

ORAL ARGUMENT NOT YET SCHEDULED
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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American Lung Association, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	No. 19-1140
v.)	(and consolidated cases)
)	
U.S. Environmental Protection Agency, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
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**NOTICE REGARDING PUBLIC HEALTH AND ENVIRONMENTAL
PETITIONERS’ MOTION TO COMPLETE THE RECORD**

On October 7, 2019, Public Health and Environmental Petitioners filed a Motion to Complete the Record for Judicial Review (“Motion”) (ECF No. 1809826) in these proceedings for review of Environmental Protection Agency (“EPA”) actions entitled “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” 84 Fed. Reg. 32,520 (July 8, 2019) (“Final Rule”). The Motion argues that EPA was statutorily obligated to include specified documents in the Certified Index to the record, and

requests an order requiring that EPA correct the Certified Index to include those documents.

On October 11, 2019, EPA filed a Second Corrected Certified Index that included each of the documents identified in the Motion, together with a certification from the Director of the Sector Policies and Planning Division of EPA's Office of Air Quality Planning and Standards attesting that the corrected index "lists the documents constituting the administrative record" for the Final Rule. Second Corrected Certified Index, at 1 (ECF No. 1810646); *see id.* at pp. 3020-21 (listing each of the documents identified in the Motion).

The Second Corrected Certified Index is prefaced by a statement from EPA's litigation counsel setting forth various qualifications, including that EPA "does not concede" that it was required to include the documents in the record, nor to respond to the documents in promulgating the rule under review. Notice of Filing Second Corrected Certified Index, at 2 (ECF No. 1810646). Movants do not agree with EPA's qualifications and reserve our right to dispute them if EPA presses them later in the case.¹ However, these disagreements do not alter the fact that EPA's Second Corrected Certified Index provides all the relief our Motion seeks. Because the Certified Index now includes each of the documents identified

¹ Far from "unnecessary motion practice," Notice of Filing at 2, the Motion came only after EPA declined Movants' prior requests to include the relevant documents in the Certified Index.

in our Motion, the Motion has become moot. *See, e.g., Williams & Connolly v. S.E.C.*, 662 F.3d 1240, 1243-44 (D.C. Cir. 2011).

Movants have consulted with counsel for respondent EPA; EPA agrees that the Motion is now moot, and does not intend to file a response.

Respectfully submitted,

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/s/ Joanne Spalding

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Dated: October 16, 2019

CERTIFICATE OF COMPLIANCE

I certify that the foregoing Notice Regarding Public Health and Environmental Petitioners' Motion to Complete the Record is presented in a proportionally-spaced, 14-point font and that, according to the Microsoft Word's word-count function, the relevant portions of the document contain 381 words.

/s/ Sean H. Donahue

CERTIFICATE OF SERVICE

I certify that on October 16, 2019, I served copies of the foregoing Notice Regarding Public Health and Environmental Petitioners' Motion to Complete the Record by filing it through the Court's electronic filing system, which will provide copies to all registered counsel.

/s/ Sean H. Donahue