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FOUNDED 1866

October 22, 2013

**By Electronic Mail and Federal Express**

Scott S. Harris  
Clerk  
Supreme Court of the United States  
One First Street, N.E.  
Washington, D.C. 20543

Re: *Utility Air Regulatory Group, et al. v. Environmental Protection Agency, et al.*, Nos. 12-1146, 12-1248, 12-1254, 12-1268, 12-1269, 12-1272

Dear Mr. Harris:

This letter is submitted on behalf of the petitioners and participating respondents in the above-captioned consolidated cases in response to the Court's request, communicated through electronic mail dated October 15, 2013, that the parties "jointly submit a briefing proposal that will keep the number of briefs to a minimum and avoid repetitive arguments." Counsel for the petitioners and participating respondents have discussed the Court's request and offer the following briefing proposals for the Court's consideration and approval.

Petitioners' Briefing Proposal

Under this Court's rules, the nine (9) parties or party-coalitions that filed petitions for writ of certiorari or supporting briefs in these consolidated cases would each be entitled to file a brief on the merits in support of the petitioners, potentially resulting in the filing of nine (9) separate briefs on the merits of up to 135,000 words in aggregate. Sup. Ct. R. 12.6, 25.1, 33.1. That number can be significantly reduced, the petitioners submit, under the following proposal for briefing in support of the petitioners:

1. The petitioners agree that the petitioners' briefs on the merits shall not exceed, in aggregate word count, the standard word limit for five (5) merits briefs – *i.e.*, 75,000 words – and shall not exceed six (6) briefs in number. If five (5) or fewer briefs on the merits are filed by the petitioners, each brief will be limited to

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15,000 words; if six (6) briefs are filed, each brief will be limited to 12,500 words. Thus, the aggregate word limit will not exceed 75,000 words. No respondent may file a separate brief in support of the petitioners, except as an amicus curiae as permitted under this Court's rules. Counsel for the petitioners shall coordinate throughout the briefing process to avoid duplication and reduce further, so far as practicable, the briefs filed in support of the petitioners.

The petitioners respectfully request that no further restrictions be imposed on the number or size of the petitioners' briefs on the merits, in light of the material differences among the petitioners, their arguments, and the scope of the relief sought. Some of the petitioners, for instance, have adopted and will advance positions on the interpretation or application of the relevant statutory provisions that are in tension with others or even possibly mutually inconsistent, and for that reason could not be presented effectively in the context of a joint brief. And a number of the petitioners are States that, either by sovereign policy choice or statutory mandate, are prohibited from joining the briefs of the private-party petitioners. The limitations proposed above will materially reduce the number and size of the briefs to be filed in support of the petitioners, and avoid the burden on the Court of confronting unnecessary repetition, while granting the petitioners the flexibility needed to ensure a full and fair presentation of all of the issues to the Court.

2. To further avoid potential duplication, the briefs on the merits filed by the petitioners may incorporate or adopt by reference sections, arguments, or discussions in the briefs of other parties. In particular, and not by limitation, the petitioners suggest that a brief on the merits filed by a petitioner need not include all of the items required by Supreme Court Rule 24.1(a) if the brief indicates clearly that it incorporates by reference the relevant item(s) of another brief, with appropriate citation to that brief. Any part of another brief that is adopted or incorporated by reference by a petitioner in a brief will not count against or reduce the word limit applicable to that petitioner's brief.

#### Respondents' Briefing Proposal

At the petition stage of these cases, three groups of respondents – the Environmental Protection Agency, *et al.* (the federal respondents); the State of New York, *et al.* (the state respondents); and the environmental organization respondents – filed briefs defending the judgment of the court of appeals. Those



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respondents respectfully propose that each of those three groups be permitted to file its own brief on the merits not to exceed 15,000 words, in accordance with Rule 33.1(g)(vi) of the Rules of this Court. Although the federal, state, and environmental organization respondents agree that the judgment of the court of appeals should be affirmed, they have distinct institutional perspectives on the question on which this Court granted certiorari. Permitting the three groups to file separate briefs, subject to the generally applicable word limit imposed by this Court's Rules, therefore should not result in undue repetition.

Very truly yours,

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*Counsel for Petitioners in No. 12-1248*

cc: Counsel on attached Service List

## CERTIFICATE OF SERVICE

Nos. 12-1146, 12-1248, 12-1254, 12-1268, 12-1269, 12-1272

UTILITY AIR REGULATORY GROUP, *et al.*,  
*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY, *et al.*,  
*Respondents.*

I, Peter D. Keisler, do hereby certify that, on this 22nd day of October, 2013, I caused a copy of the briefing proposal letter, in response to the Court's directive of October 15, 2013, to be served by first class mail, postage prepaid on the following:

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