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

NATIONAL PARKS CONSERVATION ASSOCIATION, *et al.*, Petitioners, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, *et al.* Respondents. BIG BROWN POWER CO, LLC, *et al.* Intervenor-Respondents.	No. 17-1253

STATUS REPORT

On April 10, 2018, the Court issued an Order (Doc. 1725890) granting Petitioners' and Respondents' Joint Motion to Hold Case in Abeyance pending the resolution of an administrative petition for partial reconsideration and the completion of any reconsideration process concerning the rule at issue in this case, "Interstate Transport of Fine Particulate Matter: Revision of Federal Implementation Plan Requirements for Texas," 82 Fed. Reg. 45,481 (September 29, 2017) (hereinafter, "Rule" or "September 2017 Rule"). Pursuant to the Court's

Order, Respondents submit this status report regarding the status of reconsideration proceedings.

1. The Rule at issue in this case involves two related EPA actions: First, EPA's withdrawal of federal implementation plan ("FIP") provisions requiring electric generating units in Texas to participate in the Cross-State Air Pollution Rule ("CSAPR") trading programs for annual emissions of sulfur dioxide and nitrogen oxides, *see* 76 Fed. Reg. 48,208 (August 8, 2011). Second, EPA's determination that changes to CSAPR, including the removal of Texas from these CSAPR trading programs, did not adversely affect its prior conclusion that participation in CSAPR qualifies as an alternative to best available retrofit technology ("BART") controls for addressing visibility impairment, 77 Fed. Reg. 33,642 (June 7, 2012), *see Utility Air Regulatory Grp. v. EPA*, No. 12-1342 (D.C. Cir. Mar. 20, 2018).

2. On November 28, 2017, Petitioners submitted an administrative petition for partial reconsideration of the September 2017 Rule to EPA. Central to the Petitioners' argument that EPA should reconsider certain elements of the Rule is a second action taken by EPA, the issuance of a rule entitled "Promulgation of Air Quality Implementation Plans; State of Texas; Regional Haze and Interstate Visibility Transport Federal Implementation Plan," 82 Fed. Reg. 48,324 (Oct. 17, 2017) ("Texas BART FIP rule").

3. On April 30, 2018, EPA announced its intention to convene a new rulemaking proceeding to solicit public comment on certain aspects of the Texas BART FIP rule. On August 27, 2018, EPA published a notice of proposed rulemaking proposing to affirm its October 17, 2017 BART final rule, and providing an opportunity for public comment on the proposal and other specified related issues. 83 Fed. Reg. 43,586 (Aug. 27, 2018). EPA held a public hearing in Austin, Texas on the proposed rulemaking on September 26, 2018. The public comment period on the proposed action closed on October 26, 2018. EPA received approximately 1,500 comment letters and emails from citizens, environmental groups, industry and States.

4. Prior to December 28, 2018, EPA had been reviewing the comments it received on the August 27, 2018, notice of proposed rulemaking, in preparation to draft responses to the comments. On December 28, 2018, the appropriation account that was funding this work lapsed. January 28, 2019 was the first business day that funding was restored to EPA. EPA has resumed the work now that funding has been restored.

5. EPA expects that the outcome of the new rulemaking proceeding regarding the Texas BART FIP rule could affect its consideration of Petitioners' administrative petition for partial reconsideration and any reconsideration process

regarding the Rule at issue in this case, which in turn could affect the issues to be reviewed by this Court.

6. Pursuant to the Court's Order, EPA will submit further status reports at 60-day intervals.

Dated: April 9, 2019

Respectfully submitted,

/s/ *draft*

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CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2019, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system.

The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ *Sarah A. Buckley*
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