ORAL ARGUMENT NOT SCHEDULED

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

NATIONAL WASTE & RECYCLING ASSOCIATION, *et al.*, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents.*	No. 16-1371 Consolidated with No. 16-1374

MOTION TO SUBSTITUTE PARTY OR, IN THE ALTERNATIVE, FOR LEAVE TO INTERVENE

Pursuant to Federal Rule of Appellate Procedure 43(b), the National Rural Electric Cooperative Association ("NRECA") respectfully moves to substitute into Case No. 16-1374 as a Petitioner in the place of Petitioner Utility Air Regulatory Group ("UARG"). In the alternative, NRECA respectfully moves for leave to intervene in support of Petitioners National Waste & Recycling Association, et al. ("Landfill Petitioners") in Case No. 16-1371. Granting this motion will not disrupt or delay these cases. These cases have been in abeyance since their very early stages, pending action by Respondent United States Environmental Protection Agency ("EPA") on a petition submitted to EPA by the Landfill Petitioners seeking administrative reconsideration of the rule at issue in these consolidated cases. The

Court first held the cases in abeyance for a series of 90-day periods of time starting on June 14, 2017, *see, e.g.*, ECF Nos. 1679697, 1694690, 1710345, and then pending further order of the Court, ECF No. 1726867. No briefing order has been set in these cases. For the reasons explained below, NRECA's motion should be granted.

BACKGROUND

These cases involve petitions for review of a final action of Respondent EPA under the Clean Air Act entitled "Emission Guidelines and Compliance Times for Municipal Solid Waste Landfills." 81 Fed. Reg. 59,276 (Aug. 29, 2016) ("Landfill Rule"). In the Landfill Rule, EPA revised to make more stringent the emission guidelines for municipal solid waste landfills that had previously been promulgated pursuant to section 111(d) of the Clean Air Act. Although the Landfill Rule does not directly regulate electric generators, UARG filed comments on the proposed Landfill Rule claiming that EPA lacks the authority to make section 111(d) emission guidelines more stringent. In the final Landfill Rule, EPA rejected UARG's position, claiming that section 111(d) does provide it with the authority to revise emission guidelines to make them more stringent. Given the requirement of section 307(b) of the Clean Air Act that petitions for review of final action of EPA under the Act must be filed within sixty days of the date such action appears in the Federal Register, UARG timely filed its petition for review in this case to challenge EPA's interpretation of section 111(d) of the Clean Air Act made final for the first time in the Landfill Rule.

NRECA is the national association of rural electric cooperatives. NRECA represents more than 900 consumer-owned, not-for-profit electric cooperatives, public power districts, and public utility districts in the United States. NRECA's members operate power plants and other facilities that generate electricity for residential, commercial, industrial, institutional, and governmental customers. Declaration of Jay Morrison ¶ 2 ("Morrison Declaration") (Attachment A to this Motion).

UARG is a not-for-profit association of individual electric generating companies and national trade associations that participates on behalf of certain of its members collectively in Clean Air Act administrative proceedings that affect electric generators and in litigation arising from those proceedings. NRECA has been a member of UARG for more than 30 years. *Id.* ¶ 3.

On May 10, 2019, UARG made an abrupt decision to dissolve the organization following a wind down period. *Id.* ¶ 4; *see also* Statement of UARG Policy Committee, https://www.prnewswire.com/news-releases/statement-of-uarg-policy-committee-300848377.html. As part of its dissolution and wind-down process, UARG has been withdrawing from pending cases in which it is a party. *See, e.g.*, *North Dakota v. EPA*, No. 15-1381, Motion for Withdrawal of Utility Air Regulatory Group as Petitioner (D.C. Cir. July 9, 2019), ECF No. 1796504; *Sierra Club v. EPA*, No. 18-1167, Unopposed Motion of Intervenor-Respondent Utility Air Regulatory Group To Withdraw (D.C. Cir. June 18, 2019), ECF No. 1793251; *Utility Air Regulatory Group v.*

EPA, No. 16-1210, Motion for Voluntary Dismissal (D.C. Cir. June 4, 2019), ECF No. 1790976. UARG expects to complete its wind-down process within the next few weeks. Morrison Declaration ¶ 4. UARG has filed a motion for voluntary dismissal in Case No. 16-1374. ECF No. 1797990.

The issue raised in this case is of great importance to NRECA members. Many of NRECA's members own or operate electric generating units that are subject to regulation under section 111(d) of the Clean Air Act. *See* 84 Fed. Reg. 32,520 (July 8, 2019) (promulgating the Affordable Clean Energy rule, which establishes emission guidelines for greenhouse gas emissions from existing electric utility units under section 111(d)); *see also* Morrison Declaration ¶ 6. EPA could later attempt to promulgate a different section 111(d) rule affecting electric generators, and NRECA has an interest in such a rule not becoming more stringent in the future. Morrison Declaration ¶ 6.

Because NRECA's interests with respect to this case were fully aligned with those of UARG, NRECA decided to participate in this case through UARG, as it had done in many other cases numerous times over many years. *Id.* ¶ 7. UARG's decision to dissolve occurred abruptly and very quickly, and UARG members, including NRECA, had no advance notice this would occur. *Id.* ¶ 8. If NRECA had known that UARG might dissolve, it would have participated in the present cases in its own name. *Id.*

ARGUMENT

I. NRECA Should Be Permitted To Substitute into Case No. 16-1374 in Place of UARG.

Federal Rule of Appellate Procedure 43(b) provides that "[i]f a party needs to be substituted for any reason other than death, the procedure prescribed in Rule 43(a) applies." Fed. R. App. P. 43(b). Rule 43(a)(1), which governs substitution when a party has died and the appeal has already been filed, states that substitution may occur upon the filing of a motion with the Clerk. *Id.* 43(a)(1). The dissolution of UARG is akin to the death of a party, and NRECA, a member of UARG, should be allowed to substitute into this case upon the filing of this motion.

This Court addressed the scope of Rule 43(b) in *Alabama Power Co. v. ICC*, 852 F.2d 1361 (D.C. Cir. 1988). As an initial matter, it should be noted that *Alabama Power* interpreted the 1986 version of the Federal Rules of Appellate Procedure, which was slightly reworded in 1998. The Advisory Committee Notes say, however, that the changes were for the purpose of clarification and otherwise "intended to be stylistic only." Fed. R. App. P. 43 Advisory Committee Notes, 1998 Amendments. As a result, subsequent judicial opinions have analyzed the provision in the same way this Court did in *Alabama Power*. *See, e.g.*, *AngioDynamics, Inc. v. Biolitec, Inc.*, 775 F.3d 550, 553-54 (2d Cir. 2015) (per curiam) (holding that "the D.C. Circuit's interpretation of the prior version of Rule 43(b) … is equally applicable to the current version" and that "[t]he

substance of the Rule … remains the same as when it was examined by the D.C. Circuit").

In *Alabama Power*, the Consolidated Rail Corporation ("Conrail") moved to substitute into the case as a petitioner in place of the Association of American Railroads, which had decided to withdraw its petition for review voluntarily. The Court denied Conrail's motion, holding that substitution under Rule 43(b) was available only when "a party to the suit is unable to continue to litigate, not … [when] an original party has voluntarily chosen to stop litigating." *Alabama Power*, 852 F.2d at 1366. The Court compared subsection (b) of Rule 43 to subsections (a) and (c), noting that those two subsections "provide for substitution in situations where a party cannot continue an appeal due to a party's death or removal from office." *Id.* Thus, the Court concluded that "[t]he most natural reading of subsection (b) is to permit substitution in similar situations where a party is incapable of continuing the suit, such as where a party becomes incompetent or a transfer of interest in the company or property involved in the suit has occurred." *Id.*

The facts presented here are materially different from those in *Alabama Power*. UARG is dissolving and "is incapable of continuing the suit." This is not a situation where a party has decided it no longer wishes to pursue continued participation in a pending case but where that party will continue to exist. Rather, UARG very soon will be, for all intents and purposes, "dead." Finally, permitting NRECA to substitute in this case will not cause any delay in or disruption to these consolidated cases.

For these reasons, NRECA should be permitted to substitute into Case No. 16-1374 in place of UARG.

II. In the Alternative, NRECA Should Be Granted Leave To Intervene in Case No. 16-1371.

This Court has discretion to permit NRECA to intervene at this time. In addition, NRECA has standing to challenge the Landfill Rule and meets the remaining elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2). In the alternative, as discussed below, NRECA should be granted permissive intervention.

A. NRECA Has Standing To Challenge the Landfill Rule.

NRECA is the national association of rural electric cooperatives. NRECA represents more than 900 consumer-owned, not-for-profit electric cooperatives, public power districts, and public utility districts in the United States. NRECA's members operate power plants and other facilities that generate electricity for residential, commercial, industrial, institutional, and governmental customers. Morrison Declaration ¶ 2.

The Landfill Rule was the first time EPA sought to make emission guidelines under section 111(d) of the Clean Air Act more stringent, which NRECA believes EPA lacks the authority to do. NRECA members are injured because of the precedent the Landfill Rule establishes regarding the scope of EPA's authority under section 111(d). This injury is redressable by a ruling from the Court that EPA is not

authorized to make already promulgated section 111(d) emission guidelines more stringent, as EPA did in promulgating the Landfill Rule. Electric generating units owned and operated by members of NRECA are currently subject to section 111(d) emission guidelines. 84 Fed. Reg. at 32,533 (providing that certain "coal-fired electric electric steam generating units" are designated facilities subject to emission guidelines for greenhouse gas emissions promulgated under section 111(d) of the Clean Air Act); *see also* Morrison Declaration ¶ 6. It is possible that EPA could attempt to make those emission guidelines more stringent at some point in the future, citing the Landfill Rule as precedent for its ability to do so. Although the section 111(d) emission guidelines for electric generating units are currently under review by this Court, *American Lung Ass'n v. EPA*, No. 19-1140 (D.C. Cir. July 8, 2019), and thus have the possibility of being vacated, EPA could later attempt to promulgate a different section 111(d) rule affecting electric generators, and NRECA would have an interest in such a rule not becoming more stringent in the future. NRECA would not want to risk the possibility of being time-barred from raising its argument. *See Eagle-Picher Indus., Inc. v. EPA*, 759 F.2d 905 (D.C. Cir. 1985).

An organization such as NRECA has standing to participate in litigation 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*

Advertising Comm'n, 432 U.S. 333, 343 (1977); *see also, e.g.*, *Sierra Club v. EPA*, 292 F.3d 895, 898 (D.C. Cir. 2002). Members of NRECA own and operate electric generating units subject to regulation under section 111(d) of the Clean Air Act and thus have standing in their own right. Morrison Declaration ¶ 6. The interests NRECA seeks to protect here are germane to NRECA's purpose of supporting its members in being able to provide affordable and reliable electricity to rural America, and the participation of those individual members in this case is not necessary.

B. The Standard for Intervention in Petition for Review Proceedings in This Court

Intervention in petition for review proceedings in this Court is governed by Rule 15(d) of the Federal Rules of Appellate Procedure, which "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).

The Supreme Court has recognized that Rule 24 of the Federal Rules of Civil Procedure, while not binding in cases originating in courts of appeals, may inform the intervention inquiry under Federal Rule of Appellate Procedure 15(d). *See Int'l Union, United Auto. Workers v. Scofield*, 382 U.S. 205, 216 n.10 (1965); *see also, e.g.*, *Amalgamated Transit Union Int'l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985) (per curiam). The criteria applicable to intervention of right under Federal Rule of Civil Procedure 24(a)(2) are that: (1) the motion to intervene is timely; (2) the movant claims an

interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the movant's ability to protect its interest; and (4) existing parties may not adequately represent the movant's interest. *See Fund for Animals, Inc. v. Norton,* 322 F.3d 728, 731 (D.C. Cir. 2003) (citing *Mova Pharm. Corp. v. Shalala,* 140 F.3d 1060, 1074 (D.C. Cir. 1998)); *see also, e.g., Crossroads Grassroots Policy Strategies v. FEC,* 788 F.3d 312, 320-21 (D.C. Cir. 2015). This Court has stated that an applicant for intervention that meets the test for intervention of right also 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)).

C. The Court Has Discretion To Allow Intervention After the 30-Day Period.

Rule 15(d) of the Federal Rules of Appellate Procedure provides that a motion to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." Fed. R. App. P. 15(d). Courts "have full authority to enlarge the time for intervention when good cause therefore has been shown." *Alabama Power*, 852 F.2d at 1374 & n.6 (Robinson, J., concurring in part and concurring in the judgment) (citing Federal Rule of Appellate Procedure 26(b), which, in its current form, authorizes courts "[f]or good cause" to "extend the time prescribed by these

rules" except in certain prescribed circumstances, none of which involves motions to intervene). Good cause for an extension exists here. NRECA's "predicament is not the result of any willful disregard of a statute or rule, nor is it a consequence of negligence." *Id.* at 1375 (Robinson, J., concurring). UARG timely filed a petition for review in Case No. 16-1374, and NRECA believed its interests would be pressed by UARG. It had no idea that UARG would dissolve and be unable to continue in the litigation. Morrison Declaration ¶ 8. Furthermore, allowing NRECA to intervene in Case No. 16-1371 will not cause any disruption to or delay in the proceedings, as the proceedings are in abeyance and a briefing order has not yet been entered in the case.

D. NRECA and Its Members Have Significantly Protectable Interests Related to the Subject of This Action.

Federal Rule of Civil Procedure 24(a)(2) requires that a movant for intervention claim an interest relating to the subject of the action. Although Rule 24(a)(2) does not specify the nature of the interest required for intervention of right, this Court has stated that a "'significantly protectable'" interest is required. *S. Christian Leadership Conference v. Kelley*, 747 F.2d 777, 779 (D.C. Cir. 1984) (per curiam) (quoting *Donaldson v. United States*, 400 U.S. 517, 531 (1971)). The interest test for intervention, under this Court's standard, is flexible and "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, e.g.*, *Cook v. Boorstin*, 763 F.2d 1462, 1466 (D.C. Cir. 1985).

A legally protectable interest may exist where an intervenor-applicant demonstrates that it stands to "gain or lose by the direct legal operation and effect of the judgment." *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1292 (D.C. Cir. 1980) (internal quotation marks and citation omitted). The present cases involve EPA's determination in the Landfill Rule that it has authority under section 111(d) of the Clean Air Act to make emission guidelines more stringent – a point with which NRECA disagrees. A decision in NRECA's favor by this Court would provide assurance to NRECA's members that the emission guidelines that apply to their electric generating units would not be subject to additional, costly requirements beyond those with which they already must comply. NRECA thus has a significant, legally protectable interest in being able to challenge the Landfill Rule.

E. Disposition of This Case May, as a Practical Matter, Impair or Impede NRECA's Ability To Protect Its Interests.

The language of Federal Rule of Civil Procedure 24(a)(2) reflects that the impairment of interest that warrants intervention need not be an inexorable result of disposition of the litigation but need be only a potential consequence. *See* Fed. R. Civ. P. 24(a)(2) (providing that the movant must be "so situated that disposing of the action *may* as a practical matter impair or impede the movant's ability to protect its interest" (emphasis added)); *see also Crossroads Grassroots,* 788 F.3d at 317-18 (for the intervention-of-right test to be met, harm to a prospective intervenor from an adverse ruling on the merits need not be a "certain[ ] result" of the litigation). In any event, a

judgment in EPA's favor would be expected to have significant adverse operational and financial implications for NRECA members, given the prospect of additional regulation of their facilities arising from such a judgment.

Accordingly, disposition of this case may, as a practical matter, impair or impede NRECA's ability to protect its interests and those of its members.

F. The Existing Parties Do Not and Cannot Adequately Represent NRECA's Interests in This Case.

Assuming *arguendo* that inadequate representation by existing parties is a relevant criterion for intervention under Federal Rule of Appellate Procedure 15(d),[1] NRECA meets that criterion here. The burden of showing inadequate representation in a Rule 24(a)(2) motion to intervene is "'minimal.'" *Fund for Animals,* 322 F.3d at 735 (quoting *Trbovich v. United Mine Workers,* 404 U.S. 528, 538 n.10 (1972)); *id.* at 736 n.7 ("*Trbovich* makes clear that the standard for measuring inadequacy of representation is low"); *Crossroads Grassroots,* 788 F.3d at 321.

Neither the Landfill Petitioners, EPA, nor the Respondent-Intervenors can represent NRECA's interests here.

The Landfill Petitioners cannot represent NRECA's interests. The Landfill Petitioners have raised numerous issues with regard to the substance of the emission guidelines themselves that do not concern NRECA. Although Landfill Petitioners do raise the legal issue of EPA's authority in their *non-binding* statement of issues, it is the

[1] Federal Rule of Civil Procedure 24(a)(2)'s "adequate representation" prong has no parallel in Federal Rule of Appellate Procedure 15(d).

last issue listed (out of twelve), does not appear to be the primary focus of their challenge, and nothing requires Landfill Petitioners to raise all of the issues listed. ECF No. 1648894. Moreover, Landfill Petitioners did not include this issue in their petition for reconsideration before EPA, further indicating that it is not of high importance to them. *See* Petition for Rulemaking, Reconsideration, and Administrative Stay, EPA Docket Nos. EPA-HQ-OAR-2003-0215 and EPA-HQ-OAR-2014-0451. Thus, there is no guarantee that Landfill Petitioners will raise in this litigation the only issue of importance to NRECA – namely, whether EPA has authority to revise section 111(d) emission guidelines to make them more stringent. NRECA "need only show that representation of [its] 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) (quoting *Trbovich,* 404 U.S. at 538 n.10).

While NRECA's interests were fully aligned with those of UARG, *see* Morrison Declaration ¶ 7, UARG has decided to dissolve and moved to voluntarily dismiss its petition for review in this case, and thus it can no longer adequately represent NRECA's interests.

Finally, EPA and the Respondent-Intervenors all support EPA's determination in the Landfill Rule that the Agency has authority to revise section 111(d) emission guidelines to make them more stringent. Thus, those parties plainly cannot represent NRECA's interests because they are on the opposite side on this issue.

In sum, the existing parties do not and cannot adequately represent NRECA's interests in this case, and NRECA's intervention accordingly is warranted.

G. In the Alternative, the Court Should Grant NRECA Permissive Intervention Pursuant to the Criteria in Rule 24(b) of the Federal Rules of Civil Procedure.

The Court, in the alternative, should grant NRECA leave to intervene in Case No. 15-1192 as a permissive matter. Federal Rule of Civil Procedure 24(b)(1)(B) provides that "[o]n timely motion, the court may permit anyone to intervene who ... has a claim or defense that shares with the main action a common question of law or fact." Fed. R. Civ. P. 24(b)(1)(B). As discussed above, good cause exists in the present circumstances for enlargement of the ordinary time for a request to intervene. *See* Fed. R. App. P. 26(b). Further, under Rule 24(b)(3) of the Federal Rules of Civil Procedure, a court "consider[s] whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights." Fed. R. Civ. P. 24(b)(3). As noted above, there will be neither delay in the proceedings nor prejudice to the parties by allowing NRECA to intervene.

Moreover, as the foregoing discussion demonstrates, NRECA and its members have significant, legally protectable interests in this case. As a Petitioner, NRECA will seek to protect its interests by arguing that EPA does not have authority under the Clean Air Act to revise section 111(d) emission guidelines to make them more stringent.

Accordingly, if the Court does not grant the motion for substitution, and does not grant NRECA intervention based on the criteria of Rule 24(a)(2), it should grant intervention in accordance with the criteria in Rule 24(b).

CONCLUSION

For the foregoing reasons, this Court should grant NRECA's motion to substitute into Case No. 16-1374 as a Petitioner in place of Petitioner UARG, pursuant to Federal Rule of Appellate Procedure 43(b). In the alternative, the Court should grant NRECA leave to intervene as a Petitioner-Intervenor in Case No. 16-1371.

Respectfully submitted,

/s/ Allison D. Wood
F. William Brownell
Allison D. Wood
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 955-1500
bbrownell@HuntonAK.com
awood@HuntonAK.com

Counsel for the National Rural Electric Cooperative Association

Dated: July 18, 2019

CERTIFICATE AS TO PARTIES AND *AMICI CURIAE*

Petitioners:

No. 16-1371: National Waste & Recycling Association; Solid Waste Association of North America, Inc.; Waste Management, Inc.; Waste Management Disposal Services of Pennsylvania, Inc.; and Republic Services, Inc.

No. 16-1374: Utility Air Regulatory Group*

Respondents:

Respondents are the United States Environmental Protection Agency (in Nos. 16-1371 and 16-1374) and Andrew Wheeler, Administrator for the United States Environmental Protection Agency (in No. 16-1371).

Intervenors and *Amici Curiae*:

Clean Air Council; Clean Wisconsin; Conservation Law Foundation; Environmental Defense Fund; and Natural Resources Defense Council are Intervenors in support of Respondents.

There are no Intervenors in support of Petitioners.

There are no *Amici Curiae*.

* In light of a recent decision by the Utility Air Regulatory Group to wind down its activities and to dissolve, it has filed a motion for voluntary dismissal of its petition for review (ECF No. 1797990).

ORAL ARGUMENT NOT SCHEDULED

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NATIONAL WASTE & RECYCLING ASSOCIATION, *et al.*, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents.*	No. 16-1371 Consolidated with 16-1374

RULE 26.1 DISCLOSURE STATEMENT OF MOVANT
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, Movant National Rural Electric Cooperative Association ("NRECA") submits the following statement:

NRECA is the national association of rural electric cooperatives. NRECA represents more than 900 consumer-owned, not-for-profit electric cooperatives, public power districts, and public utility districts in the United States. NRECA members operate power plants and other facilities that generate electricity for residential, commercial, industrial, institutional, and governmental customers. NRECA has no parent corporation. No publicly held corporation owns any portion of NRECA, and it is not a subsidiary or affiliate of any publicly owned corporation.

Respectfully submitted,

/s/ Allison D. Wood
F. William Brownell
Allison D. Wood
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
(202) 955-1500
bbrownell@HuntonAK.com
awood@HuntonAK.com

Counsel for the National Rural Electric Cooperative Association

Dated: July 18, 2019

CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(f) and (g) of the Federal Rules of Appellate Procedure, I hereby certify that the foregoing motion complies with the type volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 3,717 words, excluding exempted portions, according to the count of Microsoft Word.

I further certify that this motion complies with Fed. R. App. P. 27(d)(1)(E), 32(a)(5), and 32(a)(6) because it has been prepared in 14-point Garamond type.

Dated: July 18, 2019

Respectfully submitted,

/s/ Allison D. Wood
Allison D. Wood

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of July 2019, I am causing the foregoing motion and accompanying documents to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered counsel will be served by the Court's CM/ECF system.

/s/ Allison D. Wood
Allison D. Wood

Attachment

DECLARATION OF JAY MORRISON

I, Jay Morrison, declare that the following statements made by me are true and accurate to the best of my knowledge, information, and belief:

1. I am the Vice President, Regulatory Issues, for the National Rural Electric Cooperative Association ("NRECA").

2. NRECA is the national association of rural electric cooperatives. NRECA represents more than 900 consumer-owned, not-for-profit electric cooperatives, public power districts, and public utility districts in the United States. NRECA's members operate power plants and other facilities that generate electricity for residential, commercial, industrial, institutional, and governmental customers.

3. NRECA has been a member of the Utility Air Regulatory Group ("UARG") for over thirty years.

4. On May 10, 2019, UARG made the abrupt decision to dissolve the organization following a wind down period. As part of the wind down, UARG has been withdrawing from cases in which it is a party. UARG is expected to complete its wind down process and dissolve the organization within the next few weeks.

5. UARG will be moving to withdraw from the consolidated cases currently pending in the U.S. Court of Appeals for the District of Columbia Circuit that are known as *National Waste Recycling Association, et al. v. United States Environmental Protection Agency,* No. 16-1371 (consolidated with No. 16-1374). These cases involve EPA's final rule establishing emission guidelines under section 111(d) of

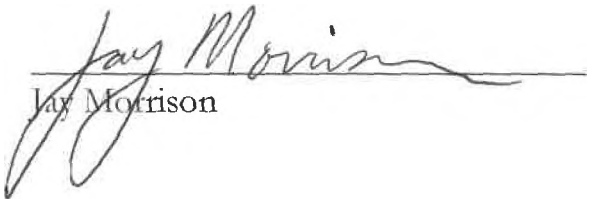
the Clean Air Act for municipal solid waste landfills. That rule was published in the Federal Register on August 29, 2016, at 81 Fed. Reg. 59,276 (hereinafter "Final Rule"). This was the first time EPA sought to make emission guidelines under section 111(d) of the Clean Air Act more stringent. UARG challenged the Final Rule on the grounds that it was unlawful because, in its view, the Clean Air Act prohibits EPA from making section 111(d) emission guidelines more stringent.

6. Many of NRECA's members own or operate electric generating units that are subject to regulation under section 111(d) of the Clean Air Act. Electric generating units owned and operated by NRECA must comply with the emission guidelines recently promulgated by EPA under section 111(d) in a rule known as the Affordable Clean Energy rule. The owners and operators of these electric generating units will need to take measures and make capital investments to ensure compliance with the Affordable Clean Energy rule. NRECA's members have an interest in ensuring that further regulation is not required for these units under section 111(d).

7. Because NRECA's interests were fully aligned with those of UARG, NRECA decided to participate in the litigation involving the Final Rule through UARG. NRECA had done the same thing numerous times over many years.

8. UARG's decision to dissolve occurred abruptly and very quickly. NRECA had no advance notice this would occur. If NRECA had known that UARG might dissolve, it would have participated in the litigation involving the Final Rule on its own.

I make this Declaration under penalty of perjury, and I state that the facts set forth herein are true.



Jay Morrison

Dated: Julya 2019