EN BANC ORAL ARGUMENT HELD SEPTEMBER 27, 2016

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

STATE OF WEST VIRGINIA, *et al.*, *Petitioners*, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents.*	No. 15-1363 (and consolidated cases)

PETITIONERS' AND PETITIONER-INTERVENORS' RESPONSE IN OPPOSITION TO MOTION TO DECIDE THE MERITS OF THE CASE

Petitioners and Petitioner-Intervenors (collectively "Petitioners") respectfully submit this response opposing the motion of Respondent-Intervenor Public Health Organizations, Environmental Organizations, and State and Municipal Governments ("Movants") seeking to remove this case from abeyance and requesting the Court to issue a decision on the merits. *See* Resp. Opposing Requests for Further Abeyance Combined with Mot. to Decide the Merits of Case, ECF No. 1748706 (Sept. 4, 2018) ("Motion"). As explained below, this Court should continue holding the case in abeyance pending completion of the U.S. Environmental Protection Agency's ("EPA" or "Agency") review of the Clean Power Plan.

Movants present nothing new in their Motion. Many of these same arguments were presented to the Court in April 2017 when the same parties first addressed EPA's motion to place the case in abeyance pending EPA's review of the Clean Power Plan. *See* State & Municipal Resp't-Intervenors' Opp'n to Mot. to Hold Proceeding in Abeyance, ECF No. 1669699 (Apr. 5, 2017) ("States' Abeyance Opp'n"); Resp't-Intervenor Pub. Health & Envtl. Organizations' Opp'n to Mot. to Hold Cases in Abeyance, ECF No. 1669759 (Apr. 5, 2017) ("ENGOs' Abeyance Opp'n"). The only difference now is that the Agency has proposed a new rule to replace the Clean Power Plan and EPA's review is nearing completion. 83 Fed. Reg. 44,746 (Aug. 31, 2018) ("Replacement Proposal").

Movants thus try a different tack. Where Movants previously argued that abeyance was inappropriate because administrative review may take too long, their concern now seems to be that continued abeyance is inappropriate because that review is almost done.[1] This request is a transparent effort to have this Court issue an eleventh-hour opinion addressing the legal issues that are raised in the ongoing Replacement Proposal before that rule is finalized. Even a decision upholding the Clean Power Plan would not actually result in that rule taking effect, as it has been

[1] Petitioners and Movants are in agreement that it would be inappropriate to remand this case to EPA, albeit for different reasons. *Compare* Motion at 18-19, *with* Pet'rs' Status Report at 4-5.

stayed by the Supreme Court and that stay by its terms would continue during the pendency of review by that Court.

Issuing a decision now, as Movants seek, would effectively amount to an advisory opinion regarding EPA's soon-to-be-completed rulemaking. To the extent Movants believe EPA's proposed actions in response to that review are unlawful, they should proceed in the ordinary course: They should present their objections in rulemaking comments to EPA and seek judicial review of the final rule if they believe the Agency has failed adequately to address those concerns, particularly given that the legal issues presented by the Replacement Proposal are likely to be distinct from those at issue in this case. Attempting to resolve them here is improper, and ultimately would serve no purpose for two reasons. First, any decision on the Clean Power Plan would likely be rendered moot shortly after issuance by its repeal and replacement, and second, due to the Supreme Court's stay, the Clean Power Plan would almost certainly never go into effect, not even for the shortest of times.

ARGUMENT

EPA has proposed to repeal the Clean Power Plan and to promulgate new emission guidelines governing greenhouse gas emissions from existing power plants in its place. *See* 82 Fed. Reg. 48,035 (Oct. 16, 2017) ("Repeal Proposal"); 83 Fed. Reg. at 44,746. As this Court has repeatedly recognized, abeyance is the appropriate approach when an agency is revisiting a challenged regulation, especially when that review is the result of a new administration's change in policy. *See* Suppl. Br. of Pet'rs

& Pet'r-Intervenors, ECF No. 1675250 (May 15, 2017) ("Supplemental Brief"); Pet'rs & Pet'r-Intervenors' Status Report in Support of Continued Abeyance, ECF No. 1747382 (Aug. 24, 2018) ("Pet'rs' Status Report"). This established practice is a sound one for several reasons, not least of which is that any decision by this Court at this late stage in the Agency's rulemaking process on the legality of the Clean Power Plan would effectively amount to an advisory opinion. If EPA repeals or replaces the Clean Power Plan as the Agency has proposed, the relief requested in the petitions for review will be unavailable because that rule will no longer exist. That outcome has only become more likely since this Court first decided to place the case in abeyance at the outset of EPA's review.

Where "[e]ach cause of action challenge[s] the validity of" a regulation, and "that regulation no longer exists, [the Court] can do nothing to affect [petitioners'] rights relative to it, thus making th[e] case classically moot for lack of a live controversy." *Akiachak Native Cmty. v. U.S. Dep't of the Interior*, 827 F.3d 100, 106 (D.C. Cir. 2016); *see also Am. Petroleum Inst. v. EPA*, 683 F.3d 382, 388-89 (D.C. Cir. 2012) (holding case in abeyance where EPA's proposed course "if adopted, would necessitate substantively different legal analysis and would likely moot the analysis we could undertake if deciding the case now"); *Larsen v. U.S. Navy*, 525 F.3d 1, 4-5 (D.C. Cir. 2008) (challenge to withdrawn policy was moot); *Coal. of Airline Pilots Ass'ns v. FAA*, 370 F.3d 1184, 1190-91 (D.C. Cir. 2004) (similar); *cf. U.S. Bancorp Mortg. Co. v. Bonner Mall P'ship*, 513 U.S. 18, 25 n.3 (1994) (noting that a prior suit "became moot

on appeal because the regulations sought to be enforced by the United States were annulled by Executive Order").

Further, this is not a case where some of the legal issues raised by the challenged rule will necessarily survive EPA's action rescinding or modifying it. In *Chlorine Chemistry Council v. EPA*, 206 F.3d 1286 (D.C. Cir. 2000), although EPA had decided not to defend the challenged rule and moved for the Court to vacate it, the Court held EPA's request would not obviate the need for a decision in the case because the petitioners sought broader relief than vacatur and the Court's opinion on the rule's lawfulness was necessary to address those remedy issues. *Id.* at 1290. Here, EPA's rescission or replacement of the Clean Power Plan could very well resolve all of Petitioners' challenges. Whether there is a need for a decision on aspects of the Clean Power Plan, however, will be known only after EPA's proposed actions are finalized and it can be determined whether Petitioners' challenges to the Clean Power Plan have been resolved.

Moreover, even if the Court were to issue a decision before EPA takes final action on its proposals to repeal and/or replace the Clean Power Plan, EPA's forthcoming action could still moot all or part of the case, and the parties would be entitled to seek vacatur of the Court's ruling in this Court, *see Clarke v. United States*, 915 F.2d 699, 706 (D.C. Cir. 1990) (en banc), or in the Supreme Court, *see Arizonans for Official English v. Arizona*, 520 U.S. 43, 71 (1997) ("When a civil case becomes moot pending appellate adjudication, '[t]he established practice … in the federal system …

is to reverse or vacate the judgment below and remand with a direction to dismiss.'") (quoting *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950)); *see also Azar v. Garza*, 138 S. Ct. 1790, 1792 (2018) (per curiam). Indeed, the Supreme Court is unlikely to allow such important legal issues to be determined by a decision that it may not be able to review due to intervening agency action mooting the case. *See Munsingwear*, 340 U.S. at 40 (vacatur is proper to "clear[] the path for future relitigation of the issues"); *see also A.L. Mechling Barge Lines, Inc. v. United States*, 368 U.S. 324, 329 (1961) ("We think the principle enunciated in *Munsingwear* at least equally applicable to unreviewed administrative orders…."); *cf. Relf v. Weinberger*, 565 F.2d 722, 727 (D.C. Cir. 1977) (per curiam) (vacating orders where agency announced its "inten[tion] to issue a new notice of rule making … at the conclusion of which it will promulgate [new] comprehensive regulations").

Perhaps recognizing this, Movants do not attempt to hide their true aim: to obtain a decision from this Court that "might influence EPA's ongoing administrative process by explicating the relevant law." Motion at 16. But it is not the proper role of this Court to issue such prospective guidance on the law, even if doing so might save "critical time" by jumping ahead to judicial review before EPA takes final action on its Repeal Proposal and Replacement Proposal. *Id.* at 3; *see also In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. 2015) (denying a request to review the legality of the proposed Clean Power Plan because the rule was not yet final). If the Movants take issue with any aspect of those proposed actions, the appropriate forum to raise those

issues is in rulemaking comments on the proposed rules—not in this case. And if their concerns are not addressed in any final action EPA takes in the coming months, Movants can litigate those issues by filing a petition for review of that final action.

Movants repeatedly suggest that EPA's Replacement Proposal is deficient and that this purported deficiency somehow weighs in favor of issuing a decision in this case. As an initial matter, Movants mischaracterize important aspects of the Replacement Proposal. They argue the proposed emission guideline "does not require any carbon dioxide reductions from power plants, but instead merely lists potential ways to achieve heat rate improvements at coal-fired steam-generating plants that States can elect to incorporate into state plans." Motion at 9. Like any emission guideline, the Replacement Proposal would not establish emission standards directly applicable to individual sources. As the Clean Power Plan itself notes, it "does not directly affect EGU owners or operators in your State." 80 Fed. Reg. 64,662, 64,952 (Oct. 23, 2015) (promulgating 40 C.F.R. § 60.5840(a)). Rather, as section 111(d) of the Clean Air Act and EPA's implementing regulations require, the proposal designates the best system of emission reduction for the source category and provides guidance for *states* to use in developing state plans that include performance standards for each affected unit within the state. 42 U.S.C. § 7411(d)(1); 40 C.F.R. § 60.22; 83 Fed. Reg. at 44,809 (proposed 40 C.F.R. § 60.5755a). And in setting those standards, the Replacement Proposal *requires* states to consider the degree of emission limitation

achievable through applicable heat rate improvements at the unit. 83 Fed. Reg. at 44,808-09 (proposed 40 C.F.R. §§ 60.5740a(a)(1), 60.5755a(a)(2)).

Movants also note disparagingly that the Replacement Proposal is projected to reduce power sector carbon dioxide emissions by up to 2 percent below "business as usual." Motion at 10. But they neglect to note that the Clean Power Plan itself would reduce those emissions by only 3 percent below "business as usual."[2] The Replacement Proposal, like the Clean Power Plan, would keep the United States on track to reduce greenhouse gas emissions from the power sector by at least 32% below 2005 levels by 2020. RIA at 3-15, Tbl. 3-6.

Regardless, Movants' objections are directed at a *proposed* rule that may or may not be finalized in its current form. This Court should not issue a decision to resolve legal issues that may not even exist once the rule becomes final. In any event, the legal issues presented in a review of the Replacement Proposal (if finalized) are likely to be different from those presented in this case—a decision on whether the Clean Power Plan exceeds EPA's authority under section 111(d) of the Clean Air Act may not even be relevant in determining whether EPA erred in choosing another path. If Movants oppose the Replacement Proposal, the Clean Air Act provides Movants with

[2] EPA, Regulatory Impact Analysis for the Proposed Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guideline Implementing Regulations; Revisions to New Source Review Program, EPA-452/R-18-006, at ES-8, Tbl. ES-5 (Aug. 2018), Doc. No. EPA-HQ-OAR-2017-0355-21182 ("RIA").

a direct avenue to this Court through the filing of a petition for review of EPA's final action under section 307(b) of the Clean Air Act. 42 U.S.C. § 7607(b).

Although Movants accuse EPA and Petitioners of abusing the Court's grant of abeyance to indefinitely forestall regulation of greenhouse gas emissions from existing power plants, Motion at 16, EPA is proceeding with its review of the Clean Power Plan expeditiously. *See* Pet'rs' Status Report at 7-8 (describing progress of review in context of other complex rulemakings). Indeed, EPA is proceeding much more quickly than the 3 or 4 year period of time Movants, in their submissions opposing the Court's first grant of abeyance in this case, anticipated EPA's review could take. States' Abeyance Opp'n at 7; ENGOs' Abeyance Opp'n at 5. EPA currently expects to take final action on its review "by the first part of 2019, after consideration of public comments," putting those administrative proceedings on track for completion within 2 years or less from when they commenced. EPA Status Report at 5 ¶ 11, ECF No. 1747298 (Aug. 24, 2018).

Finally, although briefing and oral argument have taken place on challenges to the Clean Power Plan in Case No. 15-1363 and consolidated cases, there are also additional challenges to that rule that ripened upon the denial of petitions for reconsideration that have yet to be briefed or argued. *See, e.g.*, Joint Mot. to Sever & Consolidate, ECF No. 1663046 (Feb. 24, 2017). Some of those challenges involve notice issues that are critical to the fundamental legal validity of the Clean Power Plan and would need to be addressed in any decision by this Court.

To decide the validity of the Clean Power Plan, therefore, the Court would need to expend significant resources to resolve the pending motions to consolidate, accept briefing and argument on the additional issues that ripened upon EPA's denial of the petitions for reconsideration, resolve all issues, issue a decision for the *en banc* Court (along with any potential separate concurrences or dissents), and deal with any petitions for rehearing that may be filed. The non-prevailing parties would surely file protective petitions for writs of certiorari in the Supreme Court, requiring all of the numerous parties and the Justices to expend further resources. Given the large number of parties and counsel involved in this matter and the complexity of the issues, such an effort would be extensive. And because, as explained above, the case could ultimately be mooted by EPA's final action on review of the Clean Power Plan, all of this effort would likely be wasted.

By contrast, continuing to hold these cases in abeyance until EPA finalizes its rulemaking by early 2019 conserves judicial and party resources and would not prejudice the parties. Movants' quarrel is not ultimately with abeyance, but with the Supreme Court's decision to stay the Clean Power Plan. Movants argue that they are prejudiced because while the Clean Power Plan continues to be stayed, they are "denied regulatory protection from" existing power plants' greenhouse gas emissions.[3]

[3] Movants are incorrect that these sources' emissions are subject to "no federal limits." Motion at 5. Existing power plants may be subject to standards of performance for greenhouse gases under section 111(b) of the Clean Air Act if they are modified or reconstructed, 40 C.F.R. pt. 60 Subpt. TTTT, and may be subject to

Motion at 17-18. Movants ignore that the Supreme Court granted an extraordinary stay in this case because it presumably concluded both that the Clean Power Plan was likely unlawful and that imposing that unlawful rule on Petitioners would cause them irreparable harm. *See Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010) (per curiam).

In light of that stay, a decision by this Court would have no near-term practical effect. The Supreme Court has stayed the Clean Power Plan pending disposition of any petitions for writs of certiorari (or a decision on the merits if the petitions are granted).[4] *West Virginia v. EPA*, 136 S. Ct. 1000 (2016) (No. 15A773). Thus, even if this Court were to issue a decision upholding the Clean Power Plan, that rule would not take effect unless and until the Supreme Court were to resolve the inevitable petitions for writs of certiorari and resolve them in Movants' favor, long before which EPA would almost certainly have concluded its rulemaking. Where the Court's institutional interests favor deferring review, any hardship a party would suffer from deferral must be "immediate and significant" to merit potentially proceeding with the

---

"best available control technology" limits for greenhouse gases under the Act's Prevention of Significant Deterioration program if they conduct a major modification for another pollutant, *see Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427 (2014).

[4] As Petitioners informed the Court, the Public Health and Environmental Respondent-Intervenors sent a letter to Chief Justice Roberts on July 27, 2018, noting that "'the Court may wish to require the parties to explain why the stay should continue in effect.'" Pet'rs' Status Report at 6 (quoting Letter from Sean H. Donahue, Counsel of Record for Environmental Defense Fund, et al., to The Hon. John G. Roberts, Jr., Chief Justice of the United States & Circuit Justice for the D.C. Circuit, Supreme Court of the United States, at 3 (July 27, 2018)). The Supreme Court has docketed the letter. Docket, *West Virginia v. EPA*, No. 15A773 (S. Ct.).

case. *Am. Petroleum Inst.*, 683 F.3d at 389 (placing case in abeyance where "it is not at all clear that [party] could [avoid claimed hardship resulting from abeyance] if we decided this petition in their favor") (internal quotation marks and citation omitted). Movants cannot meet that standard. Continuing to hold these cases in abeyance will not cause hardship to Movants given the Supreme Court's continuing stay of the Clean Power Plan.

CONCLUSION

For the foregoing reasons, this Court should deny Movants' request to issue a decision and continue holding these cases in abeyance.

Dated: September 14, 2018

Respectfully submitted,

/s/ Allison D. Wood
F. William Brownell
Allison D. Wood
Henry V. Nickel
Tauna M. Szymanski
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 955-1500
bbrownell@HuntonAK.com
awood@HuntonAK.com
hnickel@HuntonAK.com
tszymanski@HuntonAK.com

Counsel for Petitioners Utility Air Regulatory Group and American Public Power Association

/s/ Peter S. Glaser
Peter S. Glaser
TROUTMAN SANDERS LLP
401 Ninth Street N.W., Suite 1000
Washington, D.C. 20004
Tel: (202) 274-2998
peter.glaser@troutmansanders.com

Carroll W. McGuffey III
TROUTMAN SANDERS LLP
600 Peachtree Street, N.E., Suite 5200
Atlanta, GA 30308
Tel: (404) 885-3000
mack.mcguffey@troutmansanders.com

Counsel for Petitioner National Mining Association

/s/ Lindsay S. See
Patrick Morrisey
ATTORNEY GENERAL OF WEST VIRGINIA
Lindsay S. See
Solicitor General
Counsel of Record
Paul Anthony Martin
Chief Deputy Attorney General
State Capitol Building 1, Room 26-E
Charleston, WV 25305
Tel: (304) 558-2021
Fax: (304) 558-0140
lindsay.s.see@wvago.gov
anthony.p.martin@wvago.gov

Counsel for Petitioner State of West Virginia

/s/ Kyle D. Hawkins
Ken Paxton
ATTORNEY GENERAL OF TEXAS
Jeffrey C. Mateer
First Assistant Attorney General
Kyle D. Hawkins
Solicitor General
Counsel of Record
P.O. Box 12548
Austin, TX 78711-2548
Tel: (512) 936-1700
Kyle.Hawkins@oag.texas.gov

Counsel for Petitioner State of Texas

/s/ Peter D. Keisler
Peter D. Keisler
C. Frederick Beckner III
Ryan C. Morris
SIDLEY AUSTIN, LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8027
pkeisler@sidley.com
rbeckner@sidley.com
rmorris@sidley.com

Counsel for Petitioners Chamber of Commerce of the United States of America; National Association of Manufacturers; American Fuel & Petrochemical Manufacturers; National Federation of Independent Business; American Chemistry Council; American Coke and Coal Chemicals Institute; American Foundry Society; American Forest & Paper Association; American Iron & Steel Institute; American Wood Council; Brick Industry Association; Electricity Consumers Resource Council; Lignite Energy Council; National Lime Association; National Oilseed Processors Association; and Portland Cement Association

/s/ Andrew Brasher
Steven T. Marshall
ATTORNEY GENERAL OF ALABAMA
Andrew Brasher
Solicitor General
Counsel of Record
501 Washington Avenue
Montgomery, AL 36130
Tel: (334) 353-2609
abrasher@ago.state.al.us

Counsel for Petitioner State of Alabama

/s/ Dominic E. Draye
Mark Brnovich
ATTORNEY GENERAL OF ARIZONA
Dominic E. Draye
Solicitor General
Counsel of Record
Keith J. Miller
Assistant Solicitor General
Arizona Attorney General's Office
1275 West Washington Street
Phoenix, AZ 85007-2997
Tel: (602) 542-3333
Fax: (602) 542-8308
dominic.draye@azag.gov
keith.miller@azag.gov
SolicitorGeneral@azag.gov

Counsel for Petitioner Arizona Corporation Commission

/s/ Thomas A. Lorenzen
Thomas A. Lorenzen
CROWELL & MORING LLP
1001 Pennsylvania Ave., N.W.
Washington, D.C. 20004
Tel: (202) 624-2500
tlorenzen@crowell.com

Counsel for Petitioners National Rural Electric Cooperative Association; Big Rivers Electric Corporation; Brazos Electric Power Cooperative, Inc.; Buckeye Power, Inc.; Central Montana Electric Power Cooperative; Central Electric Power Cooperative, Inc., Corn Belt Power Cooperative; Dairyland Power Cooperative; East River Electric Power Cooperative, Inc.; Georgia Transmission Corporation; Kansas Electric Power Cooperative, Inc.; North Carolina Electric Membership Corporation; Northwest Iowa Power Cooperative; Oglethorpe Power Corporation; PowerSouth Energy Cooperative; Prairie Power, Inc.; Rushmore Electric Power Cooperative, Inc.; Seminole Electric Cooperative, Inc.; Southern Illinois Power Cooperative; Sunflower Electric Power Corporation; and Upper Missouri G. & T. Electric Cooperative, Inc.

/s/ Lee Rudofsky
Leslie Rutledge
ATTORNEY GENERAL OF ARKANSAS
Lee Rudofsky
Solicitor General
Counsel of Record
Jamie L. Ewing
Assistant Attorney General
323 Center Street, Suite 400
Little Rock, AR 72201
Tel: (501) 682-5310
lee.rudofsky@arkansasag.gov

Counsel for Petitioner State of Arkansas

/s/ Frederick Yarger
Cynthia H. Coffman
ATTORNEY GENERAL OF COLORADO
Frederick Yarger
Solicitor General
Counsel of Record
1300 Broadway, 10th Floor
Denver, CO 80203
Tel: (720) 508-6168
fred.yarger@coag.gov

Counsel for Petitioner State of Colorado

Rae Cronmiller
Environmental Counsel
NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION
4301 Wilson Blvd.
Arlington, VA 22203
Tel: (703) 907-5500
rae.cronmiller@nreca.coop

Counsel for Petitioner National Rural Electric Cooperative Association

/s/ Eric L. Hiser
Eric L. Hiser
JORDEN HISER & JOY, PLC
5080 N. 40th Street, Suite 245
Phoenix, AZ 85018
Tel: (480) 505-3927
ehiser@JHJLawyers.com

Counsel for Petitioner Arizona Electric Power Cooperative, Inc.

/s/ Brian A. Prestwood
Brian A. Prestwood
Senior Corporate and Compliance Counsel
ASSOCIATED ELECTRIC COOPERATIVE, INC.
2814 S. Golden, P.O. Box 754
Springfield, MO 65801
Tel: (417) 885-9273
bprestwood@aeci.org

Counsel for Petitioner Associated Electric Cooperative, Inc.

/s/ Jonathan A. Glogau
Pamela Jo Bondi
ATTORNEY GENERAL OF FLORIDA
Amit Agarwal
Solicitor General
Jonathan A. Glogau
Counsel of Record
Special Counsel
Jordan Pratt
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Tel: (850) 414-3818
Fax: (850) 410-2672
amit.agarwal@myfloridalegal.com
jonathan.glogau@myfloridalegal.com
jordan.pratt@myfloridalegal.com

Counsel for Petitioner State of Florida

/s/Andrew A. Pinson
Christopher M. Carr
ATTORNEY GENERAL OF GEORGIA
Andrew A. Pinson
Deputy Solicitor General
Counsel of Record
Office of the Attorney General
40 Capitol Square S.W.
Atlanta, GA 30334-1300
Tel: (404) 651-9453
Fax: (404) 657-8773
apinson@law.ga.gov

Counsel for Petitioner State of Georgia

/s/ David Crabtree
David Crabtree
Vice President, General Counsel
DESERET GENERATION & TRANSMISSION CO-OPERATIVE
10714 South Jordan Gateway
South Jordan, UT 84095
Tel: (801) 619-9500
Crabtree@deseretpower.com

Counsel for Petitioner Deseret Generation & Transmission Co-operative

/s/ John M. Holloway III
John M. Holloway III
WILLIAMS MULLEN
1666 K Street, N.W., Suite 1200
Washington, D.C. 20006
Tel: (202) 293-8127
Fax: (202) 293-5939
jholloway@williamsmullen.com

Counsel for Petitioners East Kentucky Power Cooperative, Inc.; Hoosier Energy Rural Electric Cooperative, Inc.; Minnkota Power Cooperative, Inc.; and South Mississippi Electric Power Association

Joshua L. Belcher
EVERSHEDS SUTHERLAND (US) LLP
1101 Fannin Street, Suite 3700
Houston, TX 77002
Tel: (713) 470-6118
Fax: (713) 654-1301
joshuabelcher@eversheds-sutherland.com

Counsel for Petitioner East Kentucky Power Cooperative, Inc.

/s/ Thomas M. Fisher
Curtis T. Hill, Jr.
ATTORNEY GENERAL OF INDIANA
Thomas M. Fisher
Solicitor General
Counsel of Record
Office of the Attorney General
Indiana Government Ctr. South
Fifth Floor
302 West Washington Street
Indianapolis, IN 46204-2770
Tel: (317) 232-6255
Fax: (317) 232-7979
tom.fisher@atg.in.gov

Counsel for Petitioner State of Indiana

/s/ Jeffrey A. Chanay
Derek Schmidt
ATTORNEY GENERAL OF KANSAS
Jeffrey A. Chanay
Chief Deputy Attorney General
Counsel of Record
Bryan C. Clark
Assistant Solicitor General
120 S.W. 10th Avenue, 3rd Floor
Topeka, KS 66612
Tel: (785) 368-8435
Fax: (785) 291-3767
jeff.chanay@ag.ks.gov

Counsel for Petitioner State of Kansas

/s/ Patrick Burchette
Patrick Burchette
HOLLAND & KNIGHT LLP
800 17th Street, N.W., Suite 1100
Washington, D.C. 20006
Tel: (202) 469-5102
Patrick.Burchette@hklaw.com

Counsel for Petitioners East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc.

/s/ Christopher L. Bell
Christopher L. Bell
GREENBERG TRAURIG LLP
1000 Louisiana Street, Suite 1700
Houston, TX 77002
Tel: (713) 374-3556
bellc@gtlaw.com

Counsel for Petitioner Golden Spread Electrical Cooperative, Inc.

/s/ Mark Walters
Mark Walters
Michael J. Nasi
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, TX 78701
Tel: (512) 236-2000
Fax: (512) 236-2002
mwalters@jw.com
mnasi@jw.com

Counsel for Petitioners San Miguel Electric Cooperative, Inc., South Texas Electric Cooperative, Inc.

/s/ Joe Newberg
Andy Beshear
ATTORNEY GENERAL OF KENTUCKY
Joseph A. Newberg, II
Counsel of Record
Samuel R. Flynn
Assistant Attorneys General
700 Capital Avenue
Suite 118
Frankfort, KY 40601
Tel: (502) 696-5611
joe.newberg@ky.gov
samuel.flynn@ky.gov

Counsel for Petitioner Commonwealth of Kentucky

/s/ Elizabeth B. Murrill
Jeff Landry
ATTORNEY GENERAL OF LOUISIANA
Elizabeth B. Murrill
Counsel of Record
Harry J. Vorhoff
Assistant Attorneys General
Office of the Louisiana Attorney General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, LA 70802
Tel: (225) 326-6085
Fax: (225) 326-6099
murrille@ag.louisiana.gov
vorhoffh@ag.louisiana.gov

Counsel for Petitioner State of Louisiana

/s/ Randolph G. Holt
Randolph G. Holt
Jeremy L. Fetty
PARR RICHEY OBREMSKEY FRANDSEN & PATTERSON LLP
Wabash Valley Power Association, Inc.
722 N. High School Road
P.O. Box 24700
Indianapolis, IN 46224
Tel: (317) 481-2815
R_holt@wvpa.com
jfetty@parrlaw.com

Counsel for Petitioner Wabash Valley Power Association, Inc.

/s/ Megan H. Berge
Megan H. Berge
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com

Counsel for Petitioner Western Farmers Electric Cooperative

/s/ Steven C. Kohl
Steven C. Kohl
Gaetan Gerville-Reache
WARNER NORCROSS & JUDD LLP
2000 Town Center, Suite 2700
Southfield, MI 48075-1318
Tel: (248) 784-5000
skohl@wnj.com

Counsel for Petitioner Wolverine Power Supply Cooperative, Inc.

/s/ Herman Robinson
Herman Robinson
Executive Counsel
Elliott Vega
Courtney J. Burdette
Charlotte M. Goudeau
LOUISIANA DEPARTMENT OF ENVIRONMENTAL QUALITY
Legal Division
P.O. Box 4302
Baton Rouge, LA 70821-4302
Tel: (225) 219-3985
Fax: (225) 219-4068
courtney.burdette@la.gov
charlotte.goudeau@la.gov

Counsel for Petitioner State of Louisiana Department of Environmental Quality

/s/ Lesley Foxhall Pietras
Lesley Foxhall Pietras
LISKOW & LEWIS, P.L.C.
701 Poydras Street, Suite 5000
New Orleans, LA 70139
Tel: (504) 556-4125
Fax: (504) 556-4108
lfpietras@liskow.com

Counsel for Petitioner Louisiana Public Service Commission

/s/ Christina F. Gomez
Christina F. Gomez
Jill H. Van Noord
HOLLAND & HART LLP
555 Seventeenth Street, Suite 3200
Denver, CO 80202
Tel: (303) 295-8000
Fax: (303) 295-8261
cgomez@hollandhart.com
jhvannoord@hollandhart.com

Patrick R. Day
HOLLAND & HART LLP
2515 Warren Avenue, Suite 450
Cheyenne, WY 82001
Tel: (307) 778-4200
Fax: (307) 778-8175
pday@hollandhart.com

Emily C. Schilling
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Tel: (801) 799-5800
Fax: (801) 799-5700
ecschilling@hollandhart.com

Counsel for Petitioner Basin Electric Power Cooperative

/s/ Aaron D. Lindstrom
Bill Schuette
ATTORNEY GENERAL FOR THE PEOPLE OF MICHIGAN
Aaron D. Lindstrom
Michigan Solicitor General
Counsel of Record
P.O. Box 30212
Lansing, MI 48909
Tel: (515) 373-1124
Fax: (517) 373-3042
lindstroma@michigan.gov

Counsel for Petitioner People of the State of Michigan

/s/ Harold E. Pizzetta, III
Jim Hood
ATTORNEY GENERAL OF THE STATE OF MISSISSIPPI
Harold E. Pizzetta
Assistant Attorney General
Civil Litigation Division
Office of the Attorney General
Post Office Box 220
Jackson, MS 39205
Tel: (601) 359-3816
Fax: (601) 359-2003
hpizz@ago.state.ms.us

Counsel for Petitioner State of Mississippi

/s/ Stacey Turner
Stacey Turner
SOUTHERN COMPANY SERVICES, INC.
600 18th Street North
BIN 14N-8195
Birmingham, AL 35203
Tel: (205) 257-2923
staturner@southernco.com

Counsel for Petitioners Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company

/s/ C. Grady Moore, III
C. Grady Moore, III
BALCH & BINGHAM LLP
1901 Sixth Avenue North, Suite 1500
Birmingham, AL 35303-4642
Tel: (205) 251-8100
Fax: (205) 488-5704
gmoore@balch.com

Counsel for Petitioner Alabama Power Company

/s/ Margaret Claiborne Campbell
Margaret Claiborne Campbell
Angela J. Levin
TROUTMAN SANDERS LLP
600 Peachtree Street, NE, Suite 5200
Atlanta, GA 30308-2216
Tel: (404) 885-3000
margaret.campbell@troutmansanders.com
angela.levin@troutmansanders.com

Counsel for Petitioner Georgia Power Company

/s/ Donna J. Hodges
Donna J. Hodges
Senior Counsel
MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY
P.O. Box 2261
Jackson, MS 39225-2261
Tel: (601) 961-5369
Fax: (601) 961-5349
dhodges@deq.state.ms.us

Counsel for Petitioner Mississippi Department of Environmental Quality

/s/ Todd E. Palmer
Todd E. Palmer
Valerie L. Green
MICHAEL, BEST & FRIEDRICH LLP
601 Pennsylvania Ave., N.W., Suite 700
Washington, D.C. 20004-2601
Tel: (202) 747-9560
Fax: (202) 347-1819
tepalmer@michaelbest.com
vlgreen@michaelbest.com

Counsel for Petitioner Mississippi Public Service Commission

/s/ Terese T. Wyly
Terese T. Wyly
Ben H. Stone
BALCH & BINGHAM LLP
1310 Twenty Fifth Avenue
Gulfport, MS 39501-1931
Tel: (228) 214-0413
twyly@balch.com
bstone@balch.com

Counsel for Petitioner Mississippi Power Company

/s/ Jeffrey A. Stone
Jeffrey A. Stone
BEGGS & LANE, RLLP
501 Commendencia Street
Pensacola, FL 32502
Tel: (850) 432-2451
JAS@beggslane.com

James S. Alves
2110 Trescott Drive
Tallahassee, FL 32308
Tel: (850) 566-7607
jim.s.alves@outlook.com

Counsel for Petitioner Gulf Power Company

/s/ D. John Sauer
Josh Hawley
ATTORNEY GENERAL OF MISSOURI
D. John Sauer
Solicitor General
Counsel of Record
P.O. Box 899
207 W. High Street
Jefferson City, MO 65102
Tel: (573) 751-1800
Fax: (573) 751-0774
john.sauer@ago.mo.gov

Counsel for Petitioner State of Missouri

/s/ Dale Schowengerdt
Timothy C. Fox
ATTORNEY GENERAL OF MONTANA
Dale Schowengerdt
Solicitor General
Counsel of Record
215 North Sanders
Helena, MT 59620-1401
Tel: (406) 444-7008
dales@mt.gov

Counsel for Petitioner State of Montana

/s/ James S. Alves
James S. Alves
2110 Trescott Drive
Tallahassee, FL 32308
Tel: (850) 566-7607
jim.s.alves@outlook.com

Counsel for Petitioner CO_2 Task Force of the Florida Electric Power Coordinating Group, Inc.

/s/ John J. McMackin
John J. McMackin
WILLIAMS & JENSEN
701 8th Street, N.W., Suite 500
Washington, D.C. 20001
Tel: (202) 659-8201
jjmcmackin@wms-jen.com

Counsel for Petitioner Energy-Intensive Manufacturers Working Group on Greenhouse Gas Regulation

/s/ Megan H. Berge
Megan H. Berge
William M. Bumpers
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
william.bumpers@bakerbotts.com

Counsel for Petitioner Entergy Corporation

/s/ Justin D. Lavene
Douglas J. Peterson
ATTORNEY GENERAL OF NEBRASKA
Dave Bydlaek
Chief Deputy Attorney General
Justin D. Lavene
Assistant Attorney General
Counsel of Record
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2834
justin.lavene@nebraska.gov

Counsel for Petitioner State of Nebraska

/s/ Paul M. Seby
Wayne Stenehjem
Attorney General of North Dakota
Margaret Olson
Assistant Attorney General
NORTH DAKOTA ATTORNEY GENERAL'S OFFICE
600 E. Boulevard Avenue #125
Bismarck, ND 58505
Tel: (701) 328-3640
wstenehjem@nd.gov
maiolson@nd.gov

Paul M. Seby
Jerry Stouck
Special Assistant Attorneys General
State of North Dakota
GREENBERG TRAURIG, LLP
1200 17th Street, Suite 2400
Denver, CO 80202
Tel: (303) 572-6500
Fax: (303) 572-6540
sebyp@gtlaw.com
stouckj@gtlaw.com
Counsel for Petitioner State of North Dakota

/s/ Paul J. Zidlicky
Paul J. Zidlicky
SIDLEY AUSTIN, LLP
1501 K Street, N.W.
Washington, D.C. 20005
Tel: (202) 736-8000
pzidlicky@sidley.com

Counsel for Petitioners GenOn Mid-Atlantic, LLC; Indian River Power LLC; Louisiana Generating LLC; Midwest Generation, LLC; NRG Chalk Point LLC; NRG Power Midwest LP; NRG Rema LLC; NRG Texas Power LLC; NRG Wholesale Generation LP; and Vienna Power LLC

/s/ David M. Flannery
David M. Flannery
Kathy G. Beckett
Edward L. Kropp
STEPTOE & JOHNSON, PLLC
707 Virginia Street East
Charleston, WV 25326
Tel: (304) 353-8000
dave.flannery@steptoe-johnson.com
kathy.beckett@steptoe-johnson.com
skipp.kropp@steptoe-johnson.com

Counsel for Petitioner Indiana Utility Group

/s/ Eric E. Murphy
Michael DeWine
ATTORNEY GENERAL OF OHIO
Eric E. Murphy
State Solicitor
Counsel of Record
30 E. Broad Street, 17th Floor
Columbus, OH 43215
Tel: (614) 466-8980
eric.murphy@ohioattorneygeneral.gov

Counsel for Petitioner State of Ohio

/s/ David B. Rivkin, Jr.
Mike Hunter
ATTORNEY GENERAL OF OKLAHOMA
P. Clayton Eubanks
Deputy Solicitor General
Oklahoma Office of the Attorney General
313 NE 21st Street
Oklahoma City, OK 73105
Tel: (405) 522-8992
Fax: (405) 522-0608
clayton.eubanks@oag.ok.gov

David B. Rivkin, Jr.
Counsel of Record
Mark W. DeLaquil
Andrew M. Grossman
BAKER & HOSTETLER LLP
Washington Square, Suite 1100
1050 Connecticut Ave., N.W.
Washington, D.C. 20036
Tel: (202) 861-1731
Fax: (202) 861-1783
drivkin@bakerlaw.com

Counsel for Petitioners State of Oklahoma and Oklahoma Department of Environmental Quality

/s/ F. William Brownell
F. William Brownell
Eric J. Murdock
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 955-1500
bbrownell@HuntonAK.com
emurdock@HuntonAK.com

Nash E. Long III
HUNTON ANDREWS KURTH LLP
Bank of America Plaza, Suite 3500
101 South Tryon Street
Charlotte, NC 28280
Tel: (704) 378-4700
nlong@HuntonAK.com

Counsel for Petitioner LG&E and KU Energy LLC

/s/ James Emory Smith, Jr.
Alan Wilson
ATTORNEY GENERAL OF SOUTH CAROLINA
Robert D. Cook
Solicitor General
James Emory Smith, Jr.
Deputy Solicitor General
Counsel of Record
P.O. Box 11549
Columbia, SC 29211
Tel: (803) 734-3680
Fax: (803) 734-3677
esmith@scag.gov

Counsel for Petitioner State of South Carolina

/s/ Steven R. Blair
Marty J. Jackley
ATTORNEY GENERAL OF SOUTH DAKOTA
Steven R. Blair
Assistant Attorney General
Counsel of Record
1302 E. Highway 14, Suite 1
Pierre, SD 57501
Tel: (605) 773-3215
steven.blair@state.sd.us

Counsel for Petitioner State of South Dakota

/s/ P. Stephen Gidiere III
P. Stephen Gidiere III
Thomas L. Casey III
Julia B. Barber
BALCH & BINGHAM LLP
1901 6th Ave. N., Suite 1500
Birmingham, AL 35203
Tel: (205) 251-8100
sgidiere@balch.com

Stephanie Z. Moore
Executive Vice President & General Counsel
VISTRA ENERGY CORP.
6555 Sierra Drive
Irving, Texas 75039

Daniel J. Kelly
Vice President & Associate General Counsel
VISTRA ENERGY CORP.
6555 Sierra Drive
Irving, Texas 75039

Counsel for Petitioners Luminant Generation Company LLC; Oak Grove Management Company LLC; Big Brown Power Company LLC; Sandow Power Company LLC; Big Brown Lignite Company LLC; Luminant Mining Company LLC; and Luminant Big Brown Mining Company LLC

/s/ Tyler R. Green
Sean Reyes
ATTORNEY GENERAL OF UTAH
Tyler R. Green
Solicitor General
Counsel of Record
Parker Douglas
Federal Solicitor
Utah State Capitol Complex
350 North State Street, Suite 230
Salt Lake City, UT 84114-2320
pdouglas@agutah.gov

Counsel for Petitioner State of Utah

/s/ Misha Tseytlin
Brad D. Schimel
ATTORNEY GENERAL OF WISCONSIN
Misha Tseytlin
Solicitor General
Counsel of Record
Delanie M. Breuer
Chief of Staff
Wisconsin Department of Justice
17 West Main Street
Madison, WI 53707
Tel: (608) 267-9323
tseytlinm@doj.state.wi.us

Counsel for Petitioner State of Wisconsin

/s/ Ronald J. Tenpas
Ronald J. Tenpas
MORGAN, LEWIS & BOCKIUS LLP
1111 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 739-3000
rtenpas@morganlewis.com

Counsel for Petitioner Minnesota Power (an operating division of ALLETE, Inc.)

/s/ Allison D. Wood
Allison D. Wood
Tauna M. Szymanski
Andrew D. Knudsen
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 955-1500
awood@HuntonAK.com
tszymanski@HuntonAK.com
aknudsen@HuntonAK.com

Counsel for Petitioner Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

/s/ James Kaste
Peter K. Michael
ATTORNEY GENERAL OF WYOMING
James Kaste
Deputy Attorney General
Counsel of Record
Erik Petersen
Wyoming Attorney General's Office
2320 Capitol Avenue
Cheyenne, WY 82002
Tel: (307) 777-6946
Fax: (307) 777-3542
james.kaste@wyo.gov

Counsel for Petitioner State of Wyoming

/s/ Dennis Lane
Dennis Lane
STINSON LEONARD STREET LLP
1775 Pennsylvania Ave., N.W., Suite 800
Washington, D.C. 20006
Tel: (202) 785-9100
Fax: (202) 785-9163
dennis.lane@stinson.com

Parthenia B. Evans
STINSON LEONARD STREET LLP
1201 Walnut Street, Suite 2900
Kansas City, MO 64106
Tel: (816) 842-8600
Fax: (816) 691-3495
parthy.evans@stinson.com

Counsel for Petitioner Kansas City Board of Public Utilities – Unified Government of Wyandotte County/Kansas City, Kansas

/s/ Megan H. Berge
Megan H. Berge
William M. Bumpers
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
william.bumpers@bakerbotts.com

Counsel for Petitioner NorthWestern Corporation d/b/a NorthWestern Energy

/s/ Joshua R. More
Joshua R. More
Jane E. Montgomery
Amy Antoniolli
SCHIFF HARDIN LLP
233 South Wacker Drive
Suite 7100
Chicago, IL 60606
Tel: (312) 258-5500
jmore@schiffhardin.com
jmontgomery@schiffhardin.com
aantoniolli@schiffhardin.com

Counsel for Petitioner Prairie State Generating Company, LLC

/s/ Allison D. Wood
Allison D. Wood
Tauna M. Szymanski
Andrew D. Knudsen
HUNTON ANDREWS KURTH LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 955-1500
awood@HuntonAK.com
tszymanski@HuntonAK.com
aknudsen@HuntonAK.com

Counsel for Petitioner Tri-State Generation and Transmission Association, Inc.

/s/ Megan H. Berge
Megan H. Berge
William M. Bumpers
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
william.bumpers@bakerbotts.com

Counsel for Petitioner Westar Energy, Inc.

/s/ Jeffrey R. Holmstead
Jeffrey R. Holmstead
Brittany M. Pemberton
BRACEWELL LLP
2001 M Street, N.W., Suite 900
Washington, D.C. 20036
Tel: (202) 828-5852
Fax: (202) 857-4812
jeff.holmstead@bracewelllaw.com

Counsel for Petitioner American Coalition for Clean Coal Electricity

/s/ John D. Lazzaretti
John D. Lazzaretti
SQUIRE PATTON BOGGS (US) LLP
4900 Key Tower
127 Public Square
Cleveland, OH 44114
Tel: (216) 479-8350
john.lazzaretti@squirepb.com

Counsel for Petitioner Murray Energy Corporation

/s/ Andrew C. Emrich
Andrew C. Emrich
HOLLAND & HART LLP
6380 South Fiddlers Green Circle
Suite 500
Greenwood Village, CO 80111
Tel: (303) 290-1621
Fax: (866) 711-8046
acemrich@hollandhart.com

Emily C. Schilling
HOLLAND & HART LLP
222 South Main Street, Suite 2200
Salt Lake City, UT 84101
Tel: (801) 799-5753
Fax: (202) 747-6574
ecschilling@hollandhart.com

Counsel for Petitioners Newmont Nevada Energy Investment, LLC and Newmont USA Limited

/s/ Charles T. Wehland
Charles T. Wehland
JONES DAY
77 West Wacker Drive, Suite 3500
Chicago, IL 60601-1692
Tel: (312) 782-3939
Fax: (312) 782-8585
ctwehland@jonesday.com

Counsel for Petitioners The North American Coal Corporation; The Coteau Properties Company; Coyote Creek Mining Company, L.L.C.; The Falkirk Mining Company; Mississippi Lignite Mining Company; North American Coal Royalty Company; NODAK Energy Services, LLC; Otter Creek Mining Company, LLC; and The Sabine Mining Company

/s/ Robert G. McLusky
Robert G. McLusky
JACKSON KELLY, PLLC
1600 Laidley Tower
P.O. Box 553
Charleston, WV 25322
Tel: (304) 340-1000
rmclusky@jacksonkelly.com

Counsel for Petitioner West Virginia Coal Association

/s/ Eugene M. Trisko
Eugene M. Trisko
LAW OFFICES OF EUGENE M. TRISKO
P.O. Box 596
Berkeley Springs, WV 25411
Tel: (301) 639-5238
emtrisko7@gmail.com

Counsel for Petitioner International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers

/s/ Eugene M. Trisko
Eugene M. Trisko
LAW OFFICES OF EUGENE M. TRISKO
P.O. Box 596
Berkeley Springs, WV 25411
Tel: (301) 639-5238
emtrisko7@gmail.com

Counsel for Petitioner International Brotherhood of Electrical Workers, AFL-CIO

/s/ Eugene M. Trisko
Eugene M. Trisko
LAW OFFICES OF EUGENE M. TRISKO
P.O. Box 596
Berkeley Springs, WV 25411
Tel: (301) 639-5238
emtrisko7@gmail.com

Grant F. Crandall
General Counsel (Ret.)
UNITED MINE WORKERS OF AMERICA
18354 Quantico Gateway Drive
Triangle, VA 22172
Tel: (703) 291-2429
gcrandall@umwa.org

Arthur Traynor, III
Counsel
UNITED MINE WORKERS OF AMERICA
18354 Quantico Gateway Drive
Triangle, VA 22172
Tel: (571) 383-4013
atraynor@umwa.org

Counsel for Petitioner United Mine Workers of America

/s/ Steven P. Lehotsky
Steven P. Lehotsky
Michael B. Schon
U.S. CHAMBER LITIGATION CENTER
1615 H Street, N.W.
Washington, D.C. 20062
Tel: (202) 463-5337
slehotsky@uschamber.com

Counsel for Petitioner Chamber of Commerce of the United States of America

/s/ Peter Tolsdorf
Peter Tolsdorf
MANUFACTURERS' CENTER FOR LEGAL ACTION
733 10th Street, N.W., Suite 700
Washington, D.C. 20001
Tel: (202) 637-3000
ptolsdorf@nam.org

Counsel for Petitioner National Association of Manufacturers

/s/ Richard S. Moskowitz
Richard S. Moskowitz
AMERICAN FUEL & PETROCHEMICAL MANUFACTURERS
1667 K Street, N.W., Suite 700
Washington, D.C. 20006
Tel: (202) 457-0480
rmoskowitz@afpm.org

Counsel for Petitioner American Fuel & Petrochemical Manufacturers

/s/ Karen R. Harned
Karen R. Harned
Executive Director
Elizabeth A. Milito
NATIONAL FEDERATION OF INDEPENDENT BUSINESS
SMALL BUSINESS LEGAL CENTER
1201 F Street, N.W., Suite 200
Washington, D.C. 20004
Tel: (202) 314-2061
karen.harned@nfib.org
elizabeth.milito@nfib.org

Counsel for Petitioner National Federation of Independent Business

/s/ Megan H. Berge
Megan H. Berge
William M. Bumpers
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
william.bumpers@bakerbotts.com

Counsel for Petitioner National Association of Home Builders

/s/ Kathryn D. Kirmayer
Kathryn D. Kirmayer
General Counsel
Evelyn R. Nackman
Associate General Counsel
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
Tel: (202) 639-2100
kkirmayer@aar.org

Counsel for Petitioner Association of American Railroads

/s/ Chaim Mandelbaum
Chaim Mandelbaum
Litigation Manager
FREE MARKET ENVIRONMENTAL LAW CLINIC
726 N. Nelson Street, Suite 9
Arlington, VA 22203
Tel: (703) 577-9973
chaim12@gmail.com

Counsel for Petitioner Energy and Environment Legal Institute

/s/ Catherine E. Stetson
Catherine E. Stetson
Eugene A. Sokoloff
HOGAN LOVELLS US LLP
555 Thirteenth Street, N.W.
Washington, D.C. 20004-1109
Tel: (202) 637-5600
Fax: (202) 637-5910
cate.stetson@hoganlovells.com
eugene.sokoloff@hoganlovells.com

Counsel for Petitioner Denbury Onshore, LLC

/s/ Adam R.F. Gustafson
C. Boyden Gray
Adam R.F. Gustafson
Counsel of Record
James R. Conde
BOYDEN GRAY & ASSOCIATES, PLLC
801 17th Street, N.W., Suite 350
Washington, D.C. 20006
Tel: (202) 955-0620
gustafson@boydengrayassociates.com

Counsel for Petitioners Competitive Enterprise Institute; Buckeye Institute for Public Policy Solutions; Independence Institute; Rio Grande Foundation; Sutherland Institute; Klaus J. Christoph; Samuel R. Damewood; Catherine C. Dellin; Joseph W. Luquire; Lisa R. Markham; Patrick T. Peterson; and Kristi Rosenquist

Sam Kazman
COMPETITIVE ENTERPRISE INSTITUTE
1310 L Street, N.W., 7th Floor
Washington, D.C. 20005
Tel: (202) 331-1010

Counsel for Petitioner Competitive Enterprise Institute

Robert Alt
BUCKEYE INSTITUTE FOR PUBLIC POLICY SOLUTIONS
88 E. Broad Street, Suite 1120
Columbus, OH 43215
Tel: (614) 224-4422
robert@buckeyeinstitute.org

Counsel for Petitioner Buckeye Institute for Public Policy Solutions

/s/ Tristan L. Duncan
Tristan L. Duncan
SHOOK HARDY & BACON L.L.P.
2555 Grand Boulevard
Kansas City, MO 64018
Tel: (816) 474-6550
Fax: (816) 421-5547
tlduncan@shb.com

Counsel for Petitioner-Intervenors Dixon Bros., Inc., Nelson Brothers, Inc., Wesco International, Inc., Norfolk Southern Corp., Joy Global, Inc., and Gulf Coast Lignite Coalition

/s/ Jonathan S. Massey
Jonathan S. Massey
MASSEY & GAIL, LLP
1325 G Street, N.W., Suite 500
Washington, D.C. 20005
Tel: (202) 652-4511
Fax: (312) 379-0467
jmassey@masseygail.com

Shay Dvoretzky
Charles T. Wehland
JONES DAY
51 Louisiana Avenue, N.W.
Washington, D.C. 20001
Tel: (202) 879-3939
Fax: (202) 879-1600
sdvoretzky@jonesday.com
ctwehland@jonesday.com

Counsel for Petitioner-Intervenor Peabody Energy Corporation

/s/ Mark Walters
Mark Walters
Michael Nasi
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, TX 78701
Tel: (512) 236-2000
mwalters@jw.com
mnasi@jw.com

Douglas Bryan Hughes
LAW OFFICES OF D. BRYAN HUGHES
701 N. Pacific Street
Mineola, TX 75773
Tel: (903) 569-8880
bryan@hughesfirm.com

Counsel for Petitioner-Intervenor Gulf Coast Lignite Coalition

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27(d)(2) and 32(g) of the Federal Rules of Appellate Procedure and Circuit Rules 32(a)(1) and 32(e)(1), I hereby certify that the foregoing document contains 2,965 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

Dated: September 14, 2018

/s/ Allison D. Wood
Allison D. Wood

CERTIFICATE OF SERVICE

I hereby certify that, on this 14th day of September 2018, a copy of the foregoing Petitioners' and Petitioner-Intervenors' Response in Opposition to Motion to Decide the Merits of the Case was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Allison D. Wood
Allison D. Wood