

**ORAL ARGUMENT HELD MAY 7, 2013
DECIDED JULY 26, 2013**

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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STATE OF TEXAS, ET AL.,)
)
<i>Petitioners,</i>)
)
v.) No. 10-1425
)
ENVIRONMENTAL PROTECTION) (and consolidated cases)
AGENCY,)
)
<i>Respondent.</i>)
)
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UTILITY AIR REGULATORY GROUP,)
)
<i>Petitioner,</i>)
)
v.)
) No. 11-1037
)
ENVIRONMENTAL PROTECTION) (and consolidated cases)
AGENCY,)
)
<i>Respondent.</i>)
)
)
)
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**PETITIONERS' UNOPPOSED MOTION TO EXTEND THE DEADLINE
TO PETITION FOR REHEARING AND TO EXTEND THE ISSUANCE
OF THE MANDATE PENDING THE SUPREME COURT'S
DISPOSITION OF *COALITION FOR RESPONSIBLE REGULATION V.
EPA***

Petitioners the State of Texas; Rick Perry, Governor of Texas; Greg Abbott, Attorney General of Texas; Texas Commission on Environmental Quality; Texas Department of Agriculture; Texas Railroad Commission; Texas General Land Office; Barry Smitherman, Texas Public Utility Commissioner; Donna Nelson, Texas Public Utility Commissioner; Kenneth Anderson, Texas Public Utility Commissioner; the State of Wyoming; Coalition for Responsible Regulation, Inc.; National Mining Association; Peabody Energy Company; SIP/FIP Advocacy Group; Texas Association of Business; Texas Association of Manufacturers; Texas Chemical Council; Utility Air Regulatory Group; and Intervenor-Petitioner Wyoming Mining Association respectfully move the Court, under Federal Rules of Appellate Procedure 26(b) and 41(d), and D.C. Circuit Rule 41(a)(2), to extend the deadline to petition for rehearing in the above-captioned cases until thirty (30) days after the Supreme Court's disposition of petitions for a writ of certiorari in *Utility Air Regulatory Grp., et al. v. EPA*, Sup. Ct. Nos. 12-1146, *et al.* (distributed on Aug. 7, 2013, for Sept. 30, 2013 conference), and also to necessarily extend the issuance of the mandate pursuant to this Court's rules.¹

¹ On July 26, 2013, this Court issued Orders in these cases directing the Clerk to “withhold issuance of the mandate herein until seven days after disposition of any timely petition for rehearing or petition for rehearing en banc,” citing Federal Rule of

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1. The instant cases concern challenges to several EPA actions regarding the inclusion of greenhouse gases (“GHGs”) in Clean Air Act (“CAA” or “Act”) state implementation plans. This Court’s decision dismissing the petitions for review for lack of jurisdiction was based on its decision in *Coalition for Responsible Regulation*, 684 F.3d 102 (D.C. Cir. 2012) (per curiam), dismissing or denying challenges to EPA’s interpretation of the CAA that carbon dioxide and other GHGs that are subject to regulation under any part of the Act, including the mobile source provisions of Title II of the Act, are thereby automatically included in the prevention of significant deterioration (“PSD”) program for stationary sources under Title I of the Act. *See* Slip Op. at 5, 13, 35–36, *Texas v. EPA*, Nos. 10-1425, 11-1037, *et al.* (D.C. Cir. July 26, 2013).

2. Multiple parties, including several moving parties, have filed petitions for writs of certiorari seeking review of *Coalition for Responsible Regulation*. *See, e.g.*, Sup. Ct. Nos. 12-1269 (*Texas v. EPA*), 12-1146 (*Utility Air Regulatory Grp. v. EPA*).² These

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Appellate Procedure 41(b) and D.C. Circuit Rule 41. Doc Nos. 1448568 (No. 10-1425 and consolidated cases), 1448575 (Nos. 11-1037 and consolidated cases); *see also* Fed. R. App. P. 41(b); D.C. Cir. R. 41(a)(1).

² *See also* Sup. Ct. Nos. 12-1152 (*Virginia v. EPA*), 12-1153 (*Pac. Legal Found. v. EPA*), 12-1248 (*Am. Chem. Council v. EPA*), 12-1253 (*Coal. for Responsible Regulation v. EPA*),

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petitions present significant questions concerning regulation of GHGs under the CAA and the effect of *Massachusetts v. EPA*, 549 U.S. 497 (2007), including its effect on EPA's PSD program. Issues presented by those petitions for certiorari include questions of statutory interpretation and application of standing jurisprudence that the instant cases also present.

3. Because there is a substantial chance that the Supreme Court will grant certiorari to review *Coalition for Responsible Regulation*, see Sup. Ct. R 10(c); *Massachusetts*, 549 U.S. at 506 (“the unusual importance of the underlying issue persuaded [the Court] to grant the writ”), the Supreme Court’s final disposition of the pending certiorari petitions in *Coalition for Responsible Regulation* may avoid the initiation—through the filing of petitions for rehearing or certiorari—of further proceedings in the instant cases, and, if any petitions in these cases are filed, could affect their ultimate disposition. A decision by the Supreme Court not to review *Coalition for Responsible Regulation* likewise would affect how the Petitioners would proceed. An extension of the due date for any petitions for rehearing in the present cases and a concomitant extension of the issuance of the mandate are therefore in the interests of

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12-1254 (*Energy-Intensive Mfrs. Working Grp. on Greenhouse Gas Regulation v. EPA*), 12-1268 (*Se. Legal Found. v. EPA*), 12-1272 (*Chamber of Commerce v. EPA*).

judicial economy, constituting good cause under Federal Rule of Appellate Procedure 26(b) and 41(d)(2)(A), and D.C. Circuit Rule 41(a)(2). *See, e.g.,* Order, *Avista Corp. v. NLRB*, No. 11-1397 (D.C. Cir. Feb. 19, 2013) (holding case in abeyance, despite having denied petition for review, in light of *Noel Canning v. NLRB*, 705 F.3d 490 (D.C. Cir. 2013), *cert. granted*, 133 S. Ct. 2861 (June 24, 2013)).

4. The requested relief would not significantly delay issuance of the mandate if the Supreme Court decides not to review *Coalition for Responsible Regulation*, as the petitions for certiorari have been distributed for conference on September 30, only two weeks after the mandate is currently scheduled to issue in these cases.

5. Accordingly, Petitioners respectfully request that this Court extend the deadline for filing petitions for rehearing, until thirty (30) days after the Supreme Court's final disposition of the pending petitions for a writ of certiorari through that Court's issuance of a merits decision or denial of certiorari review in that case, and concomitantly extend the issuance of the mandate as provided for in this Court's rules.

6. Counsel for Petitioners have conferred with counsel for Respondents and counsel for Respondent-Intervenors. These parties take no position with respect to the relief requested by this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on August 21, 2013, I electronically filed the foregoing Motion with the Court by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: /s/ Mark W. DeLaquil
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