

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

AMERICAN PETROLEUM INSTITUTE,
CHAMBER OF COMMERCE OF THE
UNITED STATES OF AMERICA,
INDEPENDENT PETROLEUM
ASSOCIATION OF AMERICA, and
NATIONAL FOREIGN TRADE COUNCIL,

Plaintiffs,

v.

SECURITIES AND EXCHANGE
COMMISSION,

Defendant.

Civil Action No. 12-cv-1668-(JDB)

**STATEMENT IN RESPONSE TO OXFAM AMERICA, INC.'S
MOTION TO INTERVENE AND REQUEST FOR SUPPLEMENTAL BRIEFING**

In accordance with this Court's May 7, 2013 Minute Order, plaintiffs submit this statement in response to the motion to intervene by Oxfam America, Inc. ("Oxfam"), including Oxfam's request for supplemental briefing. Dkt. No. 24. Plaintiffs' position is as follows:

1. Plaintiffs consent to Oxfam's intervention only to the extent that Oxfam's participation is limited to submission of its Intervenor's Brief before the D.C. Circuit. This matter has already been thoroughly and adequately briefed before the court of appeals, and therefore, no supplemental briefing before this Court is necessary. In addition, because the court of appeals expedited its consideration of plaintiffs' petition for review, the briefs are all very recent: The final brief in the court of appeals was filed on January 28, 2013, oral argument took place on March 22, and the D.C. Circuit issued its decision on April 26. *See API v. SEC*, No. 12-1398 (D.C. Cir.) (Dkt.

No. 1432739). Therefore, there is no need for Oxfam, or any other party, to file new or supplemental briefs before this Court.

2. It is well within this Court's discretion to limit Oxfam's participation to submission of its prior brief—a limitation to which the parties themselves are being held. In exercising its discretion to permit Oxfam to intervene, “the court must consider whether the intervention will unduly delay or prejudice the adjudication of the original parties' rights.” Fed. R. Civ. P. 24(b)(3); *see also In re Endangered Species Act Section 4 Deadline Litig.*, 270 F.R.D. 1, 6-7 (D.D.C. 2010); *In re Lorazepam & Clorazepate Antitrust Litig.*, 205 F.R.D. 363, 367-68 (D.D.C. 2001). As noted in the parties' joint motion to lift the stay and expedite resolution of this case on summary judgment, the Commission rule being challenged threatens to impose up to \$1 billion in initial compliance costs on U.S. companies between now and early 2014; expedition of this case should avoid the necessity of litigating a preliminary injunction motion. *See* Dkt. No. 21, at 4. Plaintiffs therefore respectfully request that Oxfam comply with this Court's May 3, 2013 Scheduling Order (Dkt. No. 23). *See Nat'l Coalition for the Homeless v. U.S. Veterans Admin.*, 1988 WL 126227, at *1 (D.D.C. Nov. 14, 1988) (requiring intervenors to comply with the court's scheduling order).

3. Plaintiffs further submit that any party that wishes to bring supplemental authorities to the Court's attention (*i.e.*, authorities that post-date the argument before the court of appeals), may do so by filing a brief Notice of additional authorities, as is common practice. Because such submissions are intended only to identify pertinent and significant authorities, and the aspects of the case on which they bear, plaintiffs expect that any such submissions, and responses thereto, would not exceed a page or two in length. *Cf.* Fed. R. App. P. 28(j). Any such submission by Oxfam concerning matters known to it currently could be filed simultaneously with its brief, on May 17.

4. Ultimately, plaintiffs' principal concern with respect to Oxfam's participation is that it not interfere with expeditious resolution of this action. Therefore, should this Court decide to grant Oxfam's request for supplemental briefing, plaintiffs respectfully request that any such brief be limited to five pages or fewer, and that Oxfam be required to file any such brief on the same day that it files its brief from the court of appeals, May 17. *See* Dkt. 23. In the event Oxfam is provided leave to file a supplemental brief, plaintiffs respectfully request leave to file a supplemental brief, consisting of an equivalent number of pages, no later than May 24.

Dated: May 10, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of May, 2013, I caused the foregoing Statement in Response to Oxfam's Motion to Intervene and Request for Supplemental Briefing to be filed with the Clerk of Court for the United States District Court for the District of Columbia using the CM/ECF system.

Service was accomplished on the following by the CM/ECF system:

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Dated: May 10, 2013

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