

ORAL ARGUMENT NOT YET SCHEDULED

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, and REGINA A.  
McCARTHY, Administrator, United States  
Environmental Protection Agency

Respondents.

---

Case No. 15-1363

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

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY and GINA  
McCARTHY, Administrator, United States  
Environmental Protection Agency

Respondents.

---

Case No. 15-1386  
(consolidated with No.  
15-1363 and other  
consolidated cases)

**LUMINANT PETITIONERS'**  
**RESPONSE IN SUPPORT OF MOTIONS TO STAY**

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 (collectively, “Luminant Petitioners”), the Petitioners in Case No. 15-1386 (consolidated under Lead Case No. 15-1363), file this response in support of the six motions to stay the U.S. Environmental Protection Agency’s (“EPA”) Final Rule<sup>1</sup> at issue in this case pending completion of judicial review.<sup>2</sup> Luminant Petitioners submitted a declaration in support of the Utility Air Regulatory Group’s motion for stay of EPA’s Final Rule detailing the immediate and irreparable harm caused by the Final Rule to Luminant Petitioners.<sup>3</sup> Luminant Petitioners also filed extensive comments addressing the legal flaws in

---

<sup>1</sup> *Carbon Pollution Emission Guidelines for Existing Sources: Electric Generating Units*, 80 Fed. Reg. 64,662 (October 23, 2015) (“Final Rule”).

<sup>2</sup> The six motions were filed by the Chamber of Commerce of the United States of America in Case No. 15-1382 (Doc. No. 1580020), the National Mining Association in Case No. 15-1367 (Doc. No. 1580004), the State of Oklahoma in Case No. 15-1364 (Doc. No. 1580577), the State of North Dakota in Case No. 15-1380 (Doc. No. 1580920), the State of West Virginia in Case No. 15-1363 (Doc. No. 1579999), and the Utility Air Regulatory Group in Case No. 15-1370 (Doc. No. 1580014).

<sup>3</sup> Case No. 15-1370, Doc. No. 1580014, at 665–88 (Oct. 23, 2015).

EPA's proposed rule.<sup>4</sup> For the reasons set out in Luminant Petitioners' declaration and comments and the pending motions to stay, Luminant Petitioners support the motions and request that the Court stay the Final Rule.

Dated: October 30, 2015

Respectfully submitted,

/s/ P. Stephen Gidiere III

Counsel for Petitioners

***Counsel for Petitioners:***

P. Stephen Gidiere III  
Thomas L. Casey III  
Julia B. Barber  
Balch & Bingham LLP  
1901 6th Ave. N., Ste. 1500  
Birmingham, Alabama 35203  
205-251-8100  
sgidiere@balch.com

Stephanie Z. Moore  
Vice President and  
General Counsel  
Luminant Generation  
Company LLC  
1601 Bryan Street  
22nd Floor  
Dallas, Texas 75201

Daniel J. Kelly  
Vice President and  
Associate General Counsel  
Energy Future Holdings  
Corp.  
1601 Bryan Street  
43rd Floor  
Dallas, Texas 75201

---

<sup>4</sup> Comments of Luminant Generation Company LLC on the Proposed Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units, EPA-HQ-OAR-2013-0602-33559 (Dec. 1, 2014).

**CERTIFICATE OF SERVICE**

I hereby certify that on October 30, 2015, one copy of Luminant Petitioners' Response in Support of Motions to Stay was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ P. Stephen Gidiere III

Counsel for Petitioners