ORAL ARGUMENT NOT YET SCHEDULED

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SIERRA CLUB AND NATURAL RESOURCES DEFENSE COUNCIL,	)	
Petitioners,	)	
v.	)	**No. 13-1262**
U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.*,	)	
Respondents.	)	

MOTION OF THE UTILITY AIR REGULATORY GROUP, THE NAAQS IMPLEMENTATION COALITION, AND THE AMERICAN FOREST & PAPER ASSOCIATION TO INTERVENE

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, the Utility Air Regulatory Group ("UARG"), the NAAQS Implementation Coalition ("the Coalition"), and the American Forest & Paper Association ("AF&PA") (collectively "Movant-Intervenors") respectfully move to intervene in the above-captioned consolidated case in which petitioners Sierra Club and the Natural Resources Defense Council (collectively "Sierra Club") seek review of a final action of the United States Environmental Protection Agency

("EPA" or "Agency").[1] In that final action, titled "Air Quality Designations for the 2010 Sulfur Dioxide (SO_2) Primary National Ambient Air Quality Standard" ("SO_2 NAAQS Designations Rule"), EPA determined that measured 1-hour concentrations of sulfur dioxide ("SO_2") in 29 areas of the country now exceed the health protection level established by the 1-hour SO_2 national ambient air quality standard ("NAAQS") that EPA promulgated in June 2010. 78 Fed. Reg. 47191 (Aug. 5, 2013). EPA further stated in the rule that it "intends to address in separate future actions the designations for all other areas for which the agency is not yet prepared to issue designations . . . ." *Id.*

Sierra Club filed its petition for review of the SO_2 NAAQS Designations Rule on October 3, 2013. This motion to intervene is being timely filed pursuant to Federal Rule of Appellate Procedure 15(d).

UARG is a not-for-profit association of individual electric utilities and other electric generating companies and national trade associations. Individual members of UARG own and operate electric generating units ("EGUs") that produce electricity for residential, commercial, industrial, institutional, and governmental

[1] Sierra Club's Petition for Review was consolidated with pending appeals in *Treasure State Resource Industry Association v. EPA et al.*, No. 13-1263 (D.C. Cir. filed Oct. 4, 2013) and *United States Steel Corp. v. EPA et al.*, No. 13-1264 (D.C. Cir. filed Oct. 4, 2013). Pursuant to D.C. Cir. Rule 15(b), this motion constitutes a motion to intervene only in Sierra Club's petition for review entitled *Sierra Club and Natural Resources Defense Council v. EPA*, No. 13-1262 (D.C. Cir.) but not in the other consolidated appeals.

customers and are directly affected by the SO_2 NAAQS Designations Rule. For this reason, UARG filed comments in the administrative proceeding. *See,* Comments of the Utility Air Regulatory Group on the Environmental Protection Agency's February 15, 2013 Responses to State and Tribal 2010 Sulfur Dioxide Designation Recommendations (Mar. 18, 2013) ("UARG Comments"), Doc. ID No. EPA-HQ-OAR-2012-0233-0245.

The Coalition comprises trade associations, companies, and other entities that are concerned about the implementation of new NAAQS, including the 1-hour SO_2 NAAQS that EPA adopted in 2010. The Coalition also filed comments in the administrative proceeding below. *See* Comments of NAAQS Implementation Coalition (Mar. 18, 2013) ("Coalition Comments"), Doc. ID No. EPA-HQ-OAR-2012-0233-0246.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. As a Coalition member, AF&PA supported the Coalition's comments in the SO_2 NAAQS Designations Rule administrative proceeding.

For the reasons described below, Movant-Intervenors request that this Court grant their motion to intervene. Counsel for Sierra Club authorized counsel for

Movant-Intervenors to state that Sierra Club reserves its position on the motion to intervene until it has an opportunity to review the motion. Counsel for EPA authorized counsel for Movant-Intervenors to state that EPA will take no position on this motion.

BACKGROUND

I. Relevant Clean Air Act Provisions

The Clean Air Act ("CAA" or "the Act") directs EPA to promulgate NAAQS that are protective of the public health and welfare. 42 U.S.C. § 7409(a), (b). Within one year of EPA's promulgating a new NAAQS, the governor of each State must submit to EPA information indicating which parts of that State (a) meet the new standard (designated "attainment areas"), (b) do not meet the standard ("nonattainment areas"), and (c) cannot be classified attainment or nonattainment because adequate data are not available to make a determination one way or another ("unclassifiable areas"). *Id.* § 7407(d)(1)(A). EPA must then publish final "designations" of all areas as "attainment," "nonattainment" or "unclassifiable," "as expeditiously as practicable, but in no case later than 2 years from the date of promulgation of the new or revised [NAAQS]." *Id.* § 7407(d)(1)(B)(i). The two-year deadline "may be extended for up to one year in the event the Administrator has insufficient information to promulgate the designations." *Id.* In promulgating the designations submitted by each Governor under 42 U.S.C. § 7407(d)(1)(A),

EPA's Administrator may make such modifications as are deemed necessary. *Id.* § 7407(d)(1)(B)(ii). If the Governor of a State "fails to submit the list" of required designations, then the Administrator (as part of the action required by 42 U.S.C. §7407(d)(1)(B)(i)) is to promulgate designations for any area (or portion thereof) not designated by the State. *Id*.

Accordingly, the CAA directs EPA to promulgate designations for all areas of every State within three years after the promulgation of a new or revised NAAQS. *Id.* § 7407(d)(1)(B). These designations must then be published by EPA in the *Federal Register*. *Id.* § 7407(d)(2).

II. Background on EPA's SO_2 NAAQS Designations Rule

On June 22, 2010, EPA promulgated an ambient standard, which became effective on August 23, 2010, establishing a 1-hour limit on ambient SO_2 concentrations throughout the country. *See* 75 Fed. Reg. 35520 (June 22, 2010). EPA said it would publish all initial designations for this standard by June 2012.

Prior to the time EPA promulgated the 1-hour SO_2 NAAQS in 2010, it was EPA's practice to have States base their nonattainment designations for new NAAQS on monitoring data. At the time it promulgated the 1-hour SO_2 NAAQS, though, EPA said it intended to base nonattainment designations on a combination of monitoring data and computer modeling predictions. *See* 75 Fed. Reg. at 35573. After those opposing EPA's action, including several Movant-Intervenors and

States, challenged such an approach in this Court, EPA retreated from making such changes in the NAAQS designation process. *See* Letter from Norman L. Rave, Jr., U.S. Dep't of Justice, to Clerk, U.S. Court of Appeals for the District of Columbia Circuit pursuant to Fed. R. App. P. 28(j) (Apr. 19, 2012), ECF No. 1369684, *Nat'l Envtl. Dev. Ass'ns Clean Air Project v. EPA*, 686 F.3d 803 (D.C. Cir. 2012), *cert. denied*, *ASARCO LLC v. EPA*, 133 S. Ct. 983 (2103).

On August 3, 2012, EPA announced that it then had "insufficient data . . . to promulgate designations, including where it is necessary to identify nearby contributing areas and to determine boundaries of possible nonattainment areas . . ." 77 Fed. Reg. 46295, 46297 (Aug. 3, 2012). EPA further announced that it intended to "take . . . up to 1 additional year, allowed under the CAA for promulgating initial designations for the 2010 primary SO_2 NAAQS." *Id.* EPA said that by June 2013, it expected to resolve remaining issues and "proceed expeditiously to complete the designations process." *Id.* at 46297-46298.

EPA did not, however, meet the schedule it set out in August 2012 for completing the designations process. Instead, in a February 15, 2013 *Federal Register* notice, the Agency indicated that it planned to promulgate in June 2013 designations for 30 areas it identified as "nonattainment," and that it "intend[ed] to address [other] areas in a subsequent round or multiple rounds of responses and designations." 78 Fed. Reg. 11124, 11126 (Feb. 15, 2013). The February 15, 2013

notice also announced the availability of information supporting the Agency's proposal to designate some areas as "nonattainment" and sought public comment on the Agency's proposed action. *Id.* In response, comments were filed both on the schedule that EPA intended to follow in making all area designations for the 1-hour SO_2 NAAQS and on the information that EPA said it would use to make those designations.

In its comments, UARG stated that it has been urging EPA to rely more heavily on the results of monitoring data and to rely less on computer modeling predictions in implementing the 1-hour SO_2 ambient standard, including in designating areas as not attaining that standard. *See* UARG Comments at 3. As UARG noted, EPA's currently available models for predicting short-term SO_2 concentrations, when run in the manner required by EPA, can "so greatly overstate impacts of individual sources and groups of sources" that those models will "often predict ambient standard violations where, in fact, none are occurring." *Id.* at n.3. And, UARG commented that EPA's reliance on tools that over-predict the 1-hour SO_2 impacts of individual sources or groups of sources can "lead to areas being designated nonattainment when they are, in fact, attaining the 1-hour SO_2 NAAQS. And sources in designated nonattainment areas will have to achieve far greater emission reduction requirements, potentially imposing billions of dollars of costs on source owners (including UARG members)" and others. *Id.* The Coalition also

filed comments concurring with EPA's final decision "to base designations on actual monitoring data rather than output from computer model simulations." *See* Coalition Comments at 1. AF&PA has supported the use of actual monitoring data for NAAQS designations as a Coalition member.

In contrast, Sierra Club filed comments urging EPA to rely on modeling analyses when designating areas as not attaining the 1-hour SO_2 NAAQS. *See* Comments of Sierra Club (March 18, 2013 and April 8, 2013) (collectively "Sierra Club Comments"), Doc. ID Nos. EPA-HQ-OAR-2012-0233-0265, EPA-HQ-OAR-2012-0233-0293. Sierra Club included in its comments the results of its own modeling analyses of coal-fired facilities – including analyses of facilities owned by individual members of Movant-Intervenors. *See id.* Sierra Club argued that these analyses demonstrated that many more parts of the country were failing to attain the 1-hour SO_2 NAAQS, including areas impacted by emissions from power plants owned and operated by individual members of Movant-Intervenors. *Id.*

On August 5, 2013, EPA published the final SO_2 NAAQS Designations Rule designating 29 areas "nonattainment" "based on recorded air quality monitoring data showing violations" of the 1-hour SO_2 NAAQS. 78 Fed. Reg. at 47191. In that rule, EPA announced its intent to address all other designations for the rest of the country in "separate future actions . . . ." *Id.*

III. Consequences Flowing to Regulated Sources From Area Designations

Serious consequences flow to regulated sources, including many sources owned and operated by Movant-Intervenors, from whether areas in which those sources are located are designated "attainment," "nonattainment" or "unclassifiable" with a new or revised NAAQS. Sources in areas designated "nonattainment" will likely have to adopt a wide range of measures designed to reduce targeted emissions. *See* CAA Title I, Part D—Plan Requirements for Nonattainment Areas, 42 U.S.C. §§ 7501-7509. In contrast, sources in areas designated "attainment" or "unclassifiable" do not generally need to install additional emission control equipment or take other potentially extensive and expensive measures.

In addition, the attainment status of an area – whether it is designated "nonattainment," "attainment" or "unclassifiable" – dictates which CAA permitting requirements are applicable to the construction of any major new source or the major modification of any existing source in that area. Specifically, any time a company wants to locate a major new source in an area – or make a major modification to an existing source in an area – it must apply for and receive a CAA preconstruction permit. The CAA preconstruction permitting program applicable in "attainment" and "unclassifiable" areas is the prevention of significant deterioration of air quality ("PSD") program. 42 U.S.C. §§ 7470-7479. Although

the requirements of the PSD program can be time-consuming to meet, those requirements are meaningfully less onerous to meet than the preconstruction permitting requirements applicable in areas designated "nonattainment." See 42 U.S.C. §§ 7501-7509, which set out the requirements of the Act's nonattainment new source review program for sources locating in designated nonattainment areas.

ARGUMENT

The Court should grant Movant-Intervenor's motion to intervene because Movant-Intervenors meet the standard for intervention in petition for review proceedings in this Court.

I. Movant-Intervenors Meet the Requirements for Intervention

Under Federal Rule of Appellate Procedure 15(d), a motion to intervene need only be timely and make "a concise statement of the interest of the moving party and the grounds for intervention." This Court has held that Rule 15(d) "simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991).

Appellate courts, including this Court, have recognized that policies supporting district court intervention under Federal Rule of Civil Procedure 24, while not binding in cases originating in courts of appeals, may inform their intervention inquiries. See, *e.g., Int'l Union v. Scofield*, 382 U.S. 205, 216 n.10

(1965); *Amalgamated Transit Union Int'l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (per curium). Under the Federal Rules of Civil Procedure, "the 'interest' test [for intervention] is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967); *see also Cascade Natural Gas Corp. v. El Paso Natural Gas Co.*, 386 U.S. 129, 133-35 (1967), *quoted in Nuesse*, 385 F.2d at 701.

Some cases have indicated that Article III standing is a prerequisite to intervention. *See, e.g.*, *Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533, 537-39 (D.C. Cir. 1999); *Military Toxics Project v. EPA*, 146 F.3d 948, 953-54 (D.C. Cir. 1998). More recently, this Court determined that an intervenor-applicant that meets the requirements for intervention of right under Federal Rule of Civil Procedure 24(a) thereby demonstrates Article III standing. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) ("any person who satisfies Rule 24(a) will also meet Article III's standing requirement") (citing *Sokaogon Chippewa Cmty. v. Babbitt*, 214 F.3d 941, 946 (7th Cir. 2000)). *See also Akiachak Native Cmty. v. Dep't. of the Interior,* 584 F. Supp. 2d 1, 7 (D.D.C. 2008) (citing *Roeder* for the proposition that "[t]he standing inquiry is repetitive in the case of intervention as of right because an intervenor who satisfies Rule 24(a) will also have Article III standing."). As discussed below, Movant-Intervenors meet the

elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2)[2] and, thus, satisfy any standing test that arguably might apply to intervention in this Court.[3]

The requirements for intervention of right under Federal Rule of Civil Procedure 24(a)(2) are that: (1) the application is timely; (2) the applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties may not adequately represent the applicant's interest. *See,*

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[2] Rule 24(a)(1) does not apply here; it authorizes intervention when a federal statute confers an unconditional right to intervene.

[3] An association – such as UARG, the Coalition, or AF&PA – has standing to litigate on its members' behalf when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Wash. State Apple Adver. Comm'n, 432 U.S. 333, 343 (1977). For reasons discussed herein, based upon comments Sierra Club filed on EPA's proposed SO_2 NAAQS Designations Rule, the interests of Movant-Intervenors' members will be harmed if Sierra Club prevails in this litigation. Those members, therefore, would have standing to intervene in their own right. Moreover, the interests that Movant-Intervenors seek to protect are germane to their purposes of participating in proceedings that implement NAAQS and, accordingly, affect industrial sources. Finally, participation of individual members of the associations seeking to intervene in this litigation is not required.

e.g., *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Movant-Intervenors satisfy these requirements in the present case.[4]

A. This Motion Is Timely.

Movant-Intervenors meet the timeliness requirement because this motion is being filed within 30 days after Sierra Club filed its petition for review on October 3, 2013.[5] Moreover, because this motion is being filed at an early stage of the proceedings and before establishment of a schedule and format for briefing, granting this motion will not disrupt or delay any proceedings. If granted intervention, Movant-Intervenors will comply with any briefing schedule established by the Court.

[4] In the alternative, Movant-Intervenors should be permitted to intervene under Rule 24(b)(1)(B), which provides that the Court may exercise its discretion to permit intervention by anyone who "has a claim or defense that shares with the main action a common question of law or fact." The potential claims and defenses that Movant-Intervenors would assert as intervenors would be based on the common administrative record to be filed by the government, would present questions of law and fact in common with the underlying suit, and would respond directly to Sierra Club's claims and EPA's defenses. Moreover, given the unique perspective of Movant-Intervenors as owners and operators of facilities affected by the SO_2 NAAQS Designations Rule (a perspective not shared by any other party to the suit), and their longstanding involvement in the regulatory proceedings, Movant-Intervenors participation will likely aid or enhance the Court's understanding of the history, development, purposes and application of the Rule.

[5] *See* Fed. R. App. P. 26(a)(1)(C).

B. Movant-Intervenors and Their Members Have Direct and Substantial Interests in the Proceeding, and Those Interests May Be Impaired by the Outcome of the Proceeding.

Where parties are objects of governmental regulatory action, as Movant-Intervenors' members are with respect to regulatory action under the CAA, "there is ordinarily little question that the action . . . has caused [them] injury." *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992). Members of Movant-Intervenors own and operate facilities which emit SO_2 and are subject to regulation under the CAA's NAAQS and preconstruction permitting programs. Sierra Club's comments in the administrative proceeding suggest that Sierra Club will seek a directive by this Court (or an agreement by the litigants) that EPA expeditiously promulgate SO_2 NAAQS designations and that these designations be based upon modeling analyses. As discussed above, using these models, Sierra Club asserted that EPA must designate as "nonattainment" many additional areas of the country, including areas where facilities owned and operated by Movant-Intervenors are located. *See* Sierra Club Comments.

Facility owners – including individual members of Movant-Intervenors – would be adversely affected by any litigation outcome under which EPA is ordered, or agrees, to base SO_2 NAAQS designations on the results of computer modeling predictions. This is because, as addressed in comments filed by Movant-Intervenors in the administrative proceeding, the currently available models for

predicting short-term SO_2 concentrations – when run in the manner required by EPA – "can . . . greatly overstate impacts of individual sources and groups of sources . . . ." UARG Comments at 3 n.3. This then leads to predictions of ambient standard violations in many areas and to the designation of such areas as nonattainment even though, in fact, no such violations are actually occurring. And that, in turn, means that sources in such designated nonattainment areas – including sources owned by the members of Movant-Intervenors – will collectively have to spend "billions of dollars" to achieve far greater emission reductions than would be required if NAAQS designations were to be based on actual air quality monitoring data instead of the predictions of over-conservative computer models. *Id.* Movant-Intervenors seek to participate in this case in order to be able to oppose such a result.

In short, Movant-Intervenors have a significant protectable interest in the terms of any remedial order that might result from this case. It is, therefore, imperative that Movant-Intervenors be granted intervention as of right to protect their interests in this case.

C. Existing Parties Cannot Adequately Represent Movant-Intervenors' Interests.

Under Federal Rule of Civil Procedure 24(a)(2), the burden of showing inadequate representation in a motion for intervention "is not onerous"; "[t]he applicant need only show that representation of his interest 'may be' inadequate,

not that representation will in fact be inadequate." *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (citing *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972)). Assuming *arguendo* that inadequate representation is an applicable test for intervention under Federal Rule of Appellate Procedure 15(d),[6] Movant-Intervenors pass that test here.

As the discussion above demonstrates, the likely arguments of Sierra Club are inimical to Movant-Intervenors' interests in these cases. Sierra Club, therefore, cannot represent Movant-Intervenors' interests.

Moreover, EPA cannot adequately represent Movant-Intervenors' interests. The Agency, as a governmental entity, necessarily represents the broader "general public interest." *Id*. at 192-93 (wherein this Court stated that "[a] government entity . . . is charged by law with representing the public interest of its citizens. . . . The [government] would be shirking its duty were it to advance th[e] narrower interest [of a business concern] at the expense of its representation of the general public interest."); *Fund for Animals*, 322 F.3d at 736 (this Court "ha[s] often concluded that governmental entities do not adequately represent the interests of aspiring intervenors"). In this case, acting as the government entity representing those broader general interests, EPA has delayed taking timely actions to

[6] Federal Rule of Civil Procedure 24(a)(2)'s "adequate representation" prong has no parallel in Federal Rule of Appellate Procedure 15(d), but Movant-Intervenors address it here to inform the Court fully.

promulgate area designations while it determines what data should form the basis of its designations. In contrast, Movant-Intervenors' members – who have responsibility for securing appropriate permits, obtaining the necessary financing and ultimately building sources affected directly by the designations – have a specific, focused interest in a timely designations process, and they have very different views from EPA about how the designations process should be conducted.

Even if EPA's and Movant-Intervenors' interests did coincide (which is not the case here), this Court has recognized "that does not necessarily mean that adequacy of representation [for intervenors] is ensured, ..." *Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) ("*NRDC v. Costle*"). In *NRDC v. Costle*, after manufacturers had sought unsuccessfully to intervene in the district court in support of EPA, this Court on appeal reversed the denial of intervention. In light of the fact that the companies' interests were narrower than those of EPA and were "concerned primarily with the regulation that affects their industries," the companies' "participation in defense of EPA decisions that accord with their interest may also be likely to serve as a vigorous and helpful supplement to EPA's defense." *Id*. at 912-13 (emphasis omitted). Similarly, the unique perspective Movant-Intervenors bring to this case will supplement EPA's position.

In sum, the existing parties do not and cannot adequately represent Movant-Intervenors' interests in this case.

CONCLUSION

For the foregoing reasons, Movant-Intervenors respectfully move to intervene in this case.

Respectfully submitted,

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Dated: November 4, 2013

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CERTIFICATE OF MOVANT-INTERVENORS UTILITY AIR REGULATORY GROUP, THE NAAQS IMPLEMENTATION COALITION, AND THE AMERICAN FOREST & PAPER ASSOCIATION AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), the Utility Air Regulatory Group, the NAAQS Implementation Coalition, and the American Forest & Paper Association file the following certificate as to parties and amici curiae in this case:[1]

[1] Sierra Club's Petition for Review was consolidated with pending appeals in *Treasure State Resource Industry Association v. EPA et al*., No. 13-1263 (D.C. Cir. filed Oct. 4, 2013) and *United States Steel Corp. v. EPA et al.*, No. 13-1264 (D.C. Cir. filed Oct. 4, 2013). Pursuant to D.C. Cir. Rule 15(b), this motion constitutes a motion to intervene only in Sierra Club's petition for review titled *Sierra Club and Natural Resources Defense Council v. EPA*, No. 13-1262 (D.C. Cir.) but not in the other consolidated appeals.

Petitioners. The Petitioners in this case are the Sierra Club and the Natural Resources Defense Council.

Respondents. The respondents in this case are the U.S. Environmental Protection Agency ("EPA") and Regina McCarthy, the Administrator of EPA.

At this time, to the knowledge of the undersigned counsel, there are no intervenors or amici curiae in this cases. On November 1, 2103, Treasure State Resource Industry Ass'n filed a motion to intervene in this cases which, at this time, to our knowledge has not been granted.

This case arises in this Court on a petition for review of agency action. Because no proceedings occurred before the district court, the requirement to

furnish a list of all parties, intervenors, and amici curiae that have appeared before the district court is inapplicable.

Respectfully submitted,

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RULE 26.1 DISCLOSURE STATEMENT OF MOVANT-INTERVENORS UTILITY AIR REGULATORY GROUP, THE NAAQS IMPLEMENTATION COALITION, AND THE AMERICAN FOREST & PAPER ASSOCIATION

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the Utility Air Regulatory Group ("UARG"), the NAAQS Implementation Coalition ("the Coalition"), and the American Forest & Paper Association ("AF&PA") file the following statement:

UARG is a not-for-profit association of individual electric generating companies and national trade associations that participates on behalf of its members collectively in Clean Air Act administrative proceedings that affect electric generators and in litigation arising from those proceedings. UARG has no

outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in UARG.

The Coalition comprises trade associations, companies, and other entities that are concerned about the implementation of new national ambient air quality standards, including the 1-hour sulfur dioxide NAAQS that EPA adopted in 2010. The Coalition has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in the Coalition.

AF&PA is the national trade association of the forest products industry, representing pulp, paper, packaging and wood products manufacturers, and forest landowners. AF&PA serves to advance a sustainable U.S. pulp, paper, packaging, and wood products manufacturing industry through fact-based public policy and marketplace advocacy. AF&PA has no outstanding shares or debt securities in the

hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in AF&PA.

Respectfully submitted,

/s/ Andrea Bear Field

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Dated: November 4, 2013

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rule 25(c), I hereby certify that, on this 4th day of November, 2013, I caused the foregoing documents to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

/s/ Andrea Bear Field

Andrea Bear Field