused the foregoing TWO ELK GENERATION PARTNERS, LIMITED PARTNERSHIP'S PETITION TO INTERVENE to be served by registered mail, return receipt requested, and electronic mail to:


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Mary A. Throne  
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R.P.P. § 7, set forth above, as well as Wyo. R. Civ. P. 24. TEGP has the primary interest in the subject of this action, namely protecting the legal status of its permit for construction of the Two Elk Plant in Campbell County, Wyoming. No existing party will adequately represent TEGP's interest in this proceeding, because the DEQ's interest is in upholding its decision, but it has no particular interest in the validity of TEGP's construction permit. Finally, TEGP's petition is timely under the Council rules, as no hearing has been set for this matter.

**CONCLUSION**

For the foregoing reasons, TEGP respectfully requests that the Council, through the presiding officer, grant it party status in this proceeding.

Dated this 1<sup>st</sup> day of February 2008.

TWO ELK GENERATION PARTNERS

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TWO ELK GENERATION PARTNERS

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STATE OF WYOMING**

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Re: Two Elk Power Plantl                                    )

**ORDER**

This matter is before the Council on Two Elk Generation Partners, Limited Partnership's Petition to Intervene. Having reviewed the Petition, and being fully advised in the premises, the Council hereby GRANTS the Petition. Two Elk Generation Partners, Limited Partnership, as an indispensable party under the Environmental Quality Council Order on Intervention, dated March 3, 2006, is hereby granted party status in this matter.

Dated this \_\_\_\_ day of \_\_\_\_\_, 2008.

\_\_\_\_\_  
Presiding Officer  
Environmental Quality Council  
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Cheyenne, WY 82002