NO. 16-60118

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
and GINA McCARTHY, Administrator,
United States Environmental Protection Agency,

Respondents.

RESPONDENT-INTERVENORS SIERRA CLUB AND NATIONAL PARKS CONSERVATION ASSOCIATION'S RESPONSE TO EPA'S MOTION FOR PARTIAL VOLUNTARY REMAND

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INTRODUCTION

Respondent-Intervenors Sierra Club and National Parks Conservation Association ("NPCA") file this response to Respondents United States Environmental Protection Agency and Administrator Gina McCarthy's (collectively "EPA"), motion for partial voluntary remand. While Sierra Club and NPCA do not oppose EPA's motion, they respectfully request that this Court limit the remand to address only the specific issues EPA identified in its motion and to clarify that EPA must continue to update the parties to the consent decree issued by the United States District Court for the District of Columbia on the progress of the rulemaking. *See NPCA v. EPA*, No. 1:11-cv-01548 (ABJ) (D.D.C. consent decree amendment entered Dec. 15, 2015) (ECF Doc. 86) (attached as Exhibit A).

BACKGROUND

A. The Clean Air Act's Regional Haze Requirements.

In what has been lauded as "America's best idea," Congress first set aside national parks and wilderness areas in the nineteenth century to preserve some of the nation's most spectacular scenery and wildlife habitat.[1] Today, these iconic areas are marred by air pollution. Much of the air pollution in national parks stems from power plant emissions of sulfur dioxide and nitrogen oxides, which react in

[1] John Copeland Nagle, *The Scenic Protections of the Clean Air Act*, 87 N.D. L. Rev. 571, 576 (2011).

the atmosphere to form "haze" pollution many miles downwind of the power plants and other sources.

To protect the "intrinsic beauty and historical and archaeological treasures"[2] of the nation's public lands, Congress established the Clean Air Act's visibility protection mandate, intended to reduce—and ultimately eliminate—man-made haze pollution in national parks, wilderness areas, and other designated "Class I" areas. 42 U.S.C. § 7491. Subsequently, EPA issued Regional Haze Regulations to implement this statutory provision by establishing requirements to assure reasonable progress towards the national goal of achieving natural visibility conditions at every Class I area by 2064. 40 C.F.R. § 51.308(d)(1)(i)(B), (d)(1)(ii).

In accordance with the Clean Air Act visibility protection mandated by Congress, EPA directed states to submit proposed implementation plans to the agency by 2007 that included enforceable emission limits at "major stationary sources" of haze-causing pollution to ensure "reasonable progress" toward the national goal of eliminating haze pollution caused by human activities. 42 U.S.C. § 7491(b)(2); 40 C.F.R. § 51.308(b). The Clean Air Act charges EPA with reviewing each proposed state plan and disapproving the plan if it fails to meet all applicable legal requirements. 42 U.S.C. § 7410(k)(3). Within two years of disapproving a state plan, EPA must issue a federal plan or approve a revised state

[2] H.R. Rep. No. 95-294, 203 (1977), *reprinted in* 1977 U.S.C.C.A.N 1077, 1282.

plan that corrects the deficiency. *Id.* § 7410(c)(1); *see EPA v. EME Homer City Generation*, L.P., 134 S. Ct. 1584, 1600 (2014) (recognizing the Clean Air Act's "absolute" mandate that EPA issue a federal plan if it finds a state implementation plan to be inadequate).

B. Texas's Proposed Haze Plan.

The scale of visibility-impairing air pollution caused by Texas power plants is staggering. Texas emits more sulfur dioxide than any other state in the country.[3] That is not because Texas is a larger state; it is because many Texas power plants lack the pollution controls widely used in other states.[4] For example, the Big Brown plant emits sulfur dioxide pollution at a rate that is as much as 50 times higher than plants with modern technology.[5] As a result, Texas power plants impair visibility in at least nineteen national parks and wilderness areas in seven states.[6]

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[3] *See* EPA, *Air Markets Program Data* (last updated Dec. 15, 2016), https://ampd.epa.gov/ampd/. In fact, the eight power plants subject to the rule together emit more sulfur dioxide than all of the sources in Arkansas, Oklahoma, and Louisiana combined. *Id.*

[4] *See* EPA-R06-OAR-2014-0754-0008 at 1 (Nov. 2014) [EPA, TSD for the Cost of Controls] (13 units at 6 large facilities in Texas do not have scrubbers to control sulfur dioxide pollution).

[5] *Compare id.* Attachment TX166.008-086 at 18 (Big Brown Unit 1 maximum monthly emission rate: 2.0 lb SO_2/mmbtu), *with* Approval and Promulgation of Implementation Plans; Texas and Oklahoma, 81 Fed. Reg. 296, 321 (Jan. 5, 2016) (modern scrubber vendors regularly guarantee rates of 0.04 lb SO_2/mmbtu).

[6] Emissions from the Texas power plants controlled by this rule damage air quality in: Big Bend and Guadalupe Mountains in Texas; Wichita Mountains in Oklahoma; the Caney Creek and Upper Buffalo Wilderness Areas in Arkansas; Carlsbad Caverns National Park, the Salt Creek, White Mountain, Wheeler Peak, Pecos, Bosque Del Apache, San Pedro, and Gila Wilderness Areas, and Bandelier National Monument in New Mexico; Great Sand Dunes, and Rocky

Despite the massive amount of visibility-impairing pollution coming from Texas sources, Texas failed to submit a haze plan to EPA by the 2007 deadline set by Congress. In 2009, EPA published an official finding to that effect. Finding of Failure to Submit State Implementation Plans Required by the 1999 Regional Haze Rule, 74 Fed. Reg. 2392 (Jan. 15, 2009). In response, Texas submitted a proposed haze plan to EPA in 2009, two years after the original deadline. Approval and Promulgation of Implementation Plans; Texas and Oklahoma, 81 Fed. Reg. 296 (Jan. 5, 2016) (hereinafter the "haze plan").

The Texas regional haze plan did not require a single source to install any controls to reduce haze-causing air pollution. 81 Fed. Reg. at 300. Because of this, the Texas plan would not have achieved natural visibility conditions at Big Bend and the Guadalupe Mountains National Parks until more than a century after the 2064 natural visibility goal.[7] In addition, the plan would have allowed Texas sources to continue to impair visibility at Oklahoma's Wichita Mountains and other out-of-state national parks and wilderness areas without having to install the kinds of pollution controls that have been required from other states to benefit the

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Mountain National Parks in Colorado; Hercules-Glades and Mingo Wilderness Areas in Missouri; and Breton Wilderness Area in Louisiana. Approval and Promulgation of Implementation Plans; Texas and Oklahoma, 79 Fed. Reg. 74,818, 74,854-55 (Dec. 16, 2014); *see also* EPA-R06-OAR-2014-0754-0002, Attachment TX166-002-05, at 1-5, 11-7–11-28 (Mar. 19, 2009) [Texas Proposed Haze SIP].

[7] *See* EPA-R06-OAR-2014-0754-0007 (Nov. 2014) [Technical Support Document for the Oklahoma and Texas Regional Haze Federal Implementation Plans], Attachment TX116-007-33 [spreadsheet] at "2018 RPG calcs" tab.

same places. *See, e.g.*, *Oklahoma v. EPA*, 723 F.3d 1201, 1207-10 (10th Cir. 2013) (affirming plan to require four power plant units in Oklahoma to install scrubbers).

C. The Consent Decree Requiring EPA Action on Texas Haze.

The Clean Air Act required EPA formally to approve or disapprove Texas's plan within 18 months of submittal. 42 U.S.C. § 7410(k). By 2011, EPA still had not taken final action. In August 2011, Sierra Club and NPCA, along with other groups, sued EPA, and on March 30, 2012, the District Court entered a consent decree requiring EPA to take final action on the Texas and Oklahoma regional haze plans by a date certain. *See NPCA v. EPA*, No. 1:11-cv-01548 (ABJ) (D.D.C. consent decree entered Mar. 30, 2012) (ECF Doc. 21).

The consent decree was amended several times due to numerous delays by the agency, and the governing amendment required EPA to sign a notice of final rulemaking for the reasonable progress provisions of both the Oklahoma and Texas plan by December 9, 2015. *See* Exhibit A. In that action, EPA promulgated a federal implementation plan for Texas and Oklahoma to meet the required reasonable progress elements of the regional haze implementation plan. The amendment further requires EPA to sign a notice of final rulemaking by September 9, 2017 to complete the balance of the Texas regional haze plan requirements, specifically the Best Available Retrofit Technology ("BART"). *Id.* In addition,

the court order requires the parties to "confer by telephone regarding the progress in the required rulemaking at 60-day intervals until the required notices of final rulemaking applicable to Texas has [sic] been signed." *Id.*

D. The Texas/Oklahoma Haze Plan.

In December 2015, EPA issued a final rule approving in part and disapproving in part Texas's regional haze plan, as well as portions of Oklahoma's "interconnected" plan. *See* 81 Fed. Reg. 296. As required by the Clean Air Act, 42 U.S.C. § 7410(c)(1), EPA issued a partial federal plan to correct the deficiencies in Texas's submittal which EPA had disapproved. 81 Fed. Reg. at 297. To achieve reasonable progress at impacted Class I areas, the federal plan would require eight of the oldest and dirtiest power plants in Texas to install and operate pollution controls to reduce their sulfur dioxide emissions. Seven units would need to install new pollution controls called scrubbers, and eight units would need to upgrade old scrubbers to achieve the emission limits which modern scrubbers are capable of achieving.[8]

EPA estimated that its haze plan would reduce harmful sulfur dioxide pollution by approximately 230,000 tons annually. *Id.* at 298. These emission

[8] Specifically, the federal implementation plan required Big Brown 1 & 2, Monticello 1 & 2, Coleto Creek 1, and Tolk 171B & 172B to install new scrubbers and Sandow 4, Martin Lake 1, 2, & 3, Monticello 3, and Limestone 1 & 2 to upgrade their existing, inefficient scrubbers. The plan required San Miguel to reduce its emissions with existing controls. *See* 81 Fed. Reg. at 305, 351-52.

reductions would clean the air, improving and extending the scenic views at national parks and wilderness areas throughout the region. The reductions also would yield significant health benefits and further the "overriding" and "paramount" public health goals of the Clean Air Act. *See* H.R. Conf. Rep. 95-564, 189 (1977), *reprinted in* 1977 U.S.C.A.N.N. 1502, 1570.

Sulfur dioxide causes and exacerbates asthma and other respiratory diseases, leads to increased hospitalizations and morbidity, and forms particulate matter that can aggravate respiratory and heart diseases and cause premature death.[9] By reducing harmful air pollution, EPA's haze plan would save at least 300 lives, prevent thousands of asthma-related or cardiovascular events and hospitalizations, and prevent tens of thousands of lost work and school days *each year*. EPA-R06-OAR-2014-0754-0071 at 16 (Apr. 18, 2015) [Report of Dr. George Thurston]. The public health benefits from the rule would exceed $3 billion annually. *See id.* at 17-18.

E. Challenges to the Texas/Oklahoma Haze Plan.

Even though EPA found under 42 U.S.C. § 7607(b)(1) that the rule under review was based on a determination of "nationwide scope or effect," such that any challenge could be brought "only" in the Court of Appeals for the D.C. Circuit, 81 Fed. Reg. at 349, petitioners filed seven petitions for review in this Court. At the

[9] EPA, Sulfur Dioxide Basics (last updated Aug. 16, 2016), https://www.epa.gov/so2-pollution.

same time, all of the petitioners challenged the same rule in the D.C. Circuit, and several of them also challenged the same rule in the Tenth Circuit.[10] Thus, duplicative challenges are now pending in three courts.

EPA moved to dismiss or transfer the Fifth Circuit petitions to the D.C. Circuit, while the petitioners moved to stay the rule's compliance deadlines pending judicial review. On July 15, 2016, the panel denied EPA's motion to dismiss or transfer and granted the motion to stay. *See Texas v. EPA*, 829 F.3d 405 (5th Cir. 2016). On August 19, 2016, the Court granted the parties' joint motion to stay all proceedings, including the deadline for filing any petition for rehearing *en banc*, until November 28, 2016, to accommodate settlement discussions. Doc. 00513645134. Those settlement discussions have concluded, and the litigation stay has lifted by operation of the Court's order.

F. EPA's Motion for Voluntary Remand.

Despite the significant clean air benefits to Texas and the southeast United States described above and the fact that the haze plan for Texas is now nine years overdue, EPA seeks a "voluntary remand of those portions of Final Rule's disapproving the Texas and Oklahoma [state implementation plans] and imposing [federal implementation plans]." Doc. 00513783027 (Respondents' motion for

[10] *See* Order, *Texas v. EPA*, No. 16-1078 (D.C. Cir. Mar. 11, 2016) (consolidating petitions for review filed in the D.C. Circuit); Order, *Luminant Generation Co. v. EPA*, No. 16-9508 (10th Cir. June 16, 2016) (consolidating petitions for review filed in the Tenth Circuit).

partial voluntary remand filed Dec. 2, 2016) at 18. EPA consents to the continuation of the current stay pending appeal through the completion of agency action on reconsideration but asks that the Court lift the stay for the portions of the rule not challenged by the petitioners. *Id.*

STANDARD OF REVIEW

The Fifth Circuit has held that, "[e] mbedded in an agency's power to make a decision is its power to reconsider that decision." *ConocoPhillips Co. v. EPA*, 612 F.3d 822, 832 (5th Cir. 2010) (footnote omitted). "An agency's inherent authority to reconsider its decisions is not without limits, however." *Id.* (footnote omitted). "An agency may not reconsider its own decision if to do so would be arbitrary, capricious, or an abuse of discretion." *Macktal v. Chao*, 286 F.3d 822, 826 (5th Cir. 2002) (*citing* 5 U.S.C. § 706(2)(A)). Reconsideration also must occur "within a reasonable time after the decision being reconsidered was made, and notice of the agency's intent to reconsider must be given to the parties." *Id.* (internal citations omitted)

ARGUMENT

While Sierra Club and NPCA do not oppose EPA's motion for voluntary remand, they respectfully request that this Court limit the agency's reconsideration to the specific issues EPA identified in its motion and clarify that EPA must continue to update the parties to the consent decree issued by the United States

District Court for the District of Columbia on the progress of the rulemaking as currently required under that consent decree. *See* Exhibit A.

A. The Court Should Limit the Voluntary Remand to the Specific Reasons EPA Stated in its Motion.

EPA states in its motion that the agency would like to "take a second look at the Final Rule and determine whether another course of action is appropriate." Motion at 20-21. EPA explains that the Court's Order finding that the petitioners have shown a strong likelihood of success on the merits of their claims, while not binding on a subsequent merit panel's consideration of the issues, has led EPA to want to reexamine its disapproval of the Texas and Oklahoma state plans and the federal plan. *Id.* at 20. In addition, EPA has determined that reconsideration of the deferral action on BART in the rule is warranted because the public did not have an opportunity to submit comments on that approach and because EPA has now issued a proposal on BART for Texas electric generating units ("EGUs")[11] which will likely change how reasonable progress is evaluated. *Id.* at 22. The Court should clarify in its order granting the remand that the remand is for the reasons specifically addressed in EPA's motion.

This Court has broad discretion to limit the scope of EPA's proposed remand. *See, e.g.*, *Chem. Mfrs. Ass'n v. EPA*, 870 F.2d 177, 236, 263 (5th Cir.

[11] The prepublication version of EPA's proposal on BART for Texas EGUs was issued on December 9, 2016, and can be found at: https://www.epa.gov/sites/production/files/2016-12/documents/tx_bart_fip_proposal.pdf.

1989) (remanding water pollution discharge limits to EPA for "consideration of whether zero discharge limits would be appropriate for new plants" and for "notice and comment proceedings" related to EPA's subcategorization of pollution limits); *W. Oil & Gas Ass'n v. EPA*, 633 F.2d 803, 813 (9th Cir. 1980) (recognizing that "a reviewing court has discretion to shape an equitable remedy," and remanding EPA ambient air quality standards with "instructions" to provide an opportunity to comment on nonattainment designations); *Ala. Envtl. Council v. EPA*, 711 F.3d 1277, 1290 (11th Cir. 2013) (granting EPA motion for limited voluntary remand to reconsider Clean Air Act state implementation plan approval).

If the Court grants EPA's motion, it should remand with instructions to address the issues specifically identified in EPA's motion. A blank check allowing the agency to revisit every aspect of the Regional Haze plan for Texas, and related portions for Oklahoma, could lead to further uncertainty and additional delay in addressing Texas's haze plan, which is already nearly a decade overdue. Identifying the boundaries of the remand will help ensure more expeditious resolution of this important matter. As discussed below, the plan would have provided enormous environmental and public health benefits to the region, and the agency's effort to replace it should be streamlined as much as possible.

B. The Court Should Order EPA to Continue to Provide Progress Reports During the Remand, per the Consent Decree on Haze Plan Deadlines.

EPA argues that this Court should grant the motion for voluntary remand because "Petitioners will not be prejudiced by the timing of this motion for voluntary remand," Motion at 24, but makes no mention of the prejudice to Sierra Club and NPCA of the remand with an indefinite stay of the haze plan. Sierra Club and NPCA are national non-profit conservation groups with tens of thousands of members in Texas and Oklahoma dedicated to protecting natural areas and the people who use them from the environmental and public health harms of air pollution. Sierra Club and NPCA exercised their rights under the Clean Air Act's citizen suit provision, 42 U.S.C. § 7604(a)(2), to compel EPA to undertake the rulemaking that EPA is now seeking to reconsider. *See NPCA v. EPA*, No. 1:11-cv-01548 (ABJ) (D.D.C. consent decree entered Mar. 30, 2012) (ECF Doc. 21).

Sierra Club and NPCA have participated throughout the development of the haze plan that the petitioners have challenged. *See*, *e.g.*, EPA-R06-OAR-2014-0754-0067 (Apr. 20, 2015) [Comments of Earthjustice, NPCA, and Sierra Club]. They submitted extensive expert analyses and legal comments urging EPA to strengthen EPA's proposed plan, and more than 4,500 members and supporters submitted written comments in support of the proposed plan. *See* EPA-R06-OAR-2014-0754-0067–0073; EPA-R06-OAR-2014-0754-0087 at 1,678 (Dec. 9, 2015)

[EPA Response to Comments]. They also commissioned and submitted to EPA three expert reports analyzing EPA's regional haze plan.[12] In addition, more than 100 members spoke in support of EPA's proposed plan at two separate public hearings in Oklahoma City, Oklahoma, and Austin, Texas. *Id.*

Moreover, Sierra Club and NPCA submitted extensive briefing to this Court on the stay motion arguing that compliance costs incurred during the pendency of the litigation are outweighed by the substantial harms to public health and welfare from a stay. *See* Doc. 00513456729 (Response in opposition to the motions to stay the final rule filed Apr. 7, 2016). Sierra Club and NPCA explained to this Court that the long-term harms alleged by Movants are highly unlikely and not plausibly caused by the rule. *Id.* The stay opposition submitted by Sierra Club and NPCA attached declarations from the "father of environmental justice," Dr. Robert Bullard, describing the disproportionate harm to African-American and other urban communities from a stay of the rule and the President of the Texas Local of Service Employees International Union describing the negative public health and economic impacts that any delay in the rule's required sulfur dioxide reductions would cause to the union members, their families, their patients, and members of the communities where they work. Doc. 00513456730 at Decl. 1, Decl. 7.

[12] *See* EPA-R06-OAR-2014-0754-0071 (Apr. 18, 2015) [Report of Dr. George Thurston]; EPA-R06-OAR-2014-0754-0068 (Apr. 17, 2015) [Report of Vicki Stamper]; EPA-R06-OAR-2014-0754-0070 (Apr. 20, 2015) [Report of Dr. H. Andrew Gray].

Continuing the current stay of the haze plan during an indefinite remand would only exacerbate these harms and the other harms identified by the several declarants. The continuing delay not only defeats the purposes of the Clean Air Act, but as demonstrated in Dr. George Thurston's undisputed public health modeling, it will result in hundreds of deaths, thousands of asthma-related or cardiovascular events and hospitalizations, and tens of thousands of lost work and school days *each and every year*. EPA-R06-OAR-2014-0754-0071 at 16 (Apr. 18, 2015) [Report of Dr. George Thurston].

Because Sierra Club and NPCA members are seriously impacted by EPA's motion for voluntary remand, EPA should be required to continue to update the parties to the consent decree in *NPCA v. EPA*, No. 1:11-cv-01548 (ABJ) (D.D.C. consent decree amendment entered Dec. 15, 2015) (ECF Doc. 86), so those parties can ensure EPA is on track to fulfill its Clean Air Act obligations and issue a complete and lawful haze plan as expeditiously as possible. Therefore, we ask this Court to clarify that EPA must include the progress on the remand in the updates currently ongoing under the consent decree until the reconsideration is complete.

CONCLUSION

For the foregoing reasons, the NPCA and the Sierra Club respectfully request that the Court limit the voluntary remand to the specific reasons EPA outlined in its motion and order EPA to include updates on the remand in the

progress reports required by the amended consent decree in *NPCA v. EPA*, No. 1:11-cv-01548 (ABJ) (D.D.C. consent decree amendment entered Dec. 15, 2015) (ECF Doc. 86) until the reconsideration is complete.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

The undersigned counsel states that this response complies with FED. R. APP. P. 27(d)(2)(A) because it contains 3,002 words, excluding the caption and signature blocks, as counted by a word processing system and, therefore, is within the word limit. This response also complies with typeface requirements of FED. R. APP. P. 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface in 14-point Times New Roman font.

Dated: December 19, 2016

/s/ Mary Whittle
MARY WHITTLE

Counsel for Sierra Club and National Parks Conservation Association

CERTIFICATE OF SERVICE

On this 19th day of December, 2016, a true and correct copy of the foregoing was filed with the electronic case filing (ECF) system of the U.S. Court of Appeals for the Fifth Circuit, which currently provides electronic service on the counsel of record listed below.

s/ Mary Whittle
Mary Whittle

CERTIFICATIONS UNDER ECF FILING STANDARDS

Pursuant to paragraph A(6) of this Court's ECF Filing Standards, I hereby certify that (1) required privacy redactions have been made, 5th Cir. R. 25.2.13; (2) the electronic submission is an exact copy of the paper document, 5th Cir. R.25.2.1; and (3) the document has been scanned for viruses with the most recent version of a commercial virus scanning program and is free of viruses.

Dated: December 19, 2016 *s/ Mary Whittle*
Mary Whittle

Exhibit A

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

NATIONAL PARKS CONSERVATION ASSOCIATION, et al., Plaintiffs, v. U.S. ENVIRONMENTAL PROTECTION AGENCY, et al., Defendants.	)	Civil Action No. 11-1548 (ABJ)

ORDER

The Court has considered EPA's Unopposed Motion to Amend the First Partial Consent Decree. It is hereby

ORDERED that the motion is granted and that the First Partial Consent Decree is revised as follows:

1. Paragraph 4 and Table A of the First Partial Consent Decree are amended to delete all requirements applicable to Texas.

2. A new paragraph, number 4.a.i and ii, as set forth below, will be added to the First Partial Consent Decree.

   i. Except as provided in subparagraph ii below, no later than December 9, 2015, EPA shall sign a notice(s) of final rulemaking promulgating a FIP for Texas to meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA's regional haze regulations, except where, by such deadline EPA has, for Texas, signed a notice of final rulemaking unconditionally approving a SIP or promulgating a partial FIP and unconditional approval of a portion of a SIP, that collectively meet the regional haze implementation plan requirements that were due by December 17, 2007 under EPA's regional haze regulations.

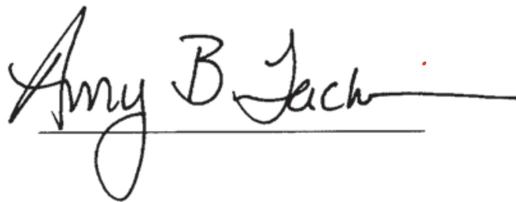
ii. The requirement of subparagraph i. above shall not apply to the regional haze implementation plan requirements for the determination and adoption of requirements for best available retrofit technology ("BART") for electric generating units ("EGUs") in Texas. Instead, the following requirements shall apply:

a. No later than December 9, 2016, EPA shall sign a notice of final rulemaking promulgating a FIP for Texas to meet the BART requirements for EGUs that were due by December 17, 2007 under EPA's regional haze regulations, except where, by such deadline EPA has, for Texas, signed a notice of final rulemaking unconditionally approving a SIP, or promulgating a partial SIP, that collectively meet the BART requirements that were due by December 17, 2007 under EPA's regional haze regulations.

b. The December 9, 2016 deadline in subparagraph 'a' for signature of a notice of final rulemaking shall be extended to September 9, 2017, if by December 9, 2016, EPA signs a new notice of proposed rulemaking in which it proposes approval of a SIP; promulgation of a FIP; partial approval of a SIP and promulgation of a partial FIP; or approval of a SIP or promulgation of a FIP in the alternative, for Texas, that collectively meet the regional haze implementation plan requirements for BART and EGUs that were due by December 17, 2007 under EPA's regional haze regulations.

The parties shall confer by telephone regarding the progress in the required rulemaking at 60-day intervals until the required notices of final rulemaking applicable to Texas has been signed. The calls will be scheduled for a mutually convenient time by counsel for EPA.

SO ORDERED.



AMY BERMAN JACKSON
United States District Judge

DATE: December 15, 2015