

ORAL ARGUMENT NOT YET SCHEDULED

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

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AMERICAN GAS ASSOCIATION,)	
)	
Petitioner,)	
)	
v.)	Case No. 11-1020
)	(and consolidated cases)
ENVIRONMENTAL PROTECTION)	
AGENCY,)	
)	
Respondent.)	
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**MOTION OF ENVIRONMENTAL DEFENSE FUND, SIERRA CLUB, AND
NATURAL RESOURCES DEFENSE COUNCIL TO INTERVENE IN
SUPPORT OF RESPONDENT**

Environmental Defense Fund, Sierra Club, and Natural Resources Defense Council (collectively “Movants”) respectfully move pursuant to FED. R. APP. P. 15(d) and D.C. Cir. Rule 15(b) to intervene in support of Respondent U.S. Environmental Protection Agency (“EPA”) in the above-captioned proceeding. This case concerns review of the final rule promulgated by EPA entitled “Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems,” published at 75 Fed. Reg. 74,458-515 (Nov. 30, 2010) (the “Final Rule”). Counsel for Petitioner American Gas Association has been consulted and

stated that American Gas Association does not object to this motion. Pursuant to D.C. Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the Final Rule.

INTRODUCTION

At issue in this case is a key piece of our nation's first comprehensive nationwide system for tracking individual facilities' greenhouse gas emissions, a reporting regime that is central to the government's global warming policy efforts. Congress charged EPA with developing a comprehensive mandatory reporting regime for greenhouse gas emissions. Congress directed EPA to publish a final rule "not later than June 26, 2009, and to begin implementation [] to require mandatory reporting of greenhouse gas emissions above appropriate thresholds in all sectors of the economy of the United States, as required by Public Law 110-161."¹ Movants have been deeply involved in the development of these reporting regulations, advocating for effective reporting protocols.

This action challenges a recently-finalized portion of the reporting regime which tracks emissions of greenhouse gases from petroleum and natural gas systems, including onshore and offshore production wells and platforms and oil and gas transmission and storage facilities. According to EPA estimates,

¹ Appropriations Act of 2009, Pub. L. No. 111-8, 123 Stat. 524, 729 (March 11, 2009) (citing Fiscal Year 2008 Consolidated Appropriations Act, Pub. L. No. 110-161, 121 Stat. 1844, 2128 (Dec. 26, 2007)).

petroleum and natural gas facilities that are large enough to trigger the Final Rule's reporting requirements annually emit the equivalent of 337 million metric tons of carbon dioxide. *See* 75 Fed. Reg. at 74,477 Table 7A. Presumably because its members wish to weaken reporting requirements for their facilities, the American Gas Association ("AGA") has petitioned for review.

Industry groups have already filed a series of legal challenges to EPA's initial set of greenhouse gas reporting regulations and other subsequent rules to add sectors to the list of facilities required to report. Two of those cases, Nos. 09-1325 and 10-1284, are presently being held in abeyance pending settlement discussions, while a third, No. 11-1022, was filed at the same time as the instant case. Two or more of Movants have sought to intervene in support of EPA in each case, and those intervention motions have either been granted or await the resumption of litigation.² To ensure that EPA's greenhouse gas reporting regime receives the strongest possible defense, Movants now seek to intervene in this proceeding as well in support of Respondent EPA.

² *See* Order of Feb. 3, 2011, *American Chemistry Council v. EPA*, No. 09-1325 (D.C. Cir.) (Environmental Defense Fund, Sierra Club, and Natural Resources Defense Council granted intervention); Motion of Sierra Club and Natural Resources Defense Council for Leave to Intervene in Support of Respondent, Case No. 10-1284, Doc. 1271183 (Oct. 12, 2010); Motion of Environmental Defense Fund and Natural Resources Defense Council for Leave to Intervene in Support of Respondent, Case No. 11-1024, (filed concurrently with this motion).

BACKGROUND

A. Movant Environmental Organizations

Movants are nonprofit citizens' groups working on many fronts to research, analyze, and control greenhouse gases.

Environmental Defense Fund ("EDF") is a national nonprofit organization representing more than 325,000 members nationwide. Declaration of John Stith (Stith Decl.) ¶¶ 3, 8. Since 1967, EDF has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems. *See id.* ¶ 4. A core part of EDF's mission is to advocate well-designed national policies, legislative and administrative, to reduce climate-altering emissions, in part by analyzing and providing their members and the public with information regarding emissions data to evaluate and influence policy proposals. *Id.* ¶ 6. EDF also actively engages in public education and outreach activities by communicating with its members and with the public through its website, email communications, press statements, internet-based media outlets, and other publications, and utilizes emissions data in many of those communications. *Id.* ¶ 8. In addition, EDF seeks strategic partnerships with corporations interested in conducting their business in a manner that mitigates the impact on human health and the environment. *See id.* ¶ 6; Declaration of Arthur P. Cooley (Cooley Decl.) ¶ 8.

The Sierra Club is a grassroots environmental organization that works to promote solutions to global warming at the federal and local level. Declaration of Jennifer Perrone (Perrone Decl.) ¶¶ 3-4. The Sierra Club’s Beyond Coal Campaign works to rapidly reduce greenhouse gas emissions in the electricity sector. *Id.* ¶ 3. The Sierra Club’s climate change activities also include major efforts to reduce greenhouse gas emissions from the oil and gas sector. *Id.* ¶ 3.

The Natural Resources Defense Council (“NRDC”) is a national nonprofit environmental organization with approximately 400,820 members nationwide. Declaration of Linda Lopez (Lopez Decl.) ¶¶ 3, 7. NRDC’s mission includes the prevention and mitigation of global warming in order to protect and maintain NRDC’s members’ use and enjoyment of natural resources threatened by global warming. *Id.* ¶ 4. Through its Climate Center, NRDC pursues federal and state policies to curb the pollution that is causing global warming, including emissions of greenhouse gases from U.S. stationary sources, which are a major contributor to global warming pollution. *Id.* ¶ 5.

B. The Final Rule

The Final Rule’s requirements for petroleum and natural gas facilities represent a critical component of EPA’s reporting system for greenhouse gas emissions. As the agency has explained, “[a]ccurate and timely information on [greenhouse gas] emissions is essential for informing many future climate change

policy decisions.” 74 Fed. Reg. 56,260, 56,265 (“Mandatory Reporting of Greenhouse Gases; Final Rule,” Oct. 30, 2009). With access to nationwide, facility-level data, “[s]tates and the public will gain a better understanding of the relative emissions of specific industries across the nation and the distribution of emissions from individual facilities within those industries.” *Id.* These data will help determine the actions “that facilities could in the future or already take to reduce emissions, including under traditional and more flexible programs.” *Id.* In promulgating reporting requirements for the petroleum and natural gas facilities covered in the Final Rule, EPA explained that emissions data from these sources are “crucial to the timely development of future [greenhouse gas] policy and regulatory programs.” 75 Fed. Reg. 18,608, 18,612 (“Mandatory Reporting of Greenhouse Gases: Petroleum and Natural Gas Systems; Proposed Rule,” Apr. 12, 2010).

The emissions reporting regulations at issue in this action focus on greenhouse gas emissions from a sector whose full impact has been difficult to quantify using previous methods of analysis. A significant portion of the greenhouse gas emissions from the oil and gas industry originate from leaks of methane – a greenhouse gas with more than twenty times the potency of carbon dioxide – from pipes and other equipment that may not be immediately detected. *See, e.g.*, 75 Fed. Reg. at 18,622 (“Each segment of the petroleum and gas system

has a variety of fugitive emissions sources that at a source type level have low emissions volume, but combined together at a segment level contribute significantly towards the total emissions from petroleum and gas systems.”). By requiring facilities to monitor and report such emissions, the Final Rule ensures a vast improvement in the public’s understanding of the magnitude of emissions from this sector. Underscoring the need for better data, in just the last two years, EPA has more than doubled its estimate of the amount of greenhouse gas emissions that come from petroleum and natural gas systems. *Compare* 74 Fed. Reg. at 16,597-98 Table VIII-1 (129.9 million metric tons of carbon dioxide equivalent emissions), *with* 75 Fed. Reg. at 74,477 Table 7A (337 million metric tons of carbon dioxide equivalent estimated in the Final Rule). However, even the agency’s low initial projection of emissions from this sector placed petroleum and natural gas facilities as one of the largest contributors to greenhouse gas emissions. *See* 74 Fed. Reg. at 16,597-98 Table VIII-1. Therefore, implementation of the Final Rule is needed to provide the public with accurate data on emissions from one of the largest sources of greenhouse gas pollution, making it possible to design cost-effective strategies to reduce those emissions.

ARGUMENT

Movants should be permitted to intervene in these proceedings in order to support their organizational interests and the specific interests of their members in

maintaining comprehensive, public, and effective greenhouse gas reporting data from all significant facilities. As demonstrated below, Movants meet the requirements for intervention. Further, this motion was timely filed within thirty days of January 28, 2011, when the American Gas Association's petition for review was filed. FED. R. APP. P. 15(d); *Alabama Power Co. v. I.C.C.*, 852 F.2d 1361, 1367 (D.C. Cir. 1988). Finally, counsel for Petitioner American Gas Association has stated that American Gas Association does not object to Movants' intervention.

A. Standard Applicable to a Motion to Intervene

Under FED. R. APP. P. 15(d), a motion to intervene need only make "a concise statement of the interest of the moving party and the grounds for intervention." This Court has noted that "in the intervention area the interest test 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) (reversing denial of intervention under FED. R. CIV. P. 24(a)). Movants seek intervention to oppose attempts to weaken access to information on public health and environmental impacts that concern the interests of their members. As discussed further below, that interest is sufficient to support intervention in this case.

This court has regularly allowed Movants to intervene in industry petitions challenging EPA actions under the Clean Air Act. *See, e.g.*, Order of Feb. 3, 2011, *American Chemistry Council v. EPA*, No. 09-1325 (D.C. Cir.) (EDF, Sierra Club, and NRDC granted intervention in industry lawsuits challenging greenhouse gas reporting regulations applicable to other facilities); Order of Aug. 3, 2006, *Coke Oven Env'tl. Task Force v. EPA*, No. 06-1131 (D.C. Cir.) (EDF (then known as Environmental Defense), Sierra Club and NRDC granted intervention in suits by industry and governmental entities challenging revisions to air pollutant emissions standards for utility boilers).³ Comparable circumstances warrant a grant of intervention to Movants here.

B. Movants' Motion to Intervene Should Be Granted.

1. Movants' Organizational Interest in Maintaining EPA's Reporting System

Movants have a substantial interest in this proceeding to protect their organizational investments in greenhouse gas emissions analysis and reductions.

³ Similarly, this Court has regularly permitted intervention by industry organizations seeking to support EPA actions challenged by environmental groups. *See, e.g.*, *NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009) (National Petrochemical and Refiners Association and other industry groups allowed to intervene in support of EPA's 8-hour ozone National Ambient Air Quality Standard); *Am. Farm Bureau Fed'n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (industry groups intervened to support EPA's 2006 revisions to its national ambient air quality standards for fine and coarse particulate matter); *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008) (chemical industry groups intervened to support EPA rule exempting major sources of air pollution from normal emission standards during periods of startups, shutdowns, and malfunctions).

Movants are working to document and control U.S. greenhouse gas emissions and to disseminate information on these emissions and their effects to the public and policymakers. *See* Perrone Decl. ¶¶ 4-9; Cooley Decl. ¶¶ 7-8; Declaration of Daniel A. Lashof (Lashof Decl.) ¶¶ 3-7; Declaration of Denise Fort (Fort Decl.) ¶¶ 6, 9. They need these data to effectively argue for reduction strategies, educate the public and politicians, and help progressive companies reduce their emissions. *See* Perrone Decl. ¶¶ 7-9; Cooley Decl. ¶¶ 7-8; Lashof Decl. ¶¶ 6-8; Fort Decl. ¶¶ 6, 9. Their members, who have vital personal interests in controlling global warming and better understanding its causes, benefit substantially from this work. *See, e.g.*, Declaration of Frank Keim (Keim Decl.) ¶¶ 6-15; Cooley Decl. ¶¶ 2-6; Fort Decl. ¶¶ 5-9; Declaration of Sarah Gordon (Gordon Decl.) ¶¶ 3-6; Declaration of Elizabeth Coplton (Coplton Decl.) ¶¶ 3-6.

Movants have advanced their organizational interests and the interests of their members by advocating in favor of regulation of greenhouse gases since EPA first requested public comment on a 1999 petition to EPA to regulate greenhouse gas emissions from motor vehicles. *See, e.g.*, EPA Document No. EPA-HQ-OAR-2001-0002-0026 at 2 (discussing comments of NRDC). Movants were also prevailing parties in the *Massachusetts v. EPA* litigation, which confirmed that greenhouse gases fall under the Clean Air Act's purview. *See Massachusetts*, 549 U.S. at 505 n.4 (listing environmental group petitioners). More recently, Movants

have been granted leave by this Court to intervene on behalf of EPA in consolidated challenges to EPA's initial regulatory finding that greenhouse gases endanger the public and to rules establishing greenhouse gas emissions limits for motor vehicles. *See* Order of May 5, 2010, *Coalition for Responsible Regulation v. EPA*, No. 09-1322 (D.C. Cir.); Order of Aug. 5, 2010, *Coalition for Responsible Regulation v. EPA*, No. 10-1092 (D.C. Cir.).

Because comprehensive and accurate emissions data are central to any emissions control strategy, Movants have been deeply involved in the development of EPA's greenhouse gas reporting regulations. Movants submitted extensive technical comments on EPA's initial rulemaking proposal in 2009 and have consistently advocated a comprehensive and public reporting system through their comments on EPA's subsequent proposals, including the agency's April 2010 proposed reporting requirements for petroleum and natural gas systems. *See* EPA Docket ID No. EPA-HQ-OAR-2009-0923-1155 (June 11, 2010) (Comments of Sierra Club, NRDC *et al.*, on proposed rule for mandatory reporting of greenhouse gases for petroleum and natural gas systems, 75 Fed. Reg. 18,608 (April 12, 2010)).⁴ Moreover, when EPA's 2009 final rule establishing greenhouse gas

⁴ *See also* EPA Docket ID No. EPA-HQ-OAR-2008-0508-2398.1 (Sept. 27, 2010) (Comments of Sierra Club, NRDC, *et al.* on proposed revisions to the Mandatory Greenhouse Gas Reporting Rule, 75 Fed. Reg. 48,744 (Aug. 11, 2010)); EPA Docket ID No. EPA-HQ-OAR-2008-0508-2370.1 (Sept. 27, 2010) (Comments of EDF on same; EPA Docket ID No. EPA-HQ-OAR-2009-0924-0053.1 (Sept. 7,

reporting failed to include requirements for petroleum and natural gas systems and other sources, Movant EDF filed both a petition for judicial review of that rule and a complaint in Federal district court to compel completion of reporting requirements for the omitted sectors. *See* Petition for Review, *EDF v. EPA*, No. 09-1334 (D.C. Cir. Dec. 29, 2009); Complaint, *EDF v. Jackson*, No. 10-CIV-0466 (S.D.N.Y. Jan. 20, 2010).

Movants depend upon emissions data, including data from petroleum and natural gas facilities, in their work. The Final Rule's data support basic policy

2010) (Comments of Sierra Club, NRDC, *et al.* on proposed rule on confidentiality of reporting data, 75 Fed. Reg. 39,094 (July 7, 2010)); EPA Docket ID No. EPA-HQ-OAR-2009-0924-0047.1 (Sept. 7, 2010) (Comments of EDF on same); EPA Docket ID No. EPA-HQ-OAR-2009-0924-0018 (Aug. 26, 2010) (Comments of Sierra Club, NRDC, *et al.* on proposed rule on additional confidentiality determinations, 75 Fed. Reg. 43,889 (June 27, 2010)); EPA Docket ID No. EPA-HQ-OAR-2009-0924-0018.3 (Aug. 19, 2010) (Comments of Sierra Club, NRDC, *et al.* on proposed reporting rule settlement agreements, 75 Fed. Reg. 42,085 (July 20, 2010)); EPA-HQ-OAR-2009-0926-0809.1 (June 11, 2010) (Comments of EDF, Sierra Club, NRDC, *et al.* on proposed reporting rule for geologic sequestration systems emissions, 75 Fed. Reg. 18,576 (Apr. 12, 2010)); EPA-HQ-OAR-2009-0927-0128.1 (June 11, 2010) (Comments of EDF, Sierra Club, *et al.*, on proposed rule covering fluorinated greenhouse gas emissions, 75 Fed. Reg. 18,652 (Apr. 12, 2010)); EPA Docket ID No. EPA-HQ-OAR-2009-0925-0040.1 (June 11, 2010) (Comments of EDF, Sierra Club *et al.* on proposed rule to add corporate parent and cogeneration reporting requirements, 75 Fed. Reg. 18, 455 (Apr. 12, 2010)); EPA Docket ID No. EPA-HQ-OAR-2008-0508-0635 (June 8, 2009) (comments of EDF, NRDC, Sierra Club, *et al.*, on the proposed mandatory greenhouse gas reporting rule, 74 Fed. Reg. 16,448 (Apr. 10, 2009)).

decisions and analyses, along with strategic advocacy choices. *See, e.g.*, Lashof Decl. ¶ 7 (“I will use data obtained from petroleum and natural gas systems to determine whether these sources of greenhouse gas emissions may be able to readily control and reduce emissions and the costs of such reductions, which will improve the policy analysis that I undertake.”); Perrone Decl. ¶ 8 (data needed “to monitor and analyze greenhouse gas emissions from major sources across the U.S. and work with volunteers across the country to understand these sources and how they can work with decision-makers to reduce emissions”); Cooley Decl. ¶¶ 7-8 (“to effectively advocate for policies that protect these areas, I need data on greenhouse gas emissions from facilities in all sectors of the economy, including facilities in high-emitting sectors like the oil and gas sector”). They also inform communications with Congress, policymakers, and the public. *See, e.g.*, Lashof Decl. ¶ (“I will also use the data to enhance public comments on proposed regulations relating to greenhouse gas emissions”); Perrone Decl. ¶ 8 (emissions data “is crucial to empowering citizens to become leaders in their communities in the fight against climate change”); Cooley Decl. ¶ 7 (“I plan to use this [emissions] data to advocate for policies that will protect the natural habitats which I have studied and for which I care deeply”); Fort Decl. ¶ 7 (emissions data “will aid my students in understanding the relative contribution of the oil and gas sector . . . to U.S. greenhouse gas emissions, and it will inform our discussions on both legal

and policy-based solutions to mitigate greenhouse gas emissions”). Weakening the rule would undermine these critical organizational tasks. *See* Lashof Decl. ¶ 8; Perrone Decl. ¶ 9; Cooley Decl. ¶ 8; Fort Decl. ¶ 9.

Movants’ significant participation in proceedings related to EPA’s greenhouse gas rulemaking effort, and to the emissions reporting system specifically, strongly favors their motion for leave to intervene. Both the Supreme Court and this Court have noted the anomaly that would result if participants in administrative proceedings who prevail, in whole or in part, before the agency were denied the ability to defend that success in judicial review proceedings brought as of right by parties aggrieved by the agency’s decision. *See Int’l Union, Aerospace and Agric. Implement Workers of Am. v. Scofield*, 382 U.S. 205, 216 (1965) (criticizing “element of fortuity” that would arise if party’s ability to participate in court of appeals depended on whether it prevailed before the agency, and embracing assumption that “Congress would not intend, without clearly expressing a view to the contrary, that a party should suffer by his own success before the agency”); *Synovus Fin. Corp. v. Bd. of Gov’rs of Fed. Reserve Sys.*, 952 F.2d 426, 432 (D.C. Cir. 1991). Further, the Clean Air Act does not limit intervention by parties that have participated extensively in the agency’s decision. *See* 42 U.S.C. § 7607(b); *Alabama Mun. Distribs. Gr. v. FERC*, 300 F.3d 877, 879 (D.C. Cir. 2002).

2. Movants' Members' Interests Will Be Harmed if Petitioners Succeed in Undermining the Final Rule.

Movants' undertook their long history of engagement with the greenhouse gas reporting regime's development and with greenhouse gas regulation more broadly to protect the significant interests of their hundreds of thousands of members who are threatened by the impacts of greenhouse gas emissions.⁵ Only by reducing emissions of greenhouse gases can the pace and severity of global warming be mitigated, and its worst consequences for public health, property, and the environment be avoided.⁶ Rigorous data are required to support these reductions, as policymakers and the public must first understand where emissions come from in order to determine where reductions can be made and in what amounts. *See* 75 Fed. Reg. 18,612 (emissions data are "crucial to the timely development of future [greenhouse gas] policy and regulatory programs").

⁵ Greenhouse gases cause climate change. The U.S. has already started to experience the impacts of climate change, including increases in air and water temperatures, reduced frost days, increased frequency and intensity of heavy downpours, a rise in sea level, and reduced snow cover, glaciers, and sea ice. EPA, *Climate Change Indicators in the United States* at 4-6 (2010); *see also* EPA, *Denial of the Petitions to Reconsider the Endangerment and Cause or Contribute Findings Under Section 202(a) of the Clean Air Act* at 7 (July 29, 2010) (the science linking greenhouse gases to climate change is "robust, voluminous, and compelling").

⁶ *See Massachusetts*, 549 U.S. at 526 (explaining that a "reduction in domestic emissions would slow the pace of global emissions increases, no matter what happens elsewhere").

Movants' members use, own, and enjoy property and natural resources which are harmed or are at risk of harm from global warming, and so will benefit if EPA and other decisionmakers can effectively address global warming pollution using data from the Final Rule. *See, e.g.*, Gordon Decl. ¶ 4 (“Harm to nearby beaches would deprive me of recreational opportunities and likely affect the value of my home, which is linked to its beach-front location.”); Keim Decl. ¶ 10 (“I intend to continue hiking in the Brooks Range, and I am saddened and upset by the disappearance of these beautiful glaciers.”); Cooley Decl. ¶ 3 (“If greenhouse gas emissions continue unabated, it appears likely that I will lose access to this beach or will be required to end or curtail my regular enjoyment of the beach due to its impairment”); Coplon Decl. ¶ 4 (“My property could be eroded and my home destroyed if sea level rise caused increased erosion of the shoreline”); Fort Decl. ¶ 7 (global warming-induced bark beetle infestations threaten the “destruction of the landscape around my home and possibly my home itself from forest fire and dead trees”). Harms to Movants' use and enjoyment of their property, as well as their interests in use and enjoyment of natural resources, are sufficient to establish injury. *See Massachusetts*, 549 U.S. at 521-23 (finding particularized injury based on harm to Massachusetts' coastal property).

Controlling these emissions, which can only be done effectively if their sources are adequately understood, will also benefit the health of Movants'

members. For example, stabilizing the climate by reducing greenhouse gas emissions would likely prevent an increase in wildfires, which are a major air pollution source, and would also help to reduce ozone pollution levels. *See* Gordon Decl. ¶ 5 (“The air quality near my home is compromised during wildfires, which are expected to occur more frequently as a result of global warming. . . . These problems are of particular concern to me because I have asthma and chronic obstructive pulmonary disease.”); Coplon Decl. ¶ 5 (“air quality has been extremely bad during wildfires, which are expected to occur more frequently as a result of global warming”); Cooley Decl. ¶ 5 (“Because global warming is likely to lead to worsening ground-level ozone concentrations and increases in heat waves and droughts, I will likely have to curtail my outdoor activities to an even greater extent if global warming is not abated”).

These health and environmental benefits and concerns establish Movants’ “interest” both under Rule 15(d) and their standing to sue under Article III of the Constitution, *see Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992), whether or not standing is independently required of parties who, as here, seek to intervene in support of a respondent.⁷ For the same reasons, Movants fall squarely within the

⁷ *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (“Requiring standing of someone who seeks to intervene as a defendant runs into the doctrine that the standing inquiry is directed at those who invoke the court’s jurisdiction.”) (discussing district court intervention under Fed. R. Civ. P. 24, citing *Virginia v. Hicks*, 539 U.S. 113, 117-22 (2003)) (internal citation omitted);

“zone of interests” protected or regulated by the relevant provisions of the Clean Air Act. *See Federal Election Comm’n v. Akins*, 524 U.S. 11, 20 (1998) (quoting *Association of Data Processing Service Orgs., Inc. v. Camp*, 397 U.S. 150, 153 (1970)).

The disposition of this case ““may as a practical matter impair or impede”” Movants’ interests. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003) (quoting Fed. R. Civ. P. 24(a)(2)). Petitioner seeks to undermine the reporting rule and, in particular, to attack cost-effective reporting requirements for one of the largest sources of greenhouse gas emissions.⁸ Movants and their members have invested a great deal of effort in identifying and reducing such greenhouse gas emissions. Thus, disposition of the petitions may as a practical matter materially impair the interests of Movants and their members in understanding and responding to climate change.

cf. Fund for Animals, Inc. v. Norton, 322 F.3d 728, 731-32 (D.C. Cir. 2003) (overturning district court decision denying intervention in support of defendant under Fed. R. Civ. P. 24, and rejecting court’s conclusion that proposed intervenor lacked Article III standing); *Rio Grande Pipeline Co. v. F.E.R.C.*, 178 F.3d 533, 538-39 (D.C. Cir. 1999) (discussing standing to intervene question).

⁸ In its comments on EPA’s proposed greenhouse gas reporting requirements, Petitioner American Gas Association advocated several changes that, if adopted by EPA, would have diminished the accuracy of facilities’ reported emissions. For example, Petitioner urged EPA not to require reporting of emissions from local natural gas distribution companies. *See EPA, Mandatory Greenhouse Gas Reporting Rule Subpart W – Petroleum and Natural Gas: EPA’s Response to Public Comments Vol. 1 at 15* (EPA Document No. EPA-HQ-OAR-2009-0923-3608).

3. Movants Bring an Important Perspective to this Action.

This Court's practice of granting intervention to private organizations – including environmental groups, trade organizations, and others – supporting agency actions in which they have an interest, *see supra* at 9 (citing cases), reflects its recognition that private entities have a distinctive perspective that contributes to the Court's careful consideration of challenges to important agency actions.

Movants' status as private organizations with missions focusing solely and systematically on environmental protection and conservation objectives, and their extensive experience with the development and implementation of environmental protection programs, including the regulations at issue here, provide them with a unique and distinctive perspective on the issues at stake. As independent nonprofit organizations that perform public education and advocacy to protect public health and the environment while working to represent the interests of their members, Movants also have a unique perspective to offer on the importance of the public having speedy and complete access to the information reported under the Final Rule. Movants therefore respectfully requests that the Court not require them to rely on EPA alone to present the full range of legitimate arguments available to oppose weakening, limitation, or delay of the Final Rule.

CONCLUSION

For all of the foregoing reasons, Movants Environmental Defense Fund, Sierra Club, and Natural Resources Defense Council respectfully request leave to intervene in case No. 11-1020, and under D.C. Circuit Rule 15(b), in all other petitions for review of the Final Rule.

Dated February 28, 2011.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this day, I served Movants Environmental Defense Fund, Sierra Club, and Natural Resources Defense Council's Motion to Intervene, Rule 26.1 Disclosure Statement, Certificate as to Parties, Rulings, and Related Cases, and the attached Declarations on the following counsel and parties, either through the Court's ECF system (Email) or through Certified First-Class U.S. Mail, as indicated below:

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