

BEFORE THE ADMINISTRATOR
U.S. ENVIRONMENTAL PROTECTION AGENCY

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In the Matter of PPL Montana, LLC – JE Corette Steam Electric Station
301 Charlene Street
Billings, MT 59107

Permit No. OP2953-07
SIC Code 4911
AFS No. 030-111-0015A
Petition No. _____

Title V Permit Issued by Montana Department
of Environmental Quality
on December 4, 2012

**PETITION REQUESTING THE ADMINISTRATOR OBJECT TO ISSUANCE OF THE
TITLE V OPERATING PERMIT FOR THE PPL MONTANA, LLC – JE CORETTE
COAL-FIRED POWER PLANT**

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INTRODUCTION

Pursuant to 42 U.S.C. § 7661d(b)(2) and 40 C.F.R. § 70.8(d), the Montana Environmental Information Center and the Sierra Club (“Petitioners”) petition the Administrator of the United States Environmental Protection Agency (“EPA”) to object to a Title V Operating Permit for the JE Corette coal-fired power plant (“Corette”), Permit Number OP2953-07 (“Permit”). The Montana Department of Environmental Quality (“DEQ”) proposed the Permit to EPA on October 17, 2012, more than forty-five days ago. A copy of the Permit is enclosed with this Petition as Document 1 in the Appendix.¹

Petitioners base their objections on their comments on the drafts of this Permit submitted to DEQ on June 15, 2011, and September 24, 2012. Copies of these comments are attached as Documents 2 and 3 in the Appendix. DEQ’s responses to these comments were included in the Technical Review Document (“TRD”) for the Permit, which is attached as Document 4 in the Appendix.

BACKGROUND

The Clean Air Act is “Congress’s response to well-documented scientific and social concerns about the quality of the air that sustains life on [E]arth and protects it from ... degradation and pollution caused by modern industrial society.” Del. Valley Citizens Council for Clean Air v. Davis, 932 F.2d 256, 260 (3rd Cir. 1991). A key component of the Clean Air Act is the Title V operating permit program, which requires that certain stationary sources of air pollution—such as coal-fired power plants—obtain permits that clearly identify all applicable emission limits and monitoring requirements. Sierra Club v. U.S. Env’tl. Prot. Agency, 536 F.3d 673, 674 (D.C. Cir. 2008). The monitoring requirements must be “sufficient to assure

¹ Documents and other citations herein are included in the Appendix to this Petition, provided on the enclosed compact disc.

compliance with the terms and conditions of the permit.” 40 C.F.R. § 70.6(c)(1). Thus, the Title V permitting program enables “the source, States, EPA, and the public to better understand the requirements to which the source is subject, and whether the source is meeting those requirements.” U.S. EPA, Final Rule: Operating Permit Program, 57 Fed. Reg. 32,250, 32,251 (July 21, 1992). In Montana, DEQ is responsible for issuing permits, but EPA is required to object to permits that do not comply with the Clean Air Act. See 42 U.S.C. § 7661d(b).

A Title V operating permit must include all of a pollution source’s “applicable requirements.” Id. § 7661c(a). “Applicable requirements” include all provisions of applicable state or federal implementation plans, any Prevention of Significant Deterioration or New Source Review requirements, and any standard or requirement under Clean Air Act sections 111, 112, 114(a)(3), or 504. 40 C.F.R. § 70.2; Mont. Admin. R. 17.8.1201(10). Applicable requirements include “requirements that have been promulgated or approved [by DEQ or EPA] through rulemaking at the time of issuance of the [Title V] permit, but have future-effective compliance dates.” Mont. Admin. R. 17.8.1201(10); see also 40 C.F.R. § 70.2. In addition to emission limits, operating permits also must specify monitoring, recordkeeping, and reporting requirements that are “sufficient to assure compliance with the terms and conditions of the permit.” 40 C.F.R. § 70.6(c)(1); Mont. Admin. R. 17.8.1212. Thus, the operating permit lists all federally enforceable emissions limits applicable to the polluting source and requirements necessary to assure compliance with the limits.

Operating permits serve the essential role of enabling the source and the public to understand the requirements to which the source is subject and enabling regulators and the public to enforce those requirements. As EPA explained in the preamble to its Title V regulations, air quality “regulations are often written to cover broad source categories” leaving it “unclear which,

and how, general regulations apply to a source.” U.S. EPA, Operating Permit Program, 57 Fed. Reg. at 32,251. Operating permits bridge this gap by “clarify[ing] and mak[ing] more readily enforceable a source’s pollution control requirements,” including making clear how general regulatory provisions apply to specific sources. Clean Air Act Amendments of 1989, S. Rep. 101-228, reprinted in 1990 U.S.C.C.A.N. 3385, 3730 (Dec. 20, 1989). In short, operating permits are supposed to link general regulatory provisions to a specific source to provide a way “to establish whether a source is in compliance.” U.S. EPA, Operating Permit Program, 57 Fed. Reg. at 32,251

The Corette plant, located on the banks of the Yellowstone River in Billings, Montana, is a coal-fired power plant with a capacity of approximately 153 megawatts. The burning of coal at the plant releases many harmful air pollutants into the urbanized Billings area, including particulate matter, sulfur dioxide, nitrogen oxides, mercury, and other hazardous air pollutants. These air pollutants can harm public health, impair visibility, and cause acid rain. As a major source of air pollution, Corette must have a Title V permit to operate.

PPL Montana recently announced its intent to place the Corette plant on “reserve” status—also called “mothballing”—in April, 2015, to avoid upgrading the facility to comply with new federal standards designed to protect the public from exposure to air toxics. Despite this announcement, PPL Montana has not committed to closing the plant, and thus, the plant’s operating permit must include all applicable requirements that will apply to the facility during the Permit’s five-year duration.

DEQ issued an operating permit for the Corette facility on December 4, 2012—almost two-and-a-half years after Corette’s prior operating permit (OP2953-05) expired on August 25, 2010. After receiving PPL Montana’s application for renewal of its operating permit for the

Corette plant on April 16, 2010, DEQ began work on revising and renewing the permit. DEQ published the first draft permit for the Corette plant on May 16, 2011. DEQ allowed thirty days for public comment, and Petitioners submitted timely comments on June 16, 2011. DEQ issued a second draft permit and announced a new public comment period on August 10, 2012.

Petitioners submitted timely comments on this second draft of the permit on September 24, 2012. DEQ provided a copy of the draft Permit to EPA on October 17, 2012. During the forty-five days afforded to EPA to review the Permit, see 42 U.S.C. § 7661d(b)(2), EPA took no action on the Permit, and on December 4, 2012, DEQ issued the Permit.

This Petition is filed within sixty days following the end of EPA's forty-five-day review period, as required by 42 U.S.C. § 7661d(b)(2). The EPA Administrator must grant or deny this Petition within sixty days of its filing. Id. If Petitioners demonstrate that Corette's Title V operating permit does not comply with the requirements of the Clean Air Act or fails to include any "applicable requirement," the Administrator is required to object to issuance of the permit. Id.; 40 C.F.R. § 70.8(c)(1) ("The [U.S. EPA] Administrator will object to the issuance of any permit determined by the Administrator not to be in compliance with applicable requirements or requirements of this part.") (emphasis added).

SUMMARY OF PETITION ARGUMENTS

Petitioners request that the Administrator object to the Corette Title V Permit because the Permit fails to include all applicable requirements and fails to require monitoring of particulate matter sufficient to assure compliance with the Permit's terms. These omitted requirements include critical environmental safeguards. Specifically, this Petition seeks an objection by the Administrator for the following reasons:

1. The Permit fails to include hazardous air pollutant emission limits recently adopted by EPA that are applicable requirements for the Permit;
2. The Permit fails to include nitrogen oxide, sulfur dioxide, and particulate matter emission limits that EPA recently finalized in its regional haze plan for Montana; and
3. The Permit fails to clearly identify applicable sulfur dioxide emission limits.

SPECIFIC OBJECTIONS

I. THE PERMIT FAILS TO INCLUDE ALL APPLICABLE REQUIREMENTS

Corette's Title V Permit is deficient because it fails to require compliance (1) with recently promulgated standards for hazardous air pollutant emissions from power plants and (2) with emission limits established through the final regional haze federal implementation plan for Montana. Both of these standards are "applicable requirements" that must be included in Corette's Title V Permit. "Applicable requirements" include "requirements that have been promulgated or approved [by DEQ or EPA] through rulemaking at the time of issuance of the [Title V] permit, but have future-effective compliance dates." Mont. Admin. R. 17.8.1201(10); see also 40 C.F.R. § 70.2 (same). Thus, emission limits established under EPA's hazardous air pollution regulations and the Montana regional haze plan—both of which were promulgated before the Permit issued—must be included in Corette's Title V Permit, along with monitoring requirements sufficient to assure compliance.

A. The Permit Omits Applicable Hazardous Air Pollutant Standards

Corette's Permit fails to assure compliance with all applicable requirements because it does not include the standards established by 40 C.F.R. Part 63, Subpart UUUUU, the National Emission Standards for Hazardous Air Pollutants ("NESHAPs") from Coal- and Oil-Fired Electric Generating Units. See 40 C.F.R. § 70.1(b) ("All sources subject to these regulations shall have a permit to operate that assures compliance by the source with all applicable

requirements.”); Mont. Admin. R. 17.8.1211-.13 (enumerating requirements for air quality operating permits). DEQ acknowledged that the hazardous air pollutant standards contained within 40 C.F.R. Part 63, Subpart UUUUU are applicable requirements for Corette’s Permit. See TRD at 45. Despite DEQ’s assertions to the contrary, DEQ may not postpone including these requirements in the Permit, and the fact that the Corette plant is currently operating within the hazardous air pollutant limits does not obviate this requirement.

The hazardous air pollutant standards are applicable requirements because they were promulgated and became effective on April 16, 2012, well before DEQ issued Corette’s operating permit. See NESHAPs from Coal- and Oil-Fired Electric Utility Steam Generating Units, 77 Fed. Reg. 9,304, 9,304 (Feb. 16, 2012). Pursuant to these standards, the Corette units must comply with limits on the emissions of hazardous air pollutants such as mercury, acid gases (or sulfur dioxide (“SO₂”) as a surrogate), and metallic hazardous air pollutants (or particulate matter (“PM”) as a surrogate) by April 16, 2015. 40 C.F.R. §§ 63.9984, 63.9991. Because the hazardous air pollutant standards “ha[d] been promulgated or approved by [DEQ or EPA] through rulemaking at the time of issuance of the air quality operating permit,” Mont. Admin. R. 17.8.1201(10), the hazardous air pollutant standards qualify as “applicable requirements,” and the Permit thus must have specifically required that each of the Corette generating units come into compliance with these standards by April 15, 2015.

The need to include in Corette’s operating permit specific requirements to comply with the hazardous air pollutant standards is not just required by the Clean Air Act and federal and state regulations; it is essential to ensure Corette’s timely adherence to those requirements. EPA’s hazardous air pollutant rule includes options for meeting and demonstrating compliance. For example, the rule established an acid gas limit for HCl of 0.002 lb/MMBtu, or, alternatively,

a surrogate limit on SO₂ of 0.20 lb/MMBtu. To ensure that Corette's operator can plan for meeting its obligations by the April 15, 2015 compliance deadline, Montana DEQ must identify the non-mercury metal hazardous air pollutant and acid gas limits or surrogate limits applicable to Corette and further include monitoring, recordkeeping, and recording requirements that assure compliance with the new limits.

While the need to select appropriate emission limits and compliance methods emphasizes the importance of including hazardous air pollutant requirements in Corette's operating permit now, DEQ improperly used the presence of compliance options to argue that "adding specific limits [to the permit] would be premature." TRD at 45. DEQ provides no support for its decision to delay including the hazardous air pollutant limits in Corette's operating permit, and indeed, federal and state regulations governing Title V permits nowhere provide for excluding applicable requirements from a permit simply because there are various options for ensuring compliance. To be sure, one function of a Title V operating permit is to make clear to the source's operator how to achieve compliance with applicable requirements. See U.S. EPA, Operating Permit Program, 57 Fed. Reg. at 32,251.

In contravention of DEQ's Clean Air Act obligation to include all "applicable requirements" in operating permits, 42 U.S.C. § 7661c(a), DEQ claimed that it has "up to 18 months following promulgation to have the permit reopened and revised" to include hazardous air pollution standards. TRD at 45 (citing Mont. Admin. R. 17.8.1228). The rule upon which DEQ relied states that "[a]dditional applicable requirements under the [federal Clean Air Act] become applicable to a major source holding a permit with a remaining term of three or more years. Reopening and revision of the permit shall be completed not later than 18 months after promulgation of the applicable requirement." Mont. Admin. R. 17.8.1228(1)(a); see also 40

C.F.R. § 70.7(f)(1)(i). However, the provision establishes the requisite timeframe for reopening an existing permit to include new requirements; it does not apply to the situation here, in which a source's permit had expired and DEQ was processing a permit renewal at the time new standards were promulgated. See Mont. Admin. R. 17.8.1228(1)(a); see also 40 C.F.R. § 70.7(f)(1)(i).² In such situations, EPA made clear that when an applicable requirement "is promulgated while a draft permit is being processed, the permitting authority must revise the permit to include the new requirements prior to issuance." U.S. EPA, Questions and Answers on the Requirements of Operating Permits Program Regulations, at 7-3 (July 7, 1993), available at http://www.epa.gov/region07/air/title5/t5memos/bbrd_qa1.pdf ("Permits Program Q & A") (emphasis added), attached as Document 6 in the Appendix

Because the Corette operating permit does not identify specific emission limits and standards that the plant must satisfy to comply with the hazardous air pollutant standards, the Permit fails to fulfill Congress's intention that such permits would "clarify and make more readily enforceable a source's pollution control requirements," including making clear how general regulatory provisions apply to specific sources. See Clean Air Act Amendments of 1989, S. Rep. 101-228, reprinted in 1990 U.S.C.C.A.N. 3385, 3730 (Dec. 20, 1989). Lacking such provisions, the Permit unlawfully fails to assure compliance with all applicable requirements.

² Furthermore, DEQ informed Corette's operator that it lacked a valid permit between April 12, 2010 and January 4, 2013, when the challenged permit took effect, because the operator failed to submit a timely renewal application. See Violation Letter # VLRG12-15 (Oct. 19, 2012), attached as Document 5 in the Appendix. Thus, Mont. Admin. R. 17.8.1228 is inapplicable for the additional reason that Corette was not "holding a permit" when the hazardous air pollutant standards were promulgated. Mont. Admin. R. 17.8.1228.

EPA must object to Corette's Title V operating permit and require DEQ to incorporate into the Permit specific hazardous air pollution standards and associated monitoring, recordkeeping, and reporting requirements applicable to the Corette plant.

B. The Permit Omits Applicable Regional Haze Emissions Limits

Corette's Title V Permit further fails to assure compliance with all applicable requirements because it does not include emission limits and related requirements established by Montana's regional haze federal implementation plan, which EPA adopted to satisfy the federal Clean Air Act's requirement that EPA address and prevent visibility impairment at federal Class I areas. See 42 U.S.C. § 7410(c). The plan's conditions were applicable requirements at the time DEQ issued a final permit pursuant to 40 C.F.R. § 70.2 and Mont. Admin. R. 17.8.1201(10)(b).

The Montana regional haze plan established new emission limits for Corette, specifically: 0.26 lbs/MMBtu of PM; 0.57 lbs/MMBtu of SO₂; and 0.35 lbs/MMBtu of NO_x. 40 C.F.R. § 52.1396(c). The plan requires compliance with PM limits by November 17, 2012. Id. § 52.1396(d). The plan requires compliance with SO₂ and nitrogen oxide ("NO_x") limits within 180 days of October 18, 2012 where installation of additional emission controls is unnecessary to achieve compliance, as is the case for Corette. Id. Although some of these regional haze requirements have future-effective compliance dates, the regional haze PM limit is already in effect, and the SO₂ and NO_x deadlines are fast approaching. All of the regional haze plan's requirements will apply to Corette within the five-year duration of Corette's Title V Permit.

DEQ was required to include the regional haze plan's emission limits and associated monitoring, record-keeping, and reporting requirements in Corette's Permit because they "ha[d] been promulgated or approved by [DEQ or EPA] through rulemaking at the time of issuance of the air quality operating permit." Mont. Admin. R. 17.8.1201(10); see also 40 C.F.R. § 70.2.

The regional haze plan was signed by the EPA Administrator on August 15, 2012, and it was published in the Federal Register on September 18, 2012. See Approval and Promulgation of Implementation Plans, 77 Fed. Reg. 57,864 (Sept. 18, 2012).³ Thus, the regional haze plan had been promulgated and set forth applicable requirements before DEQ finalized Corette's operating permit on October 17, 2012 and well before DEQ issued the final operating permit on December 4, 2012.

DEQ recognized that the regional haze plan established requirements that are applicable to the Corette plant, TRD at 44, but provided two justifications for nonetheless failing to incorporate those requirements into the final Permit. DEQ first claimed that it has eighteen months from promulgation of the new requirements to include the requirements in an operating permit. Id. Second, DEQ claimed that it was unnecessary to include the regional haze plan's limits in the Permit because Corette's actual emissions satisfied or were lower than the regional haze plan's applicable limits. Id. Neither justification supports DEQ's omission.

DEQ's attempt to justify its omission of applicable regional haze requirements based on a regulation that establishes the requisite timeframe for reopening an existing operating permit was misplaced, just as it was with respect to hazardous air pollutant standards. DEQ claimed that it was unnecessary to include in the Permit the PM, SO₂, and NO_x limits established by the regional haze plan because DEQ "has up to 18 months following promulgation to have the

³ Federal courts have come to different conclusions on whether "promulgate" means the date on which a rule was signed or the date on which it was published in the Federal Register. Compare Am. Petroleum Inst. v. Costle, 609 F.2d 20, 23 (D.C. Cir. 1979) (date of promulgation is date on which rule signed and released to public) with Nw. Env'tl. Def. Ctr. v. Brennan, 958 F.2d 930, 934 (9th Cir. 1992) (date of promulgation is date on which rule is published in Federal Register). However, regardless of how one calculates the date of promulgation in this case—either the August 15 signing or September 18 publishing in the Federal Register—the regional haze FIP was an applicable requirement for the Corette operating permit because both of these possible promulgation dates fell before the issuance of the operating permit on December 4, 2012.

permit reopened and revised.” TRD at 44 (citing Mont. Admin. R. 17.8.1228). As described above, DEQ misinterpreted the referenced rule. The eighteen-month grace period to reopen and revise a permit applies only to permits already in existence when a new requirement is promulgated. The provision allowing reopening and revision of an existing permit when a new requirement is promulgated is inapplicable here because the applicable requirements contained in the regional haze plan had already been promulgated before the Permit issued. See Mont. Admin. R. 17.8.1228(1)(a); see also 40 C.F.R. § 70.7(f)(1)(i).

DEQ’s additional justification for omitting regional haze limits for Corette also must fail. Contrary to DEQ’s claim, it may not choose to leave any applicable requirements out of an operating permit, even if the plant is currently operating within the applicable requirement’s limits. DEQ erroneously opined that it was unnecessary to include the regional haze plan’s PM limits in the Permit because Corette’s actual PM emissions were lower than the regional haze plan’s applicable limits. TRD at 44. Likewise, DEQ claimed that because “EPA has indicated that no additional controls will be necessary at [Corette] to meet an SO₂ limit of 0.57 lbs/MMBtu and a NO_x limit of 0.35 lbs/MMBtu,” the plant will be in compliance with the terms of the regional haze plan. Id. However, Corette is not limited under the operating permit to its current emissions, and there is no legal constraint to prevent those emissions from increasing. Furthermore, DEQ may not choose to leave any applicable requirements out of the operating permit, even if the plant is already operating with lower actual emissions than the limit established by the applicable requirement. See Mont. Admin. R. 17.8.1211(b) (operating permit must include “a specific description with appropriate references of the origin of, and authority for, each term or condition contained in the permit”); see also 40 C.F.R. § 70.6(a)(1)(i). EPA determined that the regional haze plan’s emission limits were necessary to address visibility

impairment in national parks and wilderness areas. Including these regional haze limits in the Corette operating permit is an important safeguard to fulfill the Clean Air Act's regional haze goals in the event that the other applicable requirements regulating SO₂, NO_x, or PM are changed or otherwise rendered unenforceable.

Because Corette's Permit fails to include the applicable emissions limits established by Montana's regional haze plan, EPA must object to the Permit and require DEQ to incorporate into the Permit the regional haze requirements and associated monitoring, recordkeeping, and reporting requirements.

II. THE PERMIT FAILS TO INCLUDE CLEAR SULFUR DIOXIDE EMISSION LIMITS

DEQ also failed to clearly identify in Corette's Title V Permit SO₂ emission limits that would enable the source, regulating agencies, and the public to understand the requirements to which the plant is subject and whether the plant is meeting those requirements. Corette's Permit states that Corette "shall not emit SO₂ ... in excess of the sum of all of the three-hour emission limitations pursuant to the SO₂ SIP Appendix, Stipulation, Exhibit A, Section 3(A)(1)(a)." Permit at 16 (condition G.7). The Permit does not identify a limit on SO₂ emissions; it merely references the SIP Appendix. The SIP Appendix is not attached to the Permit. Instead, DEQ references an EPA website and instructs that interested parties may view the SIP Appendix on the Internet or may contact DEQ for a copy. Permit at I-1. Such incorporation by reference is improper, as the operating permit must clearly identify all applicable requirements to ensure that the requirements are practically enforceable. See In Re: Citgo Refining and Chemicals Company L.P., West Plant, Corpus Christi, Texas, Petition No. VI-2007-01, Order Responding to Petitioners' Request That the Administrator Object to the Issuance of a Title V Operating Permit (May 28, 2009) (directing state to reopen title V permit to ensure that applicable "emissions

limitations are included on the face of the title V permit” rather than incorporated by reference), attached as Document 7 in the Appendix. “Generally, EPA expects that title V permits will explicitly state all emission limitations and operation requirements for all applicable emission units at a facility.” *Id.* at 11.

Furthermore, even the referenced SIP Appendix does not clearly identify the applicable SO₂ emission limit, which is expressed as an equation that depends upon the “buoyancy flux” of the plant’s exhaust gas, which is variable. Because the public (or even DEQ) has no means to identify the buoyancy flux of Corette’s exhaust at any given moment, this limit cannot possibly “enable the ... States, EPA, and the public to understand better the requirements to which the source is subject, and whether the source is meeting those requirements.” U.S. EPA, Final Rule: Operating Permit Program, 57 Fed. Reg. at 32,251.

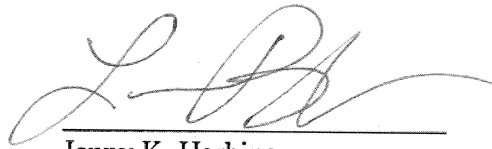
The Permit’s opaque SO₂ limit is particularly troubling given the historically unhealthful ambient levels of SO₂ in Yellowstone County, where Corette is located. *See* Montana DEQ, Citizens’ Guide to Air Quality in Montana, <http://deq.mt.gov/airmonitoring/citguide/understanding.mcp>x (last visited Jan. 31, 2013); *see also* U.S. EPA, Currently Designated Nonattainment Areas for All Criteria Pollutants, <http://www.epa.gov/oaqps001/greenbk/ancl.html> (last visited Jan. 31, 2013). Indeed, EPA identified Yellowstone County as currently exceeding the newly promulgated 1-hour standard for SO₂, based on air quality monitoring data from 2007 to 2009. *See* U.S. EPA, “Counties with Monitors Currently Violating Revised Primary Sulfur Dioxide Standard (2007 - 2009)” (June 15, 2010), at www.epa.gov/air/sulfurdioxide/pdfs/20100602table0709.pdf (last visited Jan. 31, 2013). This history emphasizes the need for clear and enforceable SO₂ emission limits in Corette’s operating permit.

Because Corette's Permit fails to clearly identify Corette's SO₂ emission limit, EPA must object to the Permit and require DEQ to include in the Permit all applicable emission limits and associated monitoring, recordkeeping, and reporting requirements.

CONCLUSION

For these reasons, Petitioners respectfully request that the Administrator object to the Title V operating permit for the Corette Steam Electric Station (OP0513-08).

Respectfully submitted this 31st day of January, 2013,



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CERTIFICATE OF SERVICE

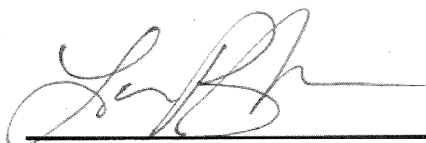
I hereby certify that on this 31st day of January, 2013, I caused to be served upon the following persons a copy of this Petition via Federal Express overnight mail:

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