NO. ______

IN THE SUPREME COURT OF THE UNITED STATES

Basin Electric Power Cooperative, et al.

Applicants,

v.

United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency

Respondents.

Application of Utility and Allied Parties for Immediate Stay of Final Agency Action Pending Appellate Review

DIRECTED TO THE HONORABLE JOHN G. ROBERTS, JR., CHIEF JUSTICE OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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Basin Electric Power Cooperative
Big Brown Lignite Company, LLC
Big Brown Power Company, LLC
Big Rivers Electric Corporation
Brazos Electric Power Cooperative, Inc.
Buckeye Power, Inc.
Central Montana Electric Power Cooperative
Central Power Electric Cooperative, Inc.
CO_2 Task Force of the Florida Electric Power Coordinating Group, Inc.
Corn Belt Power Cooperative
Dairyland Power Cooperative
Deseret Generation & Transmission Co-operative
East Kentucky Power Cooperative, Inc.
East River Electric Power Cooperative, Inc.
East Texas Electric Cooperative, Inc.
Energy & Environment Legal Institute
Georgia Power Company
Georgia Transmission Corporation
Golden Spread Electrical Cooperative, Inc.
Gulf Power Company
Hoosier Energy Rural Electric Cooperative, Inc.
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers
Kansas Electric Power Cooperative, Inc.
Luminant Big Brown Mining Company, LLC
Luminant Generation Company, LLC
Luminant Mining Company, LLC
Minnkota Power Cooperative, Inc.
Mississippi Power Company
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.
National Rural Electric Cooperative Association
North Carolina Electric Membership Corporation
Northeast Texas Electric Cooperative, Inc.
Northwest Iowa Power Cooperative
NorthWestern Corporation d/b/a NorthWestern Energy
Oak Grove Management Company, LLC
Oglethorpe Power Corporation

PowerSouth Energy Cooperative
Prairie Power, Inc.
Rushmore Electric Power Cooperative, Inc.
Sam Rayburn G&T Electric Cooperative, Inc.
San Miguel Electric Cooperative, Inc.
Sandow Power Company, LLC
Seminole Electric Cooperative, Inc.
South Mississippi Electric Power Association
South Texas Electric Cooperative, Inc.
Southern Illinois Power Cooperative
Sunflower Electric Power Corporation
Tex-La Electric Cooperative of Texas, Inc.
Tri-State Generation and Transmission Association, Inc.
United Mine Workers of America
Upper Missouri G. & T. Electric Cooperative, Inc.
Utility Air Regulatory Group
Wabash Valley Power Association, Inc.
Westar Energy, Inc.
Western Farmers Electric Cooperative
Wolverine Power Supply Cooperative, Inc.

CORPORATE DISCLOSURE STATEMENTS

Alabama Power Company is a wholly-owned subsidiary of Southern Company, which is a publicly held corporation. Other than Southern Company, no publicly-held company owns 10% or more of Alabama Power Company's stock. Southern Company is traded publicly on the New York Stock Exchange under the symbol "SO."

American Public Power Association ("APPA") is the national association of publicly-owned electric utilities. APPA has no outstanding shares or debt securities in the hands of the public. APPA has no parent company. No publicly held company has a 10% or greater ownership in APPA.

Arizona Electric Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Arizona Electric Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Associated Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Associated Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Basin Electric Power Cooperative ("Basin Electric") is a not-for-profit regional wholesale electric generation and transmission cooperative owned by other 100 member cooperatives. Basin Electric provides wholesale power to member rural electric systems in nine states, with electric generation facilities in North Dakota, South Dakota, Wyoming, Montana, and Iowa serving approximately 2.8 million customers. Basin Electric has no parent companies. There are no publicly held corporations that have a 10% or greater ownership interest in Basin Electric.

Big Brown Lignite Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Big Brown Power Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a

Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Big Rivers Electric Corporation has no parent corporation. No publicly held corporation owns any portion of Big Rivers Electric Corporation, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Brazos Electric Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Brazos Electric Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Buckeye Power, Inc. has no parent corporation. No publicly held corporation owns any portion of Buckeye Power, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Central Montana Electric Power Cooperative has no parent corporation. No publicly held corporation owns any portion of Central Montana Electric Power Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Central Power Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Central Power Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

CO_2 Task Force of the Florida Electric Power Coordinating Group, Inc. ("FCG") is a non-profit, non-governmental corporate entity organized under the laws of Florida. The FCG does not have a parent corporation. No publicly held corporation owns 10% or more of the FCG's stock.

Corn Belt Power Cooperative has no parent corporation. No publicly held corporation owns any portion of Corn Belt Power Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Dairyland Power Cooperative has no parent corporation. No publicly held corporation owns any portion of Dairyland Power Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Deseret Generation & Transmission Co-operative has no parent corporation. No publicly held corporation owns any portion of Deseret Generation & Transmission Co-operative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

East Kentucky Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of East Kentucky Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

East River Electric Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of East River Electric Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

East Texas Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of East Texas Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Energy & Environment Legal Institute ("EELI") is a non-profit, non-governmental corporate entity organized under the laws of the Commonwealth of Virginia. EELI does not have a parent corporation. No publicly held corporation owns 10% or more of EELI's stock.

Georgia Power Company is a wholly-owned subsidiary of Southern Company, which is a publicly held corporation. Other than Southern Company, no publicly-held company owns 10% or more of Georgia Power Company's stock. Southern Company is traded publicly on the New York Stock Exchange under the symbol "SO."

Georgia Transmission Corporation has no parent corporation. No publicly held corporation owns any portion of Georgia Transmission Corporation, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Golden Spread Electrical Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Golden Spread Electrical Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Gulf Power Company is a wholly-owned subsidiary of Southern Company, which is a publicly held corporation. Other than Southern Company, no publicly-held company owns 10% or more of Gulf Power Company's stock. Southern Company is traded publicly on the New York Stock Exchange under the symbol "SO."

Hoosier Energy Rural Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Hoosier Energy Rural Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers, and Helpers ("IBB") is a non-profit national labor organization with headquarters in Kansas City, Kansas. IBB's members are active and retired members engaged in various skilled trades of welding and fabrication of boilers, ships, pipelines, and other industrial facilities and equipment in the United States and Canada, and workers in other industries in the United States organized by the IBB. IBB provides collective bargaining representation and other membership services on behalf of its members. IBB is affiliated with the American Federation of Labor-Congress of Industrial Organizations. IBB and its affiliated lodges own approximately 60 percent of the outstanding stock of Brotherhood Bancshares, Inc., the holding company of the Bank of Labor. Bank of Labor's mission is to serve the banking and other financial needs of the North American labor movement. No entity owns 10% or more of IBB.

Kansas Electric Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Kansas Electric Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Luminant Big Brown Mining Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Luminant Generation Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Luminant Mining Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Minnkota Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Minnkota Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Mississippi Power Company is a wholly-owned subsidiary of Southern Company, which is a publicly held corporation. Other than Southern Company, no publicly-held company owns 10% or more of Mississippi Power Company's stock. Southern Company is traded publicly on the New York Stock Exchange under the symbol "SO."

Montana-Dakota Utilities Co. is engaged in the distribution of natural gas and the generation, transmission, and distribution of electricity in the states of North Dakota, South Dakota, Montana, and Wyoming. Montana-Dakota Utilities Co. is a division of MDU Resources Group, Inc. No publicly held company has a 10% or greater ownership interest in MDU Resources Group, Inc.

National Rural Electric Cooperative Association has no parent corporation. No publicly held corporation owns any portion of National Rural Electric Cooperative Association, and it is not a subsidiary or an affiliate of any publicly owned corporation.

North Carolina Electric Membership Corporation has no parent corporation. No publicly held corporation owns any portion of North Carolina Electric Membership Corporation, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Northeast Texas Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Northeast Texas Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Northwest Iowa Power Cooperative has no parent corporation. No publicly held corporation owns any portion of Northwest Iowa Power Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

NorthWestern Corporation is a publicly traded company (NYSE: NWE) incorporated in the State of Delaware with corporate offices in Butte, Montana and Sioux Falls, South Dakota. NorthWestern Corporation has no parent corporation.

Two investment fund families own more than 10% or more of NorthWestern Corporation's stock. They are Black Rock Fund Advisors (approximately 15%) and Deutsche Asset and Wealth Management (approximately 11%). In addition to publicly traded stock, NorthWestern Corporation has issued debt and bonds to the public.

Oak Grove Management Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Oglethorpe Power Corporation has no parent corporation. No publicly held corporation owns any portion of Oglethorpe Power Corporation, and it is not a subsidiary or an affiliate of any publicly owned corporation.

PowerSouth Energy Cooperative has no parent corporation. No publicly held corporation owns any portion of PowerSouth Energy Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Prairie Power, Inc. has no parent corporation. No publicly held corporation owns any portion of Prairie Power, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Rushmore Electric Power Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Rushmore Electric Power Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Sam Rayburn G&T Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Sam Rayburn G&T Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

San Miguel Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of San Miguel Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Sandow Power Company, LLC is a wholly owned subsidiary of Luminant Holding Company LLC, which is a Delaware limited liability company and is a wholly owned subsidiary of Texas Competitive Electric Holdings Company LLC ("TCEH"). TCEH is a Delaware limited liability company and is a wholly owned subsidiary of Energy Future Competitive Holdings Company ("EFCH"), which is a Texas corporation and a wholly owned subsidiary of Energy Future Holdings Corp. ("EFH Corp."). Substantially all of the common stock of EFH Corp., a Texas corporation, is owned by Texas Energy Future Holdings Limited Partnership, which is a privately held limited partnership. No publicly held entities have a 10% or greater equity ownership interest in EFH Corp.

Seminole Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Seminole Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

South Mississippi Electric Power Association has no parent corporation. No publicly held corporation owns any portion of South Mississippi Electric Power Association, and it is not a subsidiary or an affiliate of any publicly owned corporation.

South Texas Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of South Texas Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Southern Illinois Power Cooperative has no parent corporation. No publicly held corporation owns any portion of Southern Illinois Power Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Sunflower Electric Power Corporation has no parent corporation. No publicly held corporation owns any portion of Sunflower Electric Power Corporation, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Tex-La Electric Cooperative of Texas, Inc. has no parent corporation. No publicly held corporation owns any portion of Tex-La Electric Cooperative of Texas, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Tri-State Generation and Transmission Association, Inc. ("Tri-State") is a wholesale electric power supply cooperative which operates on a not-for-profit basis and is owned by 1.5 million member-owners and 44 distribution cooperatives. Tri-State issues no stock and has no parent corporation. Accordingly, no publicly held corporation owns 10% or more of its stock.

United Mine Workers of America ("UMWA") is a non-profit national labor organization with headquarters in Triangle, Virginia. UMWA's members are active and retired miners engaged in the extraction of coal and other minerals in the United States and Canada, and workers in other industries in the United States organized by the UMWA. UMWA provides collective bargaining representation and other membership services on behalf of its members. UMWA is affiliated with the America Federation of Labor-Congress of Industrial Organizations. UMWA has no parent companies, subsidiaries, or affiliates that have issued shares or debt securities to the public.

Upper Missouri G. & T. Electric Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Upper Missouri G. & T. Electric Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Utility Air Regulatory Group ("UARG") is a not-for-profit association of individual generating companies and national trade associations that participates on behalf of its members collectively in administrative proceedings under the Clean Air Act, and in litigation arising from those proceedings, that affect electric generators. UARG has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in UARG.

Wabash Valley Power Association, Inc. has no parent corporation. No publicly held corporation owns any portion of Wabash Valley Power Association, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

Western Farmers Electric Cooperative has no parent corporation. No publicly held corporation owns any portion of Western Farmers Electric Cooperative, and it is not a subsidiary or an affiliate of any publicly owned corporation.

Westar Energy, Inc. ("Westar") is a publicly traded company (symbol: WR) incorporated in the State of Kansas, with its principal place of business in the city of Topeka, Kansas. Westar is the parent corporation of Kansas Gas and Electric Company ("KGE"), a Kansas corporation with its principal place of business in Topeka, Kansas. Westar owns all of the stock of KGE. In addition to Westar's publicly traded stock, both Westar and KGE have issued debt and bonds to the public. Westar does not have any parent companies that have a 10% or greater ownership interest in Westar. Further, there is no publicly-held company that has a 10% or greater ownership interest in Westar.

Wolverine Power Supply Cooperative, Inc. has no parent corporation. No publicly held corporation owns any portion of Wolverine Power Supply Cooperative, Inc., and it is not a subsidiary or an affiliate of any publicly owned corporation.

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Southwest Power Pool, Inc., Comments on Proposed Rule
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TABLE OF AUTHORITIES

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Hollingsworth v. *Perry*,
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Other Authorities

AM. COAL. FOR CLEAN COAL ELEC., *Climate Effects of EPA's Proposed Carbon Regulations*, www.americaspower.org/sites/default/files/Climate%20Effects%20Issue%20 Paper%20June%202014.pdf 7

Timothy Cama & Lydia Wheeler, *Supreme Court overturns landmark EPA air pollution rule*, THE HILL (June 29, 2015, 10:38 AM), http://thehill.com/policy/energy-environment/246423-supreme-court-overturns-epa-air-pollution-rule 3

EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule* (Aug. 2015), www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis 7, 19

Tiffany Kary, Ramsey Al-Rikabi & Ben Sharples, *Arch Coal Files for Bankruptcy in Latest Blow to U.S. Miners*, BLOOMBERG BUS. (Jan. 11, 2016), www.bloomberg.com/news/articles/2016-01-11/arch-coal-files-for-bankruptcy-reaches-4-5-billion-debt-deal 3

David A. Lieb, *Renewable-energy efforts stymied by transmission roadblocks*, ASSOCIATED PRESS (Dec. 22, 2015), http://bigstory.ap.org/article/0462fcffedd749c2a7e0e729be79d681/renewable-energy-efforts-stymied-transmission-roadblocks 18

Janet McCabe, *In Perspective: the Supreme Court's Mercury and Air Toxics Rule Decision*, EPA CONNECT (June 30, 2015), https://blog.epa.gov/blog/2015/06/in-perspective-the-supreme-courts-mercury-and-air-toxics-rule-decision/ 3

NERC, *Reliability Review of Proposed Clean Power Plan Identifies Areas for Further Study, Makes Recommendations for Stakeholders* (Nov. 5, 2014), www.nerc.com/news/Headlines%20DL/EPA%2005NOV14_FINAL.pdf 7

NERC, *Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Phase I* (Apr. 2015), www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential%20Reliability%20Impacts 20

Joby Warrick, *White House set to adopt sweeping curbs on carbon pollution*, WASH. POST (Aug. 1, 2015), www.washingtonpost.com/national/healthscience/white-house-set-to-adopt-sweeping-curbs-oncarbon-pollution/2015/08/01/ba6627fa-385c-11e5-b673-1df005a0fb28_story.html 2

GLOSSARY

APA	Administrative Procedure Act
CAA	Clean Air Act
CO_2	Carbon dioxide
EGU	Electric Generating Unit
EIA	United States Energy Information Administration
EPA	United States Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
MATS	Mercury Air Toxics Standards
MW	Megawatts
NERC	North American Electric Reliability Corporation
NEPA	National Environmental Policy Act

To the Honorable John G. Roberts, Jr., Chief Justice of the United States and Circuit Justice for the United States Court of Appeals for the District of Columbia Circuit:

The Applicant utilities and allied parties respectfully ask this Court to immediately stay the effectiveness of the final rule of the United States Environmental Protection Agency (EPA) entitled Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015), known as the Clean Power Plan.[1] The Applicants have petitions for review of the rule pending in the United States Court of Appeals for the District of Columbia Circuit. Almost all of the Applicants filed motions with that court seeking a stay of the rule on October 23, 2015, which was the day the rule was published in the Federal Register and the first day such a motion could be filed. The other Applicants filed stay motions by November 5, 2015. The D.C. Circuit denied the stay motions on January 21, 2016.[2]

The Applicants agree with and hereby incorporate the Application By 29 States and State Agencies For Immediate Stay Of Final Agency Action During Pendency Of Petitions For Review, filed with this Court on January 26, 2016 (the States' Stay Application). The Applicants will not repeat the States' arguments here, but will amplify the reasons why EPA's rule poses immediate and irreparable harm to the utility industry, as demonstrated in more detail in the declarations and reports accompanying this application.

[1] The rule is provided in the appendix at a003.

[2] Order, State of West Virginia v. EPA, No. 15-1363 (D.C. Cir. Jan. 21, 2016) (a001).

INTRODUCTION

EPA's rule "'aggressive[ly] transform[s] . . . the domestic energy industry,'"[3] and is provoking an immediate and unprecedented restructuring of the nation's energy supply. Having "discover[ed] in a long-extant statute an unheralded power to regulate a significant portion of the American economy," *Util. Air Regulatory Grp.* v. *EPA*, 134 S. Ct. 2427, 2444 (2014) (*UARG*), EPA is now wielding that power to force the energy industry to shift massive amounts of energy production away from existing coal-fired power plants in favor of new natural gas, wind, and solar facilities. EPA has set emission limits for existing coal-fired plants that it admits those plants cannot meet on their own, forcing the plant owners to construct (or subsidize the construction of) new wind, solar, and natural gas facilities, and increased usage from existing natural gas turbines, in order to "blend down" total emissions across the entire energy sector. This is an unprecedented attempt to reduce emissions through the restructuring of an entire industry rather than limiting emissions at specific sources.

Although the rule's initial emission reduction obligations do not take effect until 2022, utilities require many years to plan, develop, site, and construct the billions of dollars of new facilities and new infrastructure required to implement EPA's mandates. The rule thus is forcing the immediate investment of billions of dollars in technically unneeded—but now mandated—electrical generation and

[3] Joby Warrick, *White House set to adopt sweeping curbs on carbon pollution*, WASH. POST (Aug. 1, 2015), www.washingtonpost.com/national/healthscience/white-house-set-to-adopt-sweeping-curbs-oncarbon-pollution/2015/08/01/ba6627fa-385c-11e5-b673-1df005a0fb28_story.html (quoting White House Fact Sheet).

transmission infrastructure. Additionally, the rule has sharply curbed new capital investment in existing coal-fired facilities and is triggering the premature closure of coal-fired power plants and coal mines across the country. Some of the nation's largest coal companies have declared bankruptcy, due in no small part to the rule.[4] EPA itself predicts the imminent closure of many coal-fired plants that, absent the rule, would continue operating.[5] Therefore, as discussed further below, grievous irreparable harm is occurring and will continue absent a stay.

Because of the time it will take to litigate the case, absent a stay EPA likely will obtain its desired transformation of the power sector through irreversible investments, even if its rule is ultimately struck down. EPA has trumpeted precisely this result before. When this Court rejected EPA's justification for its Mercury Air Toxics Standards (the MATS rule) last term in *Michigan* v. *EPA*, 135 S. Ct. 2699 (2015), EPA Administrator Gina McCarthy boasted that because of the time it took to litigate the rule "the majority of power plants are already in compliance or well on their way to compliance"[6] and "investments have been made."[7] McCarthy reported, "we're still going to get at the toxic pollution from

[4] *E.g.*, Tiffany Kary, Ramsey Al-Rikabi & Ben Sharples, *Arch Coal Files for Bankruptcy in Latest Blow to U.S. Miners*, BLOOMBERG BUS. (Jan. 11, 2016), www.bloomberg.com/news/articles/2016-01-11/arch-coal-files-for-bankruptcy-reaches-4-5-billion-debt-deal.

[5] Schwartz Decl. ¶¶ 18–22, 27–38 (a727–30, a733–39); Energy Ventures Analysis, Inc., Evaluation of the Immediate Impact of the Clean Power Plan Rule on the Coal Industry at 15, 62–63 (Oct. 2015) (EVA Report) (a765, a812–13).

[6] Janet McCabe, *In Perspective: the Supreme Court's Mercury and Air Toxics Rule Decision*, EPA CONNECT (June 30, 2015), https://blog.epa.gov/blog/2015/06/in-perspective-the-supreme-courts-mercury-and-air-toxics-rule-decision/.

[7] Timothy Cama & Lydia Wheeler, *Supreme Court overturns landmark EPA air pollution rule*, THE HILL (June 29, 2015, 10:38 AM), http://thehill.com/policy/energy-environment/246423-supreme-court-overturns-epa-air-pollution-rule.

these facilities" regardless of this Court's ruling.[8] The D.C. Circuit now has declined to vacate the MATS rule pending remand after EPA urged that "most sources have already complied with the Rule or have taken steps towards complying, and therefore have already made the necessary capital investments to install controls and have incorporated compliance into their business strategies."[9] Absent this Court's intercession, the same will occur here on a much larger scale.

EPA has ignored requests to stay its hand pending litigation, and the D.C. Circuit has declined to provide any relief during the pendency of the appeal. Although the D.C. Circuit expedited the briefing, the court cannot be expected to rule until well into the third quarter of the year at best, followed potentially by *en banc* review and review by this Court in 2017, just one year before final state plans are due to EPA and after most utilities will have begun making irreversible commitments in an attempt to be in a position to comply with the rule by 2022. Immediate relief is therefore needed from this Court to protect this Court's jurisdiction to afford effective—rather than largely symbolic—relief for the many utilities across the country already scrambling in response to this latest rule.

Moreover, there is a strong possibility this rule will not withstand judicial review, just as the MATS rule and the EPA rule reviewed in *UARG* did not. As explained in the States' Stay Application, EPA has again claimed a dramatic expansion of its Clean Air Act (CAA) regulatory authority, this time claiming that

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[8] Id.

[9] EPA Resp. to Pet'rs' Mot. to Govern Future Proceedings, White Stallion v. EPA, No. 12-1100 at 14–15 (D.C. Cir. Oct. 21, 2015); see also Per Curiam Order, White Stallion v. EPA, No. 12-1100 (D.C. Cir. Dec. 15, 2015). See generally McInnes Decl. ¶ 22 (a650–51).

the existing "sources" it has the power to regulate under § 111(d) of the CAA include not only the existing power plants themselves, as defined by § 111(a)(1), but also the owners and operators of those plants and the entire electric grid. EPA asserts that owners and operators can be required to shut down or curtail existing coal plants and build or purchase replacement power from other, lower- or zero-emitting energy resources. By its terms, however, CAA § 111 is limited to regulating emissions through standards of performance applied to individual sources—not regulating the gross emissions of an entire industry through coerced shifting of production to other sources with fewer or no CO_2 emissions. Thus, even more so than in *UARG*, EPA has invoked an alleged "long extant" power to "regulate a significant portion of the American economy" without express congressional approval. 134 S. Ct. at 2444.

Therefore, the Applicants respectfully request a stay of EPA's rule and an extension of the rule's compliance deadlines pending final disposition of their legal challenges to the rule, including potentially on certiorari review by this Court.

OPINION BELOW

The D.C. Circuit's unpublished Order denying the Applicants' motions to stay is provided in the appendix at a001. EPA's rule is provided at a0003.

JURISDICTION

The Court has jurisdiction and authority to grant the relief requested in this application pursuant to 5 U.S.C. § 705, 28 U.S.C. § 1254(1), and 28 U.S.C. § 1651(a).

CONSTITUTIONAL, STATUTORY AND REGULATORY PROVISIONS

All pertinent statutory and regulatory provisions are provided in the appendix to the States' Stay Application.

STATEMENT OF THE CASE

The States' Stay Application provides the relevant statutory and regulatory background. The Applicants here focus on the particular irreparable harms to the utility industry as a result of the rule.

For the first time ever, rather than simply creating guidelines based on available emission controls for the States to use to define unit-specific performance standards, EPA has created binding emission reduction requirements for existing fossil fuel-fired electric generating units (EGUs) that cannot be achieved by any individual EGU and will require restructuring the entire electric sector to achieve industry-wide emission targets. EPA set final 2030 "emission performance rates" of 1,305 pounds of carbon dioxide (CO_2) per megawatt hour for existing fossil steam plants and 771 pounds of CO_2 per megawatt hour for existing natural gas stationary turbines.[10] EPA also set "mandatory reduction" requirements for the periods of 2022–2024, 2025–2027, and 2028–2029 as "interim performance rates" to create a "glide path" to meet the final goals.[11]

But EPA concedes that no pollution control technique or process can be installed at any existing EGU to achieve these rates.[12] This means existing source owners wishing to continue operation must curtail their plants' usage and purchase replacement generation, either from renewable energy sources or via "emission

[10] 80 Fed. Reg. at 64,742.

[11] Id. at 64,827–28.

[12] Id. at 64,728 ("[M]ost of the CO_2 controls need to come in the form of those other measures . . . that involve, in one form or another, replacement of higher emitting generation with lower- or zero-emitting generation."). The utility declarations further demonstrate that existing sources cannot meet the new emissions rates. See, *e.g.*, Brummett Decl. ¶¶ 16–17 (a314–15); K. Johnson Decl. ¶¶ 26–27 (a561–62); L. Johnson Decl. ¶¶ 6, 23 (a571, a580–81).

credits" from a market EPA expects to emerge, to concoct a blended emission level that can comply with EPA's rule.[13]

EPA estimates that, as a result of the rule, coal-fired generation will fall nearly 50% from current levels.[14] The U.S. Energy Information Administration (EIA) projects that, without the rule, coal-fired generating units would supply 38% to 41% of the nation's electricity through 2030, in line with historic norms.[15] With the rule, EPA projects that coal-fired generation's share of power supply will drop to 33% by 2020 and 27% by 2030—the lowest recorded level since its advent.[16] The coal plants shuttered by the rule will be replaced by new renewable generation and increased production from natural gas generators. By any measure, this is transformational. The North American Electric Reliability Corporation (NERC), the body charged with protecting the grid's reliability, agrees: EPA "proposes a very different mix of power resources than we have today."[17]

EPA's reason for this draconian restructuring of the nation's power supply is to address climate change. But using EPA's estimate of climate sensitivity, the rule is projected to reduce global temperatures by only 0.016°C *by 2050* and to lower sea level rise by the width of three sheets of paper.[18] At any rate, the rule's initial

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[13] 80 Fed. Reg. at 64,726–28.

[14] EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule* at 2-3, 3-24 (Aug. 2015), www.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis (RIA).

[15] Schwartz Second Decl. ¶¶ 13–14 (a845–47).

[16] Id.

[17] NERC, *Reliability Review of Proposed Clean Power Plan Identifies Areas for Further Study, Makes Recommendations for Stakeholders* (Nov. 5, 2014), www.nerc.com/news/Headlines%20DL/EPA%2005NOV14_FINAL.pdf.

[18] AM. COAL. FOR CLEAN COAL ELEC., *Climate Effects of EPA's Proposed Carbon Regulations*, www.americaspower.org/sites/default/files/Climate%20Effects%20Issue%20Paper%20June%202014.pdf.

emission reduction requirements are not scheduled to go into effect until 2022, so a stay of the rule while the legal challenges are being considered would not materially delay the rule's intended impacts—but would prevent the utilities and others impacted by the rule from having to make irrevocable investments and operating changes before their legal challenges have concluded. On balance, therefore, the equities favor a stay.

REASONS FOR GRANTING THE APPLICATION

This Court should stay the rule. It is very likely the rule will be vacated, if not by the D.C. Circuit then by this Court on certiorari review. Yet if the rule is not stayed pending the Applicants' legal challenge, then by the time review is complete they will have suffered substantial and irreparable harms from having to begin the complex and lengthy process of shutting down or curtailing generation from existing plants and shifting that generation to new sources. In that event, this Court's review may be a futile exercise, as EPA contends it was in the MATS litigation, because those decisions and investments, once made, cannot be reversed. A stay *now* is needed to ensure meaningful review and the availability of meaningful relief.

I. LEGAL STANDARD

This Court may suspend EPA's rule pending completion of litigation on several alternative grounds. As shown below, the Applicants meet the applicable test under any of these alternatives.

First, the Administrative Procedure Act (APA) permits this Court to issue "all necessary and appropriate process to postpone the effective date of an agency action" in order "to prevent irreparable injury." 5 U.S.C. § 705.

Second, a stay is merited under this Court's Rules when the applicant demonstrates: (1) a reasonable probability that the Court will grant certiorari; (2) a fair prospect that the Court will then reverse the decision below; and (3) a likelihood that irreparable harm will result from the denial of a stay. *Maryland* v. *King*, 133 S. Ct. 1, 2 (2012) (Roberts, C.J., in chambers); *Hollingsworth* v. *Perry*, 558 U.S. 183, 190 (2010); see also Supreme Court Rule 23. There is a reasonable probability the Court will grant certiorari if there is "a reasonable probability that 'four Justices will consider the issue sufficiently meritorious to grant certiorari or to note probable jurisdiction.'" *Conkright* v. *Frommert*, 556 U.S. 1401, 1402 (2009) (Ginsberg, J., in chambers) (quoting *Rostker* v. *Goldberg*, 448 U.S. 1306, 1308 (1980) (Brennan, J., in chambers)). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Hollingsworth*, 558 U.S. at 190. As explained below and in the States' Stay Application, all of these considerations weigh in favor of a stay here.

Third, a stay is warranted under the All Writs Act to protect this Court's jurisdiction. Under the All Writs Act, courts, including this Court, have "inherent" authority "to 'issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.'" *Nken* v. *Holder*, 556 U.S. 418, 426 (2009) (quoting 28 U.S.C. § 1651(a)). The issuance of relief under the Act is appropriate when (1) it is "'[n]ecessary or appropriate in aid of [the Court's] jurisdiction'" and (2) "'the legal rights at issue are indisputably clear.'" *Wis. Right to Life, Inc.* v. *Fed. Election Comm'n*, 542 U.S. 1305, 1306 (2004) (Rehnquist, C.J., in chambers) (citations omitted); see also Supreme Court Rule 20. These factors also are satisfied and warrant immediate relief to the Applicants.

As evidenced by the *Michigan* case, a stay or injunction of EPA's rule is required to preserve the Applicants' right to meaningful review of the rule—particularly given that, with the very long lead times necessary to build-out new generation and infrastructure, electric generators cannot defer their compliance actions for the next few years while their appeal makes its way through the courts. All of their actions and expenses undertaken to begin this transformation during the pendency of their appeal cannot later be undone if the rule is held invalid. And a company forced to close its plant, coal mine, or other operation in the next year or two loses any opportunity to obtain effective relief from this Court. See *John Doe Agency* v. *John Doe Corp.*, 488 U.S. 1306, 1309 (1989) (Marshall, J., in chambers) (granting requested stay, and reasoning that if the contested information disclosure were not stayed then the challenge to the propriety of the order requiring disclosure may be moot because reversal by the Court could have no effect).

II. THE RULE IS LIKELY TO BE VACATED AS EXCEEDING THE BOUNDS OF EPA'S STATUTORY AUTHORITY

As explained in the States' Stay Application, the rule is likely to be vacated by the D.C. Circuit or by this Court because (1) its central premises—that States may be required to meet emission reductions based on shifting electricity generation away from fossil-fuel fired power plants, and that a "source" under CAA § 111 includes not only the source itself but also its owner and operator—are unprecedented and unlawful, (2) it unconstitutionally commandeers and coerces

States and their officials into carrying out federal energy policy, and (3) it is unambiguously prohibited by the exclusion of CAA § 112.

EPA's new interpretation of § 111(d) is contrary to the plain language of the statute, departs from forty-five years of settled practice by the agency, and results in an outcome where EPA has authority to reorganize entire industries by compelling source owners to shut down their facilities or curtail their production and to build or purchase replacement production capacity to meet customer needs.

Not one word in the CAA suggests that Congress ever intended to give EPA authority to rearrange industries as a method for regulating emitting sources. Nor is there any language suggesting that Congress ever intended EPA to have the authority to compel the closure of existing sources, representing hundreds of billions of dollars in remaining capital investment, by imposing standards no source can individually meet. Instead, Congress authorized States to consider the remaining useful life of existing facilities that are central to the health and well-being of their local communities and tailor performance standards appropriately.

EPA now claims to have found such authority in five words in § 111(d) ("best system of emission reduction"), contrary to this Court's admonition that where "decisions of vast economic and political significance" are concerned, the statute must "speak clearly" to authorize the agency's action. *UARG*, 134 S. Ct. at 2444 (internal quotation marks omitted). This is particularly so where the agency lacks expertise in the matter. *King* v. *Burwell*, 135 S. Ct. 2480, 2489 (2015) ("It is especially unlikely that Congress would have delegated" critical decision-making to an agency "which has no expertise" in the matter.). Here, there is no such clear statement by Congress; and EPA has no expertise in regulating—much less restructuring—the electric grid.

Accordingly, it is indisputably clear that EPA has exceeded the bounds of its statutory authority, and there is a reasonable probability that this Court will review and vacate the rule.

III. THE APPLICANTS WILL SUFFER IRREPARABLE HARM ABSENT A STAY

EPA's rule requires steep emission cuts beginning in 2022. But the electric sector is a long lead-time industry in which new facilities, transmission lines, and other infrastructure take years to plan, permit, and construct. Retiring existing power plants; investing in, locating, siting, purchasing, permitting, and building new renewable energy projects; locating, siting, permitting, and building new transmission systems to bring electricity from those new energy projects to the grid; and creating, designing, managing, and promoting a new emissions credit trading scheme all take three to seventeen years (or longer) to accomplish.[19] Thus, to meet the rule's requirements and have replacement generation online by 2022, the power industry must act now.[20] Waiting until the litigation has concluded is not an option.

As discussed above, utilities spent billions of dollars retiring power plants and committing to irreversible action under the MATS rule before this Court

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[19] See Burroughs Decl. ¶ 7 (a335); Campbell Decl. ¶ 22 (a350–51); K. Johnson Decl. ¶ 13 (a553–54); L. Johnson Decl. ¶¶ 26–28, 30–31 (a582–86); McInnes Decl. ¶¶ 13–15 (a642–45); McLennan Decl. ¶ 20 (a662); Pemberton Decl. ¶ 7 (a669–70); Voyles Decl. ¶ 5 (a871–72).

[20] See Greene Decl. ¶¶ 21, 30, 32–33 (a477, a480–82); Heilbron Decl. ¶ 20 (a541); K. Johnson Decl. ¶ 28 (a562–63); L. Johnson Decl. ¶¶ 26–28, 30–31 (a582–86); Pemberton Decl. ¶ 20 (a674).

invalidated it.[21] Absent a stay of the rule, far more wasted funds and irreversible actions will be undertaken here. The sworn declarations in the appendix document the immediate and irrevocable compliance burdens—and thus irreparable harm—already being incurred and expected to continue under the rule.

1. *Projected Impacts by an Example Utility.* For purposes of illustration, the Applicants set forth the experience of just one of the hundreds of utilities affected by the rule. Applicant Basin Electric Power Cooperative, a not-for-profit regional wholesale electric generation and transmission cooperative, owns and/or operates thirteen EGUs in four western States that will be directly impacted by the rule.[22] Basin Electric has determined that, irrespective of whether those States opt to adopt the sub-category performance rates, state-wide rate goals, or the EPA-established mass-based limit, the overall impact will be similar.[23]

As explained in the declarations, Basin Electric *alone* estimates that between now and 2022 it will have to:

- Shut down five existing generating units, including Leland Olds Station Units 1 and 2; two of the three units at Laramie River Station; and Earl F. Wisdom Generating Station Unit 1, although those units have between eight and twenty-eight years of remaining useful life;[24]
- Develop approximately 1,350 megawatts (MW) of new wind resources (nine sites of approximately 100 turbines each) in addition to the

[21] See Ledger Decl. ¶ 35 (a619–20); McInnes Decl. ¶ 22 (a650–51).
[22] Raatz Decl. ¶ 4 (a683–84).
[23] Id. ¶¶ 6 n.1, 16 (a685, a690–91).
[24] Id. ¶¶ 4, 21 (a683–84, a693–94).

approximately 670 MW of wind generation that already is scheduled to come on-line during the next two years;[25] and

- Build approximately 1,740 MW of new natural gas generating capacity to back-up the new wind generating capacity and replace existing base-load generation capacity lost from the shutdown of existing coal-fired units, likely configured as 670 MW of reciprocating engine generating capacity (three sites with twenty-four engines per site), 270 MW of simple cycle combustion turbine generating capacity (two sites with three turbines per site), and 800 MW natural gas combined cycle turbine (a standalone station on a single site).[26]

The estimated cost to develop, procure, and install all these resources for Basin Electric—just one utility—is $5 billion.[27] This does not include the substantial new transmission infrastructure, including lines and substations, that also will be required.[28]

Nor can Basin Electric await the outcome of this litigation to undertake these fifteen large-scale projects. The facilities it must construct are large and complex, necessitating a series of inter-related and sequential actions occurring over multiple years, from initial conception to final commissioning. Activities that must be completed to meet its customers' demands, while also complying with the rule's requirements, include: site selection and land/right-of-way acquisition; preliminary

[25] Raatz Decl. ¶ 21 (a693–94); McCollam Decl. ¶ 9 (a625–26).
[26] Raatz Decl. ¶ 21 (a693–94); McCollam Decl. ¶ 9 (a625–26).
[27] Raatz Decl. ¶ 22 (a694); McCollam Decl. ¶ 10 (a626)
[28] Raatz Decl. ¶ 22 (a694); McCollam Decl. ¶ 8 (a625).

engineering, including equipment technology assessment, preliminary equipment specifications, preliminary design (general, civil, structural, architectural, mechanical, and electrical), and subsurface investigation; environmental assessment and permitting; final engineering and design, and development of final specifications and equipment procurement; completion of interconnection studies for transmission, gas and needed utilities; site construction, including foundation, buildings, and mechanical and electrical construction; installation of generation equipment; and commissioning and start-up.[29] Some of these tasks will take years to complete; and environmental assessments or environmental impact statements that may be required under the National Environmental Policy Act (NEPA), as well as bird studies that may be required under the Migratory Bird Treaty Act or the Bald and Golden Eagle Protection Act, are anticipated to cause additional costs and delays ranging from several months to several years.[30] Additionally, a long lead-time is needed for the preparation of transmission to support these new sources.[31]

Thus, unless the Court stays the rule and extends the compliance dates, Basin Electric estimates it will have to spend about $330 million just in the next two years to comply with the rule.[32] Those costs will be borne by Basin Electric's member cooperatives and their customers, and will not be recoverable from EPA in the event that the rule is eventually vacated.[33]

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[29] McCollam Decl. ¶ 12 (a627–28).

[30] See id. ¶¶ 11, 19, 22 (a627, a631–32, a634); Witham Decl., ¶¶ 10, 13, 16 (a876–78).

[31] Stoltz Decl. ¶¶ 9–17 (a864–70).

[32] McCollam Decl. ¶¶ 16–22 (a630–34).

[33] Id. ¶ 22 (a634).

2. *Similar harms faced by other utilities.* Basin Electric's estimated harms are by no means out of the ordinary; they are typical of the harms being incurred by electric utilities across the country. For instance, as explained in the Southern Company's declarations, EPA's own modeling predicts the immediate closure of 20% of the Southern Company's existing coal-fired fleet.[34] Maintaining service in the face of this lost generation will require the construction of thirty-five new transmission projects at an estimated cost of $1 billion, with $185 million spent in the next two years alone.[35] EPA's anticipated plant closures could cost the Southern Company another $950 million in associated fuel compliance costs in the next two years, as unscheduled retirements force cancellation of existing coal and transportation contracts, impacts on existing coal inventory, and other expenses associated with dramatically altering the company's existing fuel supply arrangements.[36] Plant closures would impact not only the company, but also its customers and local governments.[37] And even if EPA's projected plant closures do not occur until later, the rule still will result in irreparable harm to the Southern Company while this case is pending.[38]

The same imminent harms are occurring and will continue to occur across the nation, as utilities must undertake efforts to identify and prepare the retirement of coal-fired power plants that otherwise have many more years of remaining useful

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[34] Greene Decl. ¶ 2 (a470–71).

[35] Id. ¶¶ 2, 32 (a470–71l, a481–82).

[36] Id. ¶ 34 (a482–83).

[37] Pemberton Decl. ¶¶ 26, 29 (a678–79).

[38] Greene Decl. ¶¶ 30, 33, 38 (a480, a482, a484); Heilbron Decl. ¶ 20 (a541); Pemberton Decl. ¶¶ 20, 24 (a674, a677).

life.[39] Utilities also must make near-term commitments to ensure that new power facilities are operational to offset declining coal generation and prepare for increases in natural gas and renewable generation.[40] And the utilities have identified many other impending harms, including contract cancellation costs for units retiring early,[41] stranded costs from prematurely retired or artificially curtailed units,[42] downgraded credit ratings and resulting higher costs of capital,[43] operational disruptions, including lost or displaced investments,[44] costs to maintain resource and transmission adequacy,[45] and increases in electricity prices.[46]

None of these impacts can be avoided while the parties await resolution of this litigation over the next year or two. Contrary to EPA's uninformed belief,

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[39] See Brummett Decl. ¶¶ 16–18 (rule "will force the retirement of [the San Miguel]" plant) (a314–16); Hines/Cashell Decl. ¶ 44 ("operation of the Colstrip Plant cannot continue as it exists today under" the rule) (a370–71); McLennan Decl. ¶ 14 (Minnkota plant will need "a combined approach of reducing its generation at its three coal generating resources [and] perhaps shuttering the Young Station completely") (a659–60); Pemberton Decl. ¶ 13 ("[u]nder EPA's Compliance solution, Georgia Power must retire . . . more than 4,200 MW . . . in 2016" and identifying specific plants) (a671–72); Rasmussen Decl. ¶¶ 7–8 (sole plant serving Reservation would have to cease operations under either a rate-based or mass-based emissions limit) (a698–99). See also Frenzel Decl. ¶ 24 (a444–45); PA Consulting Group, Inc., A Survey of Near-Term Damages Associated with the EPA's Clean Power Plan at 8–11 (Oct. 16, 2015) (a500–03) (PA Consulting Report); L. Johnson Decl. ¶¶ 10, 24–25 (a573, a581–82); Jura Decl. ¶¶ 9, 23–25 (a593–94, a599–a600); Ledger Decl. ¶ 29 (a617); McInnes Decl. ¶ 14 (a643–44); EVA Report at 15 (a765).

[40] See Galli Decl. ¶ 18 ("The closure process will need to begin immediately for affected plants . . . . It takes a decade or more to make major shifts in generation mix and to upgrade the transmission system to support these shifts. . . . [P]roviders must begin planning now.") (a462); Heilbron Decl. ¶ 2 (Alabama Power will incur $72 million for new transmission projects in 2016–17) (a534–35). See also Burroughs Decl. ¶ 22 (a340–41); Greene Decl. ¶ 6 (a472); PA Consulting Report at 8–11 (a500–03); Heilbron Decl. ¶ 3 (a535); L. Johnson Decl. ¶¶ 25–27, 30 (a581–86); Jura Decl. ¶¶ 25–26, 28 (a600–601); McInnes Decl. ¶ 14 (a643–44); McLennan Decl. ¶ 22 (a663); Reaves Decl. ¶ 22 (a711–12); Voyles Decl. ¶ 5 (a871–72).

[41] See Burroughs Decl. ¶ 23 (a342–43); Greene Decl. ¶ 34 (a482–83); Heilbron Decl. ¶ 24 (a544–45).

[42] See Campbell Decl. ¶ 21 (a350); Frenzel Decl. ¶ 8(d) (a436–37); Pemberton Decl. ¶ 28 (a679); Rasmussen Decl. ¶¶ 9–11 (a699).

[43] See Jura Decl. ¶¶ 27, 29, 32 (a601, a603–04); McLennan Decl. ¶ 23 (a663).

[44] See Rasmussen Decl. ¶¶ 9–10 (a699); Voyles Decl. ¶ 5 (a871–72).

[45] See PA Consulting Report at 22–24 (a514–16).

[46] See Brummett Decl. ¶ 28 (a320); Campbell Decl. ¶ 24 (a352); Ledger Decl. ¶¶ 9, 29 (a608, a617); McLennan Decl. ¶¶ 8, 23 (a657, a663); Rasmussen Decl. ¶ 9 (a699).

electrons cannot flow anywhere they are needed across the country. Basin Electric's service territory, for example, straddles the eastern and western grids, which prevents it from moving electricity even across its own service territory; it must instead build extensive new facilities.[47] Additionally, plant closures require replacement power to be purchased, approved by regulators, or built from scratch, a process that ordinarily takes five to fifteen years—sometimes longer.[48] The construction, planning, development, coordination, siting, and permitting of energy resources to meet future demand is complex and involves tremendous costs and long lead times.[49] It often takes up to seven years to construct new gas pipeline infrastructure and up to ten years to build new transmission systems.[50]

Also, the challenges in building new solar and wind farms and transmission lines are enormous and include long timetables.[51] Those challenges and timetables—as well as the challenges and timetables for other necessary projects and infrastructure—are sure to increase as the industry struggles to complete so

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[47] Stoltz Decl. ¶ 6, 14 (a862, a867–68).

[48] Burroughs Decl. ¶ 7 (a335); Campbell Decl. ¶ 22 (a350–51); Greene Decl. ¶ 6 (a472); PA Consulting Report at 8–11 (a500–03); McLennan Decl. ¶ 20 (a662); Pemberton Decl. ¶¶ 7, 22–24 (a669–70, a675–77); Voyles Decl. ¶ 5 (a871–72).

[49] See McInnes Decl. ¶ 15 (3–10 years lead time for new transmission projects) (a644–45); McLennan Decl. ¶ 20 (7 years to build new natural gas generation) (a662); Pemberton Decl. ¶ 23 (5–8 years lead time for new line and substation projects and 2–3 years for existing lines and substations) (a676–77); Rasmussen Decl. ¶¶ 13–14 (6 years lead time for baseload resource development) (a700). See also Campbell Decl. ¶ 22 (a350–51); Frenzel Decl. ¶¶ 26–27 (a445–47); Heidell/Repsher Decl. ¶ 12 (a489); Heilbron Decl. ¶ 7 (a536–37); Hines/Cashell Decl. ¶ 47 (a372–73); K. Johnson Decl. ¶¶ 13 & n.9, 28 (a553–54, a562–63); Pemberton Decl. ¶ 7 (a669–70); Rasmussen Decl. ¶ 12 (a700); EVA Report at 35–43 (a785–93); Reaves Decl. ¶ 7 (a705); Voyles Decl. ¶ 6 (a872).

[50] See PA Consulting Report at 11 (a503); McInnes Decl. ¶¶ 13–15 (a642–45).

[51] See, e.g. David A. Lieb, *Renewable-energy efforts stymied by transmission roadblocks*, ASSOCIATED PRESS (Dec. 22, 2015), http://bigstory.ap.org/article/0462fcffedd749c2a7e0e729be79d681/renewable-energy-efforts-stymied-transmission-roadblocks; Stoltz Decl. ¶¶ 15–16 ("only a relatively small percentage of proposed wind projects that begin initial development steps are actually completed" and "most wind projects tend to incur some degree of local opposition and sometimes that opposition results in significant delays") (a868–69).

many large-scale projects and infrastructure developments over a short, six-year time frame.[52]

Although EPA and Respondent-Intervenors argued below that no serious impacts will occur to utilities until this litigation is resolved, these arguments are facially incredible and belied by EPA's own record. EPA admits that "successfully achieving reductions by 2022 will be facilitated by actions and investments . . . prior to 2022" and it "encourage[s] early actions."[53] Moreover, EPA's own modeling projects that the rule will cause a net retirement of around seventeen GW of capacity, representing fifty-three EGUs, this year alone.[54] EPA says its projections are the "best assessment of likely impacts of the [rule] under a range of approaches that states may adopt,"[55] but its projected impacts are almost certainly unrealistically low—just as they were way off with respect to the MATS rule.[56] Its modeling recognizes the reality that, for many plants, making costly investments necessary to continue operations in the short term when those plants are likely to be shuttered by the rule in a few years is economically irrational.[57]

NERC also confirmed the rule will require immediate efforts, emphasizing to EPA the need for significant new infrastructure and the danger to grid reliability if

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[52] See McCollam Decl. ¶¶ 11–13, 21 (a627–29, a632–33); Stoltz Decl. ¶¶ 12, 17 (a866–67, a869–70).

[53] 80 Fed. Reg. at 64,670.

[54] See EVA Report at 15, 62–63 (a765, a812–13). While EPA may argue that these are only modeling projections, EPA itself is relying on these projections and the associated near term emission reductions in developing other rules for EGUs under the CAA. See Schwartz Second Decl. ¶¶ 28–31 (a855–58).

[55] RIA at 3-11.

[56] See PA Consulting Report at 12–14 (a504–06); EVA Report at 19–25 (a769–75). See also EVA Report at 24 n.33 ("EPA used IPM to predict that the MATS rule would retire less than 5 GW of coal-fired capacity, yet the actual figure turned out to be about ten times that amount.") (a774).

[57] See EVA Report at 63 (a813).

the long lead times necessary for such infrastructure are not accommodated.[58] NERC estimated that construction of gas-fired facilities takes over five years and that development of new transmission infrastructure takes six to fifteen years.[59] Regional grid coordinators also alerted EPA to these facts. The Southwest Power Pool, for instance, which oversees the grid in all or parts of fourteen States, warned that the rule as proposed would lead to "cascading outages and voltage collapse" because it will take up to 8.5 years to build the transmission lines necessary for the alternative resources the rule requires.[60] Echoing these warnings, Federal Energy Regulatory Commission (FERC) Commissioner Clark recently cautioned that "if expanded infrastructure is not built in time to meet the generation mix changes required by [the rule]," grid reliability will be imperiled and electricity prices will rise "substantially."[61] Thus, the rule forces utilities to act now to ensure necessary infrastructure is in place by 2022 to preserve reliable electric service.

Nor does any of this describe the profound adverse human impacts the rule will have on the nation's citizens during the pendency of this litigation. Studies indicate that short-term plant retirements will cause direct employment losses of 8,000 to 24,000 jobs in the electric power and coal mining sectors.[62] Based on EPA's

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[58] NERC, *Potential Reliability Impacts of EPA's Proposed Clean Power Plan, Ph. I* at 2 (Apr. 2015), www.nerc.com/pa/RAPA/ra/Reliability%20Assessments%20DL/Potential%20Reliability%20Impacts.

[59] Id. at 36–41; see also Stoltz Decl. ¶¶ 9, 17 (a864, 869–70).

[60] Southwest Power Pool, Inc., Comments on Proposed Rule at 6, 8 (Oct. 9, 2014) (a891, a893). See also Midcontinent Independent System Operator, Inc., Comments on Proposed Rule at 3 (Nov. 25, 2014) (due to lead time needed to build infrastructure, the new generation needed to safeguard reliability will be available in 2024 at the earliest) (a898).

[61] Written Testimony of Tony Clark, Commissioner, FERC, U.S. House Committee on Energy and Commerce, Subcommittee on Energy and Power at 6–7 (Dec. 1, 2015) (a906–07).

[62] See PA Consulting Report ¶ 6 (a498).

predicted plant retirements, Georgia Power anticipates losing as many as 800 jobs.[63] And it is just one of the hundreds of utilities affected.

These are devastating impacts to force on people under a rule of such dubious legality, particularly where, as here, there can be no measurable climate-related impact during the time it will take for this litigation to conclude. EPA is hoping to avoid .016 degrees Celsius in warming *thirty-four years* from now. There is simply no reason to undermine so many lives for so little benefit while litigation occurs over the next few years, particularly when much of what EPA is forcing the electric industry to do now cannot be undone later.

CONCLUSION

There is no question that immediate, irreparable, and extraordinary harm is already occurring and will continue to occur unless this Court stays EPA's rule pending judicial review. The nation's entire energy supply cannot be fundamentally restructured in six years without enormous cost being incurred immediately. Reorganizing the country's energy supply is a gigantic undertaking, and it should not be compelled unless and until EPA's authority to require these harms is upheld. See *Thunder Basin Coal Co.* v. *Reich*, 510 U.S. 200, 220–21 (1994) (Scalia, J., concurring) ("[C]omplying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs.").

In *Philip Morris* v. *Scott*, 131 S. Ct. 1 (2010) (Scalia, J., in chambers), Justice Scalia recognized that "[i]f expenditures cannot be recouped, the resulting loss may be irreparable." *Id.* at 4. He accordingly found irreparable harm had adequately

[63] Pemberton Decl. ¶ 2 (a667–68).

been demonstrated where the applicants showed they would irrevocably expend $270 million before the Court could even consider the claim. *Id.* The same will occur here, many times over, in the absence of a stay.

The Applicants therefore request an immediate stay of EPA's rule, extending all compliance dates by the number of days between publication of the rule and a final decision by the courts, including this Court, relating to the rule's validity.

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