United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 99–1268 **September Term, 2002**

Filed On: March 7, 2003

APPALACHIAN POWER COMPANY, ET AL.,
PETITIONERS

v.

ENVIRONMENTAL PROTECTION AGENCY,
RESPONDENT

COMMONWEALTH OF PENNSYLVANIA, DEPARTMENT OF ENVIRONMENTAL PROTECTION, ET AL.,
INTERVENORS

Consolidated with
99–1270, 99–1274, 99–1276, 99–1277, 99–1279, 99–1280, 99–1281, 99–1286, 99–1287, 00–1169, 00–1187, 00–1189, 00–1190, 00–1191, 00–1192, 00–1194

On Motion for Attorneys' Fees

Before: EDWARDS and SENTELLE, *Circuit Judges*, and WILLIAMS, *Senior Circuit Judge.*

ORDER

Upon consideration of the motion for attorneys' fees, the response thereto, and the reply, it is

ORDERED that the motion be denied. A remand occasioned by an agency's failure to respond to comments is a

purely procedural victory for the petitioner and is therefore insufficient to support an award of attorneys' fees under 42 U.S.C. § 7607(f). *See Sierra Club v. EPA*, 769 F.2d 796, 806 (D.C. Cir. 1985). In the most similar case in which this court did award attorneys' fees, *Michigan v. EPA*, 254 F.3d 1087, 1091 (D.C. Cir. 2001) (vacating EPA rule for want of notice and comment before promulgation), the Agency had to reopen the record or receive new comments on remand, thus creating a greater probability that it would alter the rule.

Per Curiam

FOR THE COURT:

Mark J. Langer, Clerk

BY:

Deputy Clerk