

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

American Public Gas Association,

Petitioner,

v.

United States Department of Energy,

Respondent.

No. 11-1485

Air Conditioning Contractors of America, et al.,

Intervenors.

JOINT PROPOSED BRIEFING FORMAT

The parties jointly submit this proposed format for the briefing of this case in accordance with the Court's order of August 19, 2013, and respectfully request its approval.

1. In accordance with the Court's order, the proposed format provides for the briefing of three issues: (1) the joint motion of petitioner American Public Gas Association (APGA) and respondent U.S. Department of Energy (DOE) to vacate and remand the case; (2) the motion of intervenor Heating, Air-Conditioning and Refrigeration Distributors International (HARDI) to substitute as petitioner; and (3) the merits of the case. The proposed format is set forth in the table below.

			Issues Addressed		
Brief	Date	Word Limit	Joint Motion To Vacate & Remand	HARDI Motion To Substitute as Petitioner	Merits
Brief of Petitioner APGA	40 days after order approving schedule	15,500	Affirmative	N/A	Affirmative
Joint Brief of Intervenors in Support of Petitioner	15 days later	11,000	Response	Affirmative	Affirmative
Brief of Respondent DOE	30 days later	16,250	Affirmative	Response	Response
Joint Brief of Intervenors in Support of Respondent	15 days later	10,250	Response	Response	Response
Reply Brief of APGA	15 days later	8,500	Reply	Response	Reply
Joint Reply Brief of Intervenors in Support of Petitioner	Same date as APGA Reply Brief	5,125	N/A	Reply	Reply

2. The proposed briefing format maintains the format previously ordered by the Court in this case, including the same number of briefs and the same alignment

of the parties, with the following changes: (1) the briefs also will address the pending motions as indicated; (2) the word limits for each brief are increased slightly beyond the standard allotment for such a brief to accommodate the briefing of these additional issues; and (3) the briefs will cite to the pages of the previously filed joint appendix, making a deferred appendix and final briefs unnecessary.

3. The parties respectfully request the additional allotment of words because the merits issues in the case have not been narrowed during the pendency of the case, either by the filing of the pending motions or other intervening events, and the motions present additional complicated and unusual issues. In general, the parties' positions as to the merits issues are unchanged since the prior briefs were filed, and they believe their briefs will require substantially the same number of words as before. While the parties will make every effort to streamline their briefs without compromising their arguments, they believe they will need additional words to address the issues presented by the motions. Accordingly, the proposal allots 1,500 words for argument for a motion; 2,250 words for a combined response to a motion and argument for the other motion; 1,500 words for a response to such combined argument; and 750 words for a final reply, as follows:

- APGA's opening brief is increased by 1,500 words for argument for the joint motion to vacate and remand.

- The joint brief of intervenors in support of petitioner is increased by 2,250 words for argument (1) in response to the joint motion and (2) for HARDI's motion to substitute as petitioner.
- DOE's brief is increased by 2,250 words for argument (1) for the joint motion to vacate and remand and (2) in response to HARDI's motion to substitute as petitioner.
- The joint brief of intervenors in support of DOE is increased by 1,500 words for a response to both motions.
- APGA's reply brief is increased by 1,500 words for a response to HARDI's motion to substitute as petitioner and reply to the responses to the joint motion to vacate and remand.
- The joint reply of intervenors in support of petitioner is increased by 750 words for a reply to the responses to HARDI's motion to substitute as petitioner.

These additional allotments of words proportionally track—but are substantially less than the numbers of words permitted under—the page limits for motions, responses, and replies under Fed. R. App. P. 27(d)(2) and Circuit Rule 27(c).

4. The number of briefs to be filed under the proposal is the same as the number previously filed, and the order of filing continues to reflect the alignment of the parties on the merits. As before, APGA and DOE will continue to file

separate briefs, and all intervenors on each side of the case will join in a single brief. The brief of an amicus curiae would be governed by the standard rules. The parties believe that this proposal is reasonable and logical in that it maintains the traditional briefing order and does not increase the number of briefs to be filed.

5. The parties unfortunately were not able to reach agreement as to the order in which the Court should take up the issues to be briefed. To the extent a party has a position with respect to that issue, it will include its position and any supporting argument in its brief(s).

Respectfully submitted,

/s/ Randolph Lee Elliott

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CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d) Circuit Rule 25(c), and the Court's Administrative Order Regarding Electronic Case Filing (May 15, 2009), I certify that on this date the Joint Proposed Briefing Format was served on all parties or their counsel of record through the CM/ECF system if they are registered CM/ECF users or, if they are not, by serving a true and correct copy by U.S. Mail at the addresses listed below.

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