ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

UTILITY AIR REGULATORY GROUP, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	Docket No. 12-1147 Consolidated with Nos. 12-1100, 12-1101, 12-1102, 12-1166

MOTION OF NATIONAL GRID GENERATION LLC FOR LEAVE TO INTERVENE AS RESPONDENT

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Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), National Grid Generation LLC ("National Grid Generation") hereby moves for leave to intervene as a party respondent in the above-captioned proceedings and in any future petitions for review challenging the same agency action. In support of its motion, National Grid Generation states the following:

1. Petitioner White Stallion Energy Center, LLC, ("White Stallion") commenced this proceeding on February 16, 2012, seeking review of a rulemaking issued by the United States Environmental Protection Agency ("EPA" or "Respondent"). The rulemaking is known as the "Mercury and Air Toxics Standards" ("MATS" or the "Rule") and was published under the title "National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units", 77 Fed. Reg. 9,304 (Feb. 16, 2012). National Mining Association (Dkt. No. 12-1101), and the National Black Chamber of Commerce and Institute for Liberty (Dkt. No. 12-1102), also petitioned for review. Utility Air Regulatory Group ("UARG") filed two petitions (Dkt. Nos. 12-1147, 12-1166), one seeking review of the Rule and review of EPA's denial as part of the Rule of UARG's "de-listing petition" (see paragraph 12, below), and a second petition separately seeking review of the New Source

Performance Standards portion of the Rule. Those petitions have been consolidated in this matter.[1] UARG filed its petitions for review on March 16, 2012, and April 9, 2012.

2. The Rule establishes national emission standards for hazardous air pollutants ("NESHAPs") that apply to coal- and oil-fired electric utility steam generating units ("EGUs") and that regulate the emissions of hazardous air pollutants ("HAPs") with standards consistent with the requirements of section 112 of the Clean Air Act, 42 U.S.C. § 7412. MATS also revises new source performance standards ("NSPS") for fossil fuel-fired EGUs and for industrial-commercial-institutional ("ICI") and small ICI steam generating units, pursuant to section 111 of the Clean Air Act, 42 U.S.C. § 7411.

3. National Grid Generation owns and operates 53 natural gas- and oil-fired electric generating units capable of delivering approximately 4,000 megawatts ("MW") of electricity to consumers throughout Long Island, New York. National Grid Generation supplies approximately 25 to 30 percent of the electric demand for Long Island, New York. Declaration of Robert D. Teetz ("Teetz Decl.") ¶ 4.

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[1] White Stallion, National Mining Association, National Black Chamber of Commerce, Institute for Liberty, and UARG are referred to collectively as "Petitioners."

4. National Grid Generation owns and operates oil-fired EGUs directly affected by MATS. National Grid Generation also owns and operates EGUs that are not subject to MATS, but which are dispatched in electricity markets with generating units that are subject to the Rule. Teetz Decl. ¶ 5.

5. National Grid Generation supports MATS and seeks to intervene in these proceedings to oppose the petitions for review, and to advocate for the implementation of the Rule as promulgated by EPA, on the schedule set forth in the Rule. As explained in greater detail below, National Grid Generation has a distinct view to present to this Court as an electric generator that has made strategic investments in low emission resources. National Grid Generation's view contrasts with that of Petitioners and other potential petitioners in the electric power industry.

Background

6. MATS reflects the culmination of nearly two decades of activity related to whether EPA should promulgate NESHAPs for coal- and oil-fired EGUs. In 1990, Congress amended section 112 of the Clean Air Act to hasten EPA's regulation of HAP emissions by identifying in section 112(b) the pollutants that are hazardous and requiring EPA to promulgate NESHAPs for categories of sources of those pollutants. *See* 42 U.S.C. § 7412(b); S. Rep. No. 101-228 at 155-59 (1989); *Sierra Club v. EPA*, 353 F.3d 976, 979-80 (D.C. Cir. 2004). Congress

also required EPA to set emission standards for these pollutants that reflect "maximum achievable control technology" ("MACT"). MACT emission limitations in a source category reflect "the maximum degree of reduction in emissions of the [HAPs] subject to [section 112] (including a prohibition on such emissions, where achievable) that the Administrator, taking into consideration the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements, determines is achievable for new or existing sources" in a listed category or subcategory. 42 U.S.C. § 7412(d)(2). However, Congress required that regardless of cost and non-air quality impacts, MACT emission limitations (i) for new sources, "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source," and (ii) for existing sources, shall not be less stringent than "the average emission limitation achieved by the best performing 12 percent of the existing sources (for which the Administrator has emissions information) . . ." in categories or subcategories with 30 or more sources, or no less stringent than "the average emission limitation achieved by the best performing 5 sources" in categories or subcategories with fewer than 30 sources. *Id.* § 7412(d)(3). In this way, MACT limits initially must reflect the performance achieved by the best-performing sources in a source category.

7. Congress also required the EPA Administrator to promulgate a list of all categories of sources of HAPs identified in section 112(b). *See* 42 U.S.C. § 7412(c). Prior to a finding that EGUs should be among the categories "listed" as sources of HAPs under section 112(c) of the Clean Air Act, Congress required the EPA Administrator to "perform a study of the hazards to public health reasonably anticipated to occur as a result of emissions by [EGUs] of [HAPs] . . . after imposition of the requirements of this chapter." *Id.* § 7412(n)(1)(A). This study was to have been sent to Congress by November 15, 1993. *Id.*[2] The report was not completed and provided to Congress until February 1998. *See* "Study of Hazardous Air Pollutant Emissions from Electric Utility Steam Generating Units – Final Report to Congress," EPA-453/R-98-004a (Feb. 1998).[3] The EPA Administrator "shall regulate [EGUs] under [section 112], if the Administrator finds such regulation is appropriate and necessary after considering the results of the [Utility Study]." 42 U.S.C. § 7412(n)(1)(A).

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[2] This report is sometimes referred to as the "Utility Study" or the "Utility Report to Congress."

[3] Section 112(n) also required the EPA Administrator to complete by November 15, 1994, a study of mercury emissions from EGUs and other specified sources ("the Mercury Study"), 42 U.S.C. § 7412(n)(1)(B), and required the National Institute of Environmental Health Sciences to complete by November 15, 1993, "a study to determine the threshold level of mercury exposure below which adverse human health effects are not expected to occur," *id.* § 7412(n)(1)(C).

8. On December 20, 2000, the Administrator published a determination consistent with section 112(n)(1) that it was both "appropriate" and "necessary" to regulate HAP emissions from coal- and oil-fired EGUs under section 112, and listed EGUs under section 112(c). *Regulatory Finding on the Emissions of Hazardous Air Pollutants From Electric Utility Steam Generating Units*, 65 Fed. Reg. 79,825 (Dec. 20, 2000) ("the Finding"). That determination triggered a statutory requirement that EPA promulgate a NESHAP for EGUs within two years, by December 20, 2002. *See* 42 U.S.C. § 7412(c)(5). EPA failed to meet that deadline, and several petitioners brought suit against the Agency to compel a rulemaking. *See Izaak Walton League of America v. Johnson*, 400 F. Supp. 2d 38 (D.D.C. 2005). Rather than promulgate a NESHAP, in March 2005 EPA purported to determine that its Finding from December 2000 was wrong and that it was neither appropriate nor necessary to regulate EGUs. *Revision of December 2000 Regulatory Finding*, 70 Fed. Reg. 15,994 (Mar. 29, 2005) ("De-Listing Rule"). As a result, EPA purported to remove EGUs from the list of source categories to be regulated under section 112. *Id.* Instead, EPA set performance standards for new coal-fired EGUs pursuant to section 111, 42 U.S.C. § 7411, and "establishe[d] total mercury emission limits for States and certain tribal areas, along with a voluntary cap-and-trade program for new and existing coal-fired EGUs." *Standards of Performance for New and Existing Stationary Sources:*

Electric Utility Steam Generating Units, 70 Fed. Reg. 28,606 (May 18, 2005) (the "Clean Air Mercury Rule" or "CAMR"); *New Jersey v. EPA*, 517 F.3d 574, 577 (D.C. Cir. 2008). In February 2008, this Court determined that EPA lacked authority to remove EGUs from the section 112(c) source category list without satisfying the statutory criteria of section 112(c)(9) for de-listing a source category, and vacated the De-Listing Rule and CAMR. *New Jersey v. EPA*, 517 F.3d 574.

9. After this Court's decision in *New Jersey v. EPA*, EGUs remained listed under section 112 without a NESHAP to regulate their HAP emissions. Environmental and other groups sued EPA to require the Agency to promulgate a NESHAP, and entered into a consent decree to require EPA to propose MATS by March 16, 2011, and to finalize MATS by December 16, 2011. *American Nurses Ass'n v. Jackson*, No. 1:08-cv-02198 (D.D.C. Oct. 24, 2011).[4]

10. EPA proposed MATS on March 16, 2011, and the proposed Rule was published approximately six weeks later. 76 Fed. Reg. 24,976 (May 3, 2011). Though EPA was not obligated to review its Finding, EPA re-affirmed that it

[4] The Court entered the consent decree in *American Nurses Ass'n v. Jackson* over the objection of intervenor Utility Air Regulatory Group. *See American Nurses Ass'n v. Jackson*, No. 1:08-cv-02198, Memorandum Opinion (D.D.C. Apr. 15, 2010). The consent decree initially provided that EPA would promulgate the MATS by November 16, 2011, but the parties to the consent decree agreed to extend that deadline to December 16, 2011. *See id*. (consent decree entered April 15, 2010, amended by court-approved stipulation Oct. 24, 2011).

properly determined in December 2000 that it was "appropriate and necessary" to regulate EGUs under section 112, and conducted additional analyses that confirmed it remained "appropriate and necessary" to regulate EGUs under section 112. EPA also proposed emission limitations for HAPs emitted by coal- and oil-fired EGUs. The limitations for emissions of mercury, non-mercury metallic HAPs, and acid gas HAPs from EGUs reflected MACT determined in accordance with section 112(d). In setting those emission limitations, EPA subdivided the EGU source category into several subcategories. EPA also proposed "work practice" standards for organic HAPs emitted by EGUs. Further, EPA proposed NSPS for fossil fuel-fired EGUs. EPA solicited comment on its "appropriate and necessary" determination, the proposed emission standards, the methodology for determining those standards, the proposed source subcategories, and a variety of other aspects of the Rule and its projected impacts, as well as the proposed NSPS.

11. National Grid Generation participated in the MATS rulemaking proceedings by, among other things, submitting comments on the proposed rule.[5] Those comments were generally supportive of EPA's effort to regulate HAPs, and recommended some technical changes.

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[5] *See Comments of National Grid*, EPA-HQ-OAR-2009-0234-17803, available at http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2009-0234-17803.

12. EPA finalized MATS on December 16, 2011, and made it available to the public on December 21, 2011. The Rule was published in the Federal Register on February 16, 2012. 77 Fed. Reg. 9,304 (Feb. 16, 2012). In MATS, the Agency evaluated updated technical analyses, peer reviews, and public comments and confirmed that it remained both "appropriate" and "necessary" to regulate HAP emissions from EGUs under section 112. During the comment period, UARG had petitioned the Agency pursuant to section 112(c)(9) to remove EGUs from the list of source categories to be regulated, and EPA denied that de-listing petition in the Rule. EPA also promulgated MACT emission limitations for mercury, non-mercury metallic HAPs, and acid gas HAPs from new and existing EGUs. EPA promulgated work practice standards for organic HAP emissions from EGUs. For purposes of establishing emission limitations, EPA segregated coal- and oil-fired EGUs into several different subcategories. Existing sources subject to MATS must comply with the Rule by April 16, 2015, unless an extension is granted. 77 Fed. Reg. at 9,465 (40 C.F.R. § 63.9984(b)).

Grounds for Intervention

13. 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. 15(d). To satisfy this rule, a prospective intervenor must "simply . . . file a motion setting forth its

interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors of Fed. Reserve Sys.*, 952 F.2d 426, 433 (D.C. Cir. 1991).

14. Rule 15(d) does not provide any standards for intervention, and "appellate courts have turned to the rules governing intervention in the district courts under Fed. R. Civ. P. 24." *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004). Under that rule, this Court has held that "qualification for intervention as of right depends on the following four factors: (1) the timeliness of the motion; (2) whether the applicant 'claims an interest relating to the property or transaction which is the subject of the action'; (3) whether 'the applicant is so situated that the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest'; and (4) whether 'the applicant's interest is adequately represented by existing parties.'" *Fund For Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003) (quoting FED. R. CIV. P. 24(a)(2)); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233-34 (D.C. Cir. 2003). National Grid Generation easily satisfies the four factors under this test.

The Motion Is Timely

15. This motion is timely because it has been filed within "30 days after the petition for review [was] filed." FED. R. APP. 15(d); *see also Alabama Power Co. v. I.C.C.*, 852 F.2d 1361, 1367 (D.C. Cir. 1988). UARG filed its first petition

for review on March 16, 2012, and its second petition on April 9, 2012, and this motion is filed within 30 days of those petitions. *See also* FED. R. APP. 26(a) (Computing Time). The statutory deadline for filing a petition to review MATS does not expire until April 16, 2012. By operation of D.C. Circuit Rule 15(b), this motion to intervene is "deemed a motion to intervene in all cases before this court involving the same agency action or order, including later filed cases, ..."

National Grid Generation Has Significant Interests In Regulation of Emissions of HAPs Under MATS

16. As a member of the industry regulated by MATS, National Grid Generation has a direct, immediate, and substantial interest in this case that would be harmed if the petitions for review were granted. *See, e.g.*, *Huron Envtl. Activist League v. EPA*, 917 F. Supp. 34, 42-43 (D.D.C. 1996) (industry members have direct, legally cognizable interest sufficient to intervene in support of EPA in case involving rules for that industry). National Grid Generation will benefit from the timely and complete implementation of MATS, and any *vacatur* or delay of MATS will deprive National Grid Generation of those substantial benefits.[6]

17. National Grid Generation has long been committed to producing cleaner energy by investing well over $100 million in pollution control equipment

[6] Because UARG's request for review of EPA's denial of its de-listing petition, if granted, could have the same effect as a *vacatur* of the Rule, National Grid Generation's interests in defending EPA's denial of the de-listing petition are identical to its interests in defending MATS.

for its oil-fired units and adding natural gas firing capability to all of its baseload plants. Included within these investments, National Grid Generation has recently invested tens of millions of dollars to improve control technology and energy efficiency at existing oil- and natural gas-fired facilities, including improvements to back end control technologies at several units that will reduce HAP and other emissions. These and other investments have been made, in part, in anticipation and expectation of federal and state environmental rules that would impose increasingly stringent emissions controls upon the electric generating sector. Teetz Decl. ¶ 7.

18. A *vacatur* or delay of MATS will create regulatory uncertainty that will increase the risk that National Grid Generation will not fully recover its investments in these emission reduction projects, frustrating its reasonable, investment-backed expectations. Teetz Decl. ¶ 8.

19. The electricity industry requires long-term certainty in order to make long-term investment decisions. EPA's promulgation of MATS relieved the uncertainty that plagued the electric generating industry for the better part of a decade, as a result of EPA's failure to promulgate a NESHAP after making the Finding in 2000, and its unlawful attempt to de-list EGUs in 2005. The Rule provides the industry with the firm ground needed to support capital investment by establishing nationally-applicable emissions standards. In so doing, it also brings

an end to the case-by-case derivation of MACT standards to HAP emissions from new or modified EGUs in the absence of a federal NESHAP. *See* 42 U.S.C. § 7412(g)(2). A *vacatur* of MATS would return the industry to the uncertainty that followed this Court's decision in *New Jersey v. EPA*, paralyzing capital investment and preventing the overdue modernization of the country's generation fleet.

20. National Grid Generation operates in a market where it must negotiate the sale of its generating capacity. Because air pollution control equipment carries significant capital cost and often is more expensive to operate as well, fossil fuel-fired plants without emission controls (or which do not operate the controls they have) hold a competitive advantage over cleaner fossil fuel-fired plants with emissions controls, cleaner natural gas-fired plants, and other cleaner generation sources. That advantage reduces the price paid to all generators. As a result, without MATS, National Grid Generation's cleaner generation capacity would have diminished competitive value than it otherwise would if uncontrolled plants were forced to reduce their pollution. MATS eliminates some of the price advantage that uncontrolled and poorly controlled electric generating units enjoy over plants equipped with pollution controls. The petition jeopardizes the many benefits that will result from implementation of MATS.

Disposition Of The Petition May Impair National Grid Generation's Interests

21. National Grid Generation's operations are directly implicated by the agency action underlying the petition for review. National Grid Generation owns or controls generation assets that are or may be directly regulated by the Rule.

22. A *vacatur* of MATS would deprive National Grid Generation of the certainty needed to competitively market its capacity and recover its costs for environmental improvements to its generation fleet. Teetz Decl. ¶ 9. Accordingly, the disposition of the petitions may impair National Grid Generation's interests. *See Huron Envtl. Activist League*, 917 F. Supp. at 43 (intervention granted where relief sought by petitioner could result in rule of law unfavorable to intervenor).

23. National Grid Generation also expects that MATS may positively affect its business in the ways described above.

Respondent EPA May Be Unable Adequately To Represent National Grid Generation's Distinct Interests

24. A prospective intervenor's burden of showing inadequate representation "is not onerous," as it "need only show that representation of [its] interest 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. District 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)).

25. National Grid Generation has distinct interests in this matter separate and apart from the regulatory interests of Respondent EPA. EPA's overarching interests are the proper administration and implementation of the Clean Air Act, including promulgation of a NESHAP consistent with section 112 after *New Jersey v. EPA*. *See Dimond*, 792 F.2d at 192-93 ("A government entity . . . is charged by law with representing the public interest of its citizens"). National Grid Generation's interests, on the other hand, are protecting its business interests and implementing environmental regulations that will reduce emissions of air pollutants in a manner consistent with its capital investments in pollution control equipment and lower-polluting generation capacity.

26. It is uncommon for members of the regulated industry to support implementation of a stringent air pollution control rule such as MATS. By contrast, several members of the industry already have petitioned for review of the Rule. National Grid Generation should be permitted to intervene to protect its interests in the outcome of this litigation.

27. National Grid Generation believes that its participation will be uniquely helpful to the Court. The electric industry and the markets in which it functions are complex. While Respondent has diligently educated itself with respect to those complexities, it is not ideally situated to address contentions about electric price and reliability impacts, which many objectors raised in their

comments on the Rule and are likely to be raised in judicial challenges to the Rule before this Court. National Grid Generation, which owns units that are subject to contractual obligations to run under certain conditions for reliability purposes, is able to fill this role to assure that the adversarial process is as effective in this case as in any other.

28. National Grid Generation will endeavor to coordinate with EPA, as well as with any other intervenors, to avoid duplicative briefing and to ensure that their participation as intervenors will be of assistance to the Court.

29. Counsel for Respondent has informed the undersigned that Respondent takes no position on National Grid Generation's motion to intervene on Respondent's behalf and will not oppose the motion. Counsel for petitioner UARG has informed the undersigned that UARG does not oppose the motion. Counsel for the National Mining Association has informed the undersigned that National Mining Association takes no position on the motion. Counsel for petitioners National Black Chamber of Commerce and the Institute for Liberty has informed the undersigned that those petitioners do not intend to take a position on the motion. Counsel for White Stallion has informed the undersigned that White Stallion opposes the motion.

* * *

Wherefore, National Grid Generation respectfully requests that it be granted leave to intervene as a party respondent in the captioned proceedings and any future petition for review challenging the Mercury and Air Toxics Standards, including the New Source Performance Standards provisions of the Rule, or the denial of UARG's de-listing petition.

April 16, 2012

Respectfully submitted,

/s/ Brendan K. Collins

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Counsel for National Grid Generation LLC

CERTIFICATE OF SERVICE

I, Brendan K. Collins, a member of the Bar of this Court, hereby certify that on April 16, 2012, I electronically filed the foregoing "Motion of National Grid Generation LLC For Leave To Intervene As Respondents" with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system.

I further certified that I served the foregoing motion on all registered counsel through the Court's CM/ECF system.

/s/ Brendan K. Collins
Brendan K. Collins

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FOR THE DISTRICT OF COLUMBIA CIRCUIT

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DECLARATION OF ROBERT D. TEETZ

I, Robert D. Teetz, do hereby declare, under penalty of perjury pursuant to 28 U.S.C. § 1746, as follows:

1. I am Vice President of Environmental Services for National Grid Generation LLC ("National Grid Generation").

2. Through the course of my employment, I have personal knowledge of the issues and activities referred to herein.

3. I submit this declaration in support of the Motion of National Grid Generation LLC for Leave to Intervene as Respondents. The rulemaking in this appeal is known as the "Mercury and Air Toxics Standards" ("MATS" or "Rule") and was published under the title "National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units," 77 Fed. Reg. 9,304 (Feb. 16, 2012).

4. National Grid Generation owns and operates 53 natural gas- and oil-fired electric generating units capable of delivering approximately 4,000 megawatts ("MW") of electricity to consumers throughout Long Island, New York. National Grid Generation supplies approximately 25 to 30 percent of the electric demand for Long Island, New York.

5. National Grid Generation owns and operates oil-fired EGUs directly affected by MATS. National Grid Generation also owns and operates EGUs that are not subject to MATS, but which are dispatched in electricity markets with generating units that are subject to the Rule.

6. National Grid Generation participated in the MATS rulemaking proceedings through, among other things, submitting comments

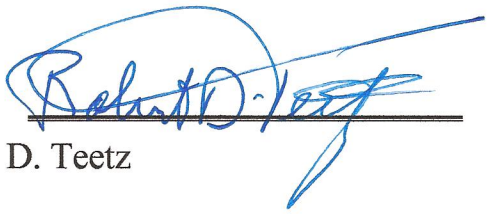
on the proposed rule. Those comments were generally supportive of EPA's effort to regulate HAPs, and recommended some technical changes.

7. National Grid Generation has long been committed to producing cleaner energy by investing well over $100 million in pollution control equipment for its oil-fired units and adding natural gas firing capability to all of its baseload plants. Included within these investments, National Grid Generation has recently invested tens of millions of dollars to improve control technology and energy efficiency at existing oil- and natural gas-fired facilities, including improvements to back end control technologies at several units that will reduce HAP and other emissions. These and other investments have been made, in part, in anticipation and expectation of federal and state environmental rules that would impose increasingly stringent emissions controls upon the electric generating sector.

8. A *vacatur* or delay of MATS will create regulatory uncertainty that will increase the risk that National Grid Generation will not fully recover its investments in these emission reduction projects, frustrating its reasonable, investment-backed expectations.

9. A *vacatur* of MATS would deprive National Grid Generation of the certainty needed to competitively market its capacity and recover its costs for environmental improvements to its generation fleet.

April 16, 2012



Robert D. Teetz

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Proposed Intervenor-Respondent National Grid Generation LLC states that it is limited liability company organized under the laws of New York that owns and operates 53 natural gas- and oil-fired electric generating units capable of delivering approximately 4,000 megawatts of electricity. National Grid Generation LLC is a wholly-owned subsidiary of KeySpan Corporation. KeySpan Corporation is a wholly-owned subsidiary of National Grid USA, a public utility

holding company with regulated subsidiaries engaged in the generation of electricity and the transmission, distribution and sale of both natural gas and electricity.

All of National Grid USA's common shares are owned by National Grid Holdings Inc., which is wholly-owned by National Grid (US) Partner 1 Limited. National Grid (US) Partner 1 Limited is wholly-owned by National Grid (US) Investments 4 Limited, which is wholly-owned by National Grid (US) Holdings Limited, which is wholly-owned by National Grid plc. National Grid plc's ordinary shares are listed on the London Stock Exchange. National Grid plc's stock is also held by U.S. investors through American Depositary Shares that are listed on the New York Stock Exchange.

April 16, 2012

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CERTIFICATE OF PARTIES AND AMICI CURIAE PURSUANT TO D.C. CIRCUIT RULE 28(a)(1)(A)

Pursuant to D.C. Circuit Rules 15, 27(a)(4) and 28(a)(1)(A), Proposed Intervenor-Respondent National Grid Generation LLC submits this certificate as to parties and amici curiae.

This case involves consolidated petitions for review of a rulemaking issued by the United States Environmental Protection Agency entitled "National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-

Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units", 77 Fed. Reg. 9,304 (Feb. 16, 2012).

Petitioners: The petitioners in the consolidated cases are:

White Stallion Energy Center, LLC (Case No. 12-1100);

National Mining Association (Case No. 12-1101);

National Black Chamber of Commerce, and Institute for Liberty (Case No. 12-1102);

Utility Air Regulatory Group (Case Nos. 12-1147, 12-1166).

Respondent: The respondent is the U.S. Environmental Protection Agency ("EPA").

Intervenors and Amici Curiae: The following parties have moved for leave to intervene:

Commonwealth of Massachusetts and the States of Connecticut, Delaware, Illinois, Iowa, Maine, Maryland, New Hampshire, New Mexico, New York, Rhode Island, and Vermont, and the District of Columbia and the City of New York have moved for leave to intervene in support of Respondent EPA.

The State of North Carolina moved for leave to intervene in support of Respondent.

American Academy of Pediatrics, American Lung Association, American Nurses Association, American Public Health Association, Chesapeake Bay

Foundation, Citizens for Pennsylvania's Future, Clean Air Council, Conservation Law Foundation, Environment America, Environmental Defense Fund, Izaak Walton League of America, Natural Resources Council of Maine, Natural Resources Defense Council, Ohio Environmental Council, Physicians for Social Responsibility, Sierra Club, and Waterkeeper Alliance moved for leave to intervene in support of Respondent.

Calpine Corporation, Exelon Corporation, and Public Energy Services Group, Inc. moved for leave to intervene in support of Respondent.

There are no *amici curiae*.

April 16, 2012

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