

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS FOR
THE DISTRICT OF COLUMBIA CIRCUIT

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CLEAN AIR COUNCIL, EARTHWORKS,)	
ENVIRONMENTAL DEFENSE FUND,)	
ENVIRONMENTAL INTEGRITY PROJECT,)	
NATURAL RESOURCES DEFENSE)	
COUNCIL, and SIERRA CLUB,)	
)	
	Petitioners,)	
)	No. 17-1145
	v.)	
)	
E. SCOTT PRUITT, ADMINISTRATOR,)	
ENVIRONMENTAL PROTECTION)	
AGENCY, and U.S. ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
	Respondents.)	
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**UNOPPOSED MOTION OF THE TEXAS OIL & GAS ASSOCIATION FOR
LEAVE TO INTERVENE ON BEHALF OF RESPONDENT**

Pursuant to Federal Rules of Appellate Procedure Rule 15(d) and 27, and Circuit Rules 15(b) and 27, the Texas Oil & Gas Association (TXOGA), respectfully moves for leave to intervene in the above-captioned case on behalf of Respondent, U.S. Environmental Protection Agency (EPA or the Agency).

After attempting to contact the parties to this cases, TXOGA is authorized to state that counsel for Respondent has indicated that they do not oppose this motion,

and counsel for the Petitioners has indicated that they take no position on it.

In support of this motion, Movant-Intervenor states as follows:

1. This case involves a challenge brought by Petitioners, Clean Air Council, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Natural Resources Defense Council, and Sierra Club to a June 5, 2017, final action of EPA entitled *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Grant of Reconsideration and Partial Stay; Notice of reconsideration and partial stay*, 82 Fed. Reg. 25,730 (June 5, 2017) (hereinafter “Stay Rule”). In this rule, EPA announced that it was convening a proceeding to reconsider certain requirements of the Agency’s 2016 final rule entitled *Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final rule*, 81 Fed. Reg. 35,824 (June 3, 2016) (“2016 Quad Oa Rule”). In addition, EPA announced that it was issuing a three-month stay of the requirements pending reconsideration.

2. Movant-Intervenor TXOGA, a “trade association” within the meaning of Circuit Rule 26.1, is the largest and oldest petroleum organization in Texas, representing more than 5,000 members. The membership of TXOGA produces in excess of 90 percent of Texas’ crude oil and natural gas, operates nearly 100 percent of the state’s refining capacity, and is responsible for the vast majority of the state’s pipelines. TXOGA member companies produce approximately a

quarter of the nation's oil, a third of its natural gas and account for one-fourth of the U.S. refining capacity. TXOGA participates in administrative proceedings before EPA under environmental statutes and in litigation arising from those proceedings that affect its members. Many of TXOGA's members either own or operate facilities that are subject to the provisions that EPA has stayed in the rule challenged in this action. Therefore, disposition of the issues raised in this case will have a substantial direct impact on the Movant-Intervenor members.

3. Because TXOGA's members "indisputably will be directly affected" by EPA's rule, their standing is "self-evident[.]" *See American Library Ass'n v. FCC*, 401 F.3d 489, 491-92 (D.C. Cir. 2005). Because TXOGA's members would otherwise have standing to sue in their own right and the interests TXOGA seek to protect are germane to its organizational purposes, Movant-Intervenor has representational standing here. *See Sierra Club v. EPA*, 292 F.3d 895, 900 (D.C. Cir. 2002) ("In particular, if the complainant is 'an object of the action (or forgone action) at issue' – as is the case usually in review of a rulemaking and nearly always in review of an adjudication – there should be 'little question that the action or inaction has caused him injury, and that a judgment preventing or requiring the action will redress it.'") (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561-62 (1992)). *See also S. Coast Air Quality Mgmt. Dist. v. EPA*, 472 F.3d 882, 895-96 (D.C. Cir. 2006) ("It is inconceivable that EPA's comprehensive reworking

of an Act that specifically controls the requirements for industrial pollution would fail to affect the requirements of even a single NPRA member.”) (citations omitted).

4. TXOGA submitted written comments during the public comment period on the proposed Quad Oa Rule. *See* TXOGA, Comments on EPA’s Oil and Natural Gas Sector: Emission Standards for New and Modified Sources; Proposed rule, 80 Fed. Reg. 56,593 (Sept. 18, 2015) dated Dec. 4, 2015, Docket Id. No. EPA-HQ-OAR-2010-0505-7058. In addition, TXOGA filed a Petition for Review and a Petition for Reconsideration on the 2016 Quad Oa Final Rule. *See* Pet. for Review, *Texas Oil and Gas Ass’n v. EPA*, 16-1269 (D.C. Cir. Aug. 2, 2016); TXOGA, Pet. for Recons., (Aug. 2, 2016), Docket Id. No. EPA-HQ-OAR-2010-0505-7686.

5. Intervention is necessary here for the adequate representation of Movant-Intervenor’s interests. No other party to this case directly represents the interests of TXOGA members, whose primary business is oil and natural gas production and refining. While Movant-Intervenor’s position at times may align with other parties’ positions, those parties do not necessarily represent TXOGA’s interests. A ruling in Petitioners favor could result in more stringent requirements being imposed on TXOGA member company facilities. Petitioners are environmental advocacy organizations that do not represent TXOGA’s interests,

and TXOGA anticipates it will not support their positions. Further, while Movant-Intervenor anticipates it will support some of EPA's positions, Movant-Intervenor's interests are different than EPA's regulatory and institutional interests. Even if Movant-Intervenor's interests and EPA's interests were more closely aligned, "that [would] not necessarily mean that adequacy of representation is ensured." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977). Precisely because Movants' interests are "more narrow and focused than EPA's," Movants' participation is "likely to serve as a vigorous and helpful supplement to EPA's defense." *Id.* at 912-913.

6. The present motion is timely. Federal Rule of Appellate Procedure 15(d), requires that a party seek intervention within 30-days after the docketing of the last docketed case. Here, Petitioner's case, was docketed on June 5, 2017. Intervention will not prejudice any party or result in delay as a briefing schedule has not been set, and Movant-Intervenor does not intend to seek delay in the briefing or consideration of the issues raised by the parties.

WHEREFORE, TXOGA respectfully requests that the Court grant this Motion for Leave to Intervene on Behalf of Respondent.

Respectfully submitted,

/s/Shannon S. Broome

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*Counsel for the Texas Oil & Gas
Association*

Dated: June 14, 2017

CERTIFICATE OF COMPLIANCE

I hereby certify that the Motion of the Texas Oil & Gas Association for Leave to Intervene on Behalf of Respondent, complies with the requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because it has been prepared in 14-point Times New Roman type.

I further certify that the motion complies with the type volume limitation of Fed. R. App. P. 27(d)(2) and 32(g) because it contains 962 words, excluding exempted portions, according to the count of Microsoft Word.

/s/ Shannon S. Broome

Shannon S. Broome

DATED: June 14, 2017

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No. 17-1145

RULE 26.1 STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Movant-Intervenor Texas Oil and Gas Association (TXOGA) makes the following Disclosure:

TXOGA, a “trade association” within the meaning of Circuit Rule 26.1, is the largest and oldest petroleum organization in Texas, representing more than 5,000 members. The membership of TXOGA produces in excess of 90 percent of Texas’ crude oil and natural gas, operates nearly 100 percent of the state’s refining capacity, and is responsible for the vast majority of the state’s pipelines. TXOGA

member companies produce approximately a quarter of the nation's oil, a third of its natural gas and account for one-fourth of the U.S. refining capacity and, therefore, own and operate facilities that are affected by the rule at issue in this case.

TXOGA has not issued shares or debt securities to the public, has no parent company, and no publicly-held company has a 10 percent or greater ownership interest in TXOGA.

Respectfully submitted,

/s/Shannon S. Broome

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*Counsel for the Texas Oil & Gas
Association*

Dated: June 14, 2017

5, 2017). There was no action in the district court, and so there were no parties in the district court. The parties in this case include:

Petitioners

Clean Air Council, Earthworks, Environmental Defense Fund, Environmental Integrity Project, Natural Resources Defense Council, and Sierra Club.

Respondents

E. Scott Pruitt, Administrator, Environmental Protection Agency, and U.S. Environmental Protection Agency.

Movant-Intervenors

American Petroleum Institute, Interstate Natural Gas Association of America, Independent Petroleum Association of America, American Exploration & Production Council, Domestic Energy Producers Alliance, Eastern Kansas Oil & Gas Association, Illinois Oil & Gas Association, Independent Oil, Gas Association of West Virginia, Inc., Indiana Oil and Gas Association, International Association of Drilling Contractors, Kansas Independent Oil & Gas Association, Kentucky Oil & Gas Association, Michigan Oil and Gas Association, National Stripper Well Association, North Dakota Petroleum Council, Ohio Oil and Gas Association, Oklahoma Independent Petroleum Association, Pennsylvania Independent Oil & Gas

Association, Texas Alliance of Energy Producers, Texas Independent Products & Royalty Owners Association, West Virginia Oil and Natural Gas Association, GPA Midstream Association, and Texas Oil and Gas Association.

We are unaware that this Court has granted any interventions at this time. We also believe that no entity has been admitted as an *amicus* at this time.

Respectfully submitted,

/s/Shannon S. Broome

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*Counsel for the Texas Oil & Gas
Association*

Dated: June 14, 2017

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of June 2017, I caused to be electronically filed the foregoing Motion of the Texas Oil & Gas Association For Leave To Intervene on Behalf of Respondent, Rule 26.1 Statement, and Certificate of Parties and *Amici* with the Clerk of the Court of the United States Court of Appeals for the District of Columbia Circuit by using the Court's CM/ECF system.

Participants in the case who are registered CM/ECF users and will be served by the Court's CM/ECF system.

/s/Shannon S. Broome

SHANNON S. BROOME