

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

AMERICAN PUBLIC GAS
ASSOCIATION,

Petitioner,

v.

U.S. ENVIRONMENTAL PROTECTION
AGENCY,

Respondent.

No. 09-1331

SETTLEMENT AGREEMENT

WHEREAS the American Public Gas Association in No. 09-1331 (referred to as "Petitioner") filed in the Court of Appeals for the D.C. Circuit a petition for review captioned above that challenges the regulation titled "Mandatory Reporting of Greenhouse Gases," 74 Fed. Reg. 56,260 (Oct. 30, 2009) ("GHG Reporting Rule"), which was promulgated under the Clean Air Act by the Environmental Protection Agency ("EPA");

WHEREAS No. 09-1331 has been consolidated with other petitions challenging the GHG Reporting Rule, with No. 09-1325 designated as the lead petition;

WHEREAS EPA intends to undertake a rulemaking to make certain amendments to portions of the GHG Reporting Rule that may resolve the concerns raised by Petitioners in their petition for review;

WHEREAS the EPA and American Public Gas Association (collectively the "Parties") wish to implement this Settlement Agreement ("Agreement") to avoid

protracted and costly litigation and to preserve judicial resources;

NOW, THEREFORE, the Parties, intending to be bound by this Agreement, hereby stipulate and agree as follows:

1. Promptly after execution of this Agreement, the Parties will notify the Court that they have reached a settlement, subject to required notice provisions described in paragraph 7 below, and will request that No. 09-1331 be severed from lead No. 09-1325 and the other consolidated cases and be held in abeyance pending finalization and completion of the terms of their settlement, with EPA to file status reports on 120-day intervals.

2. EPA shall as expeditiously as practicable publish a notice of proposed rulemaking on the issue of whether the GHG Reporting Rule should be amended by the inclusion of proposed amendments of the same substance as set forth in Attachment A to this Agreement.

3. If and when EPA promulgates in final form an amendment to the GHG Reporting Rule that includes a change that is substantially the same substance as set forth in Attachment A to this Agreement, then Petitioner shall promptly file a stipulation of dismissal with prejudice of No. 09-1331 in accordance with Rule 42 of the Federal Rules of Appellate Procedure, with each party to bear its own costs and attorneys' fees. In addition, Petitioner shall not challenge the validity of the portion of the final rule adopting such amendments of substantially the same substance as set forth in Attachment A in any court or administrative proceeding, and the right to raise such challenge is waived, provided that Petitioner reserves any rights it may have to challenge in any court

or administrative proceeding any portion of such final rule that is not of substantially the same substance as set forth in Attachment A to this Agreement.

4. If and when EPA promulgates in final form an amendment to the GHG Reporting Rule that includes a change that is substantially the same substance as set forth in Attachment A to this Agreement, Petitioner's pending administrative petition for reconsideration of the GHG Reporting Rule shall be deemed withdrawn.

5. For purposes of this Agreement, EPA and Petitioner recognize that the publication of new or modified regulations in the proposed or final rule that address other matters or provisions than that set forth in Attachment A or that in the proposed or final rule are otherwise substantially more detailed, extensive and comprehensive than that set forth in Attachment A would not on that basis alone cause the final changes referenced in paragraphs 2, 3 and 4 above not to be the same substance or substantially the same substance as set forth in Attachment A.

6. If EPA does not take action in accordance with the terms of this agreement then Petitioner's sole remedy under this Agreement regarding the rules under review in these cases shall be the right to request that the Court lift the stay of proceedings and establish a schedule for briefing and oral argument.

7. EPA and Petitioner agree and acknowledge that before this Agreement is final, EPA must provide notice in the Federal Register and an opportunity for comment pursuant to Clean Air Act section 113(g), 42 U.S.C. § 7413(g). EPA shall submit said notice of this Agreement to the Federal Register for publication as expeditiously as possible. After this Agreement has undergone

an opportunity for notice and comment, the Administrator and/or the Attorney General, as appropriate, shall promptly consider any such written comments in determining whether to withdraw or withhold her consent to the Agreement, in accordance with section 113(g) of the Clean Air Act. This Agreement shall become final on the date that EPA provides written notice of such finality to Petitioner.

8. Nothing in the terms of this Agreement shall be construed to limit or modify the discretion accorded EPA by the Clean Air Act or by general principles of administrative law.

9. Any obligations of EPA to obligate or expend funds under this Agreement are subject to the availability of appropriations in accordance with the Anti-Deficiency Act, 31 U.S.C. § 1341. This Settlement Agreement shall not be construed to require the United States to obligate or pay funds in contravention of said Anti-Deficiency Act, 31 U.S.C. § 1341.

10. Except as provided in this Settlement Agreement, none of the parties hereto waives or relinquishes any legal rights, claims or defenses it may have.

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11. The undersigned representatives of each party certify that they are fully authorized by the party that they represent to bind that respective party to the terms of this Agreement.

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Dated: _____

Dated: _____

ATTACHMENT A

- (B) ~~All~~ Local natural gas distribution companies that deliver 460,000 thousand standard cubic feet or more of natural gas per year.

40 C.F.R. 98.2(a)(4)(iii)(B)