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, Regina McCarthy, Administrator, United States Environmental Protection Agency, Respondents.	No. 15-1363 (consolidated with 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398)

UNOPPOSED MOTION TO INTERVENE IN SUPPORT OF RESPONDENTS BY NEXTERA ENERGY, INC.

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and D.C. Circuit Rules 15(b) and 27, NextEra Energy, Inc. ("NextEra") respectfully moves to intervene on behalf of Respondents Environmental Protection Agency ("EPA") and Regina McCarthy in the above-captioned petition for review of EPA's final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Final Rule"). *See* 80 Fed. Reg. 64662 (Oct. 23, 2015), Docket No. EPA-HQ-OAR-2013-0602. Pursuant to D.C. Circuit Rule 15(b), this motion constitutes a request to intervene in all petitions for review of the Final Rule.

Petitioners have authorized NextEra to state that they take no position on this motion at this time. Counsel for Respondents state that Respondents do not oppose the motion. Counsel for Movant-Intervenors American Wind Energy Association, Advanced Energy Economy, American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club have indicated they consent to this motion. Counsel for Movant-Intervenor Peabody Energy Company has indicated it does not object to the motion.[1]

INTRODUCTION AND BACKGROUND

EPA regulates emissions of air pollutants from existing sources through Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d). Under Section 111(d), EPA is required to promulgate regulations establishing a procedure similar to the State Implementation Plan process under Section 110 of the Act, 42 U.S.C. § 7410, under which each State must submit a plan that "establishes standards of performance for any existing source" of certain air pollutants. 42 U.S.C. § 7411(d)(1). "Standard of

[1] Movant-intervenors have also consulted counsel for petitioners in the consolidated cases. Counsel for petitioners in numbers, 15-1379, -1393, and -1398 state that petitioners in those cases have no objection to this motion. Counsel for petitioners in numbers 15-1365, -1367, -1368, -1371, -1375, -1378, -1380, -1382, -1383, and -1386 state that petitioners in those cases take no position on the motion at this time. Counsel for petitioners in numbers 15-1364, -1366, -1370, -1372, -1373, -1374, -1376, and -1377 had not responded to counsel's consultation request at the time of this filing.

performance" is defined as a "standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction . . .) the Administrator determines has been adequately demonstrated." 42 U.S.C. § 7411(a)(1).

This case concerns petitions for review of EPA's Final Rule published on October 23, 2015 pursuant to Section 111(d), establishing final emission guidelines for States for plans to reduce greenhouse gas emissions from existing fossil fuel-fired electric generating units ("EGUs"). *See* 80 Fed. Reg. at 64662.

NextEra's subsidiaries, NextEra Energy Resources, LLC, and Florida Power and Light Company, develop, construct, and operate a diverse array of power plants to produce electricity for their respective customers. LaBauve Decl. ¶¶ 5-7, Ex. 1. Florida Power and Light Company, the largest investor-owned electric utility in the State of Florida, has been transitioning to use more efficient, lower-emitting and zero-emitting technologies over the past 15 years. *Id.* ¶ 7. NextEra Energy Resources, LLC, is the world's largest generator of wind and solar electricity. *Id.* It develops, owns, and/or operates electricity generating facilities powered by the wind, sun, nuclear energy, or fossil fuels throughout the United States and internationally.

NextEra has a substantial interest in defending the Final Rule. If upheld, the Final Rule is predicted to increase the electricity generated by renewable energy by 17-20 gigawatts by 2030 compared to the base case without the Final Rule. U.S. EPA,

Regulatory Impact Analysis for the Clean Power Plan Final Rule (Oct. 2015) at 3-31. States may choose to utilize wind and solar energy as a means to implement the Final Rule's emission guidelines. LaBauve Decl. ¶¶ 9-10. As part of the Final Rule, EPA also provided for a Clean Energy Incentive Program, which rewards early investments in renewable energy before the 2022 compliance deadline. 80 Fed. Reg. at 64670. This program specifically incentivizes wind and solar energy projects.

Such programs, including the regulation of carbon dioxide emissions generally, require a clear, predictable path for implementation over the next 15 years. NextEra requires such predictability in order to appropriately plan its development, capital and maintenance costs over the coming years in furtherance of EPA's requirements. LaBauve Decl. ¶ 12. NextEra has a substantial interest in defending the Final Rule in order to preserve the Final Rule's orderly path for the regulation of greenhouse gas emissions over a predictable time schedule. *Id.*

NextEra's business includes developing generation of electricity from renewable sources, and, to the extent that States, in their Section 111(d) plans, choose renewable energy to help meet their greenhouse gas emission reduction goals, then NextEra's business will be directly impacted by the increased demand for existing and new renewable generation. LaBauve Decl. ¶ 11. A decision in favor of petitioners in this case would therefore adversely impact the interests of NextEra. *Id.*

In view of these substantial interests, the Court should grant NextEra's motion to intervene in support of Respondents.

ARGUMENT

I. NextEra Is Entitled To Intervention

Federal Rule of Appellate Procedure 15(d) requires that a motion for leave to intervene in a proceeding seeking review of an agency order "must contain a concise statement of the interest of the moving party and the grounds for intervention." This Court has held that this rule "simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991).

This Court has also recognized that policies supporting district court intervention under Federal Rule of Civil Procedure 24, while not binding in matters concerning review of an agency order in the courts of appeals, "may" nonetheless inform the intervention inquiry on appeal. *Amalgamated Transit Union Int'l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985). The requirements for intervention as of right under Rule 24(a)(2) are: (1) the application is timely; (2) the applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties may not adequately represent the applicant's interest. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003).

Some cases have suggested that Article III standing need not be established by a party seeking to intervene as a defendant or respondent. *See Roeder*, 333 F.3d at 233.

Indeed, "Article III standing is not a threshold determination that courts normally make before allowing a defendant to enter a case." *Crossroads Grassroots Policy Strategies v. Federal Election Comm'n*, 788 F.3d 312, 316 (D.C. Cir. 2015). But where a party seeks to intervene as a defendant—or by extension, a respondent—this Court has on occasion "required it to demonstrate Article III standing, reasoning that otherwise 'any organization or individual with only a philosophic identification with a defendant—or a concern with a possible unfavorable precedent—could attempt to intervene and influence the course of litigation.'" *Id.* (quoting *Deutsche Bank Nat'l Trust Co. v. FDIC*, 717 F.3d 189, 195 (D.C. Cir. 2013) (Silberman, *J.*, concurring)).

For the reasons explained below, the interests of NextEra in developing, operating, and managing its energy generation facilities would be significantly affected if there were an adverse decision in this matter. NextEra has standing to intervene as a respondent, and thus satisfies the requirements to intervene in this matter.

A. NextEra's interests will be impaired if petitioners prevail in this litigation.

NextEra's business will be directly impacted when the Final Rule is implemented. LaBauve Decl. ¶¶ 11-12. In establishing emission guidelines and requiring States to limit greenhouse gas emissions from existing EGUs, EPA in the Final Rule "relies on the accelerating transition to cleaner power generation that is already well underway in the utility power sector." 80 Fed. Reg. at 64663. Throughout implementation of the Final Rule, NextEra will be making decisions to

allocate capital and develop priorities for the operation and maintenance of all of its electricity generating facilities nationwide. If petitioners prevail, NextEra's ability to make such plans will be impaired.

Furthermore, the use of two of the three "building blocks" suggested by EPA in establishing the "best system of emission reduction" pursuant to Section 111(d) could depend on electricity generation provided, or to be provided, by NextEra. Building block 2—generation shifts among affected EGUs—is based on the extent to which higher-emitting coal and oil/gas steam EGUs can shift generation to existing lower-emitting natural gas combined cycle EGUs. 80 Fed. Reg. at 64795. Building block 3—renewable generating capacity—is based on "the extent to which generation at the affected EGUs can be replaced by using an expanded amount of zero-emitting renewable electricity (RE) generating capacity." 80 Fed. Reg. at 64803. Together, these two building blocks are expected to drive generation from higher-emitting fossil fuel steam EGUs to lower emitting natural gas combined cycle EGUs and zero-emitting renewable generation. NextEra's portfolio of assets, which includes low- and zero-emitting electricity generation from natural gas, wind, and solar, could benefit if generation from these sources increases in response to implementation of the Final Rule.

An adverse decision by this Court could require EPA to revise the Final Rule, harming the interests of NextEra. LaBauve Decl. ¶¶ 11-12. Vacatur or remand of the

Final Rule would at the very least delay its implementation, reducing or at least delaying the benefits of the rule to NextEra. *Id.*

NextEra filed comments and exhibits totaling 43 pages in favor of the proposed rule. Through these comments, NextEra asserted its general support for the proposed rule and suggested a number of improvements, including changes to reward early action by states and to improve building block 2 of the "best system of emission reduction," or re-dispatch to natural gas combined cycle generation. "Re: Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Proposed Rule," Docket Entry EPA-HQ-OAR-2013-0602-22763 (Dec. 1, 2014) (submitted by Randall R. LaBauve, Vice President, Environmental Services, NextEra Energy, Inc.).

B. NextEra's interests are not adequately represented by any of the existing parties or prospective intervenors.

A party seeking intervenor status under Rule 24(a)(2) must show that the prospective intervenor's interests are not adequately represented. "This burden, however, is not onerous." *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). A proposed intervenor "need only show that representation of his interest may be inadequate." *Id.* (internal quotation marks omitted).

No existing party to this litigation adequately represents the interests of NextEra. Although movant-intervenors Solar Energy Industries Association (SEIA), American Wind Energy Association (AWEA) (of which NextEra is a member), and

Advanced Energy Economy (AEE) represent renewable and advanced energy interests, none of these entities can further assert all of the unique interests of NextEra in this litigation. *See* Unopposed Motion to Intervene in Support of Respondents by Solar Energy Industries Association (Oct. 30, 2015); Motion of the American Wind Energy Association for Leave to Intervene in Support of Respondent (Oct. 26, 2015); Motion of Advanced Energy Economy for Leave to Intervene in Support of Respondents (Oct. 27, 2015). SEIA and AWEA, respectively, seek to intervene to assert solely the interests of manufacturers, project developers, and other members of the solar and wind energy industry. SEIA Mtn. at 3-4; AWEA Mtn. at 4-5. These interests are narrower than and do not entirely overlap with NextEra's interests. AEE's members include "providers of a broad range of advanced energy products and services, including products and services related to natural gas, wind, solar, and nuclear power; energy efficiency technologies; smart grid technologies; and advanced transportation systems." AEE Mtn. at 5. These interests do not necessarily overlap with NextEra's interests as a generator of electricity. Similarly, movant-intervenors nonprofit environmental and public-health advocacy organizations seek to protect their members from the impacts of air pollution—interests that do not necessarily overlap with NextEra's interests as an electricity generator and generation developer. Unopposed Motion of American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio

Environmental Council, and Sierra Club for Leave to Intervene in Support of Respondent (Oct. 27, 2015) at 3.

Nor does EPA adequately represent NextEra's interests. Although EPA and NextEra share the objective of upholding the Final Rule, this Court has generally held that EPA is not an appropriate party to advance the "narrow interest" of businesses "at the expense of its representation of the general public interest." *Dimond*, 792 F.2d at 192-93. Indeed, this Court has "often concluded that governmental entities do not adequately represent the interests of aspiring intervenors." *Crossroads Grassroots*, 788 F.3d at 314 (internal quotation marks omitted). EPA has broader interests at stake, such as emphasizing fairness across States, ensuring significant environmental benefits at a reasonable cost, and other interests that do not necessarily converge with NextEra's interests, as well as pursuing arguments to ensure that courts provide it with as much deference and flexibility in carrying out its statutory duties as possible. Given that the interests of NextEra are both narrower and differently focused than EPA's interests, NextEra's participation in this case would "serve as a vigorous and helpful supplement to EPA's defense." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C Cir. 1977); *see also Sierra Club v. EPA*, 358 F.3d 516, 518 (7th Cir. 2004) ("Courts value submissions … to learn about facts and legal perspectives that the litigants have not adequately developed.").

C. NextEra has standing to intervene as a respondent.

Although this Court generally requires a party seeking to intervene as a defendant to demonstrate Article III standing, *Crossroads Grassroots*, 788 F.3d at 316, the Court has noted that any party that satisfies Federal Rule of Civil Procedure 24(a)—regarding intervention as of right in the district court—will also meet Article III's standing requirement. *Roeder*, 333 F.3d at 233. As noted above, NextEra has satisfied the standing for district court intervention as of right and, thus, has Article III standing to intervene in this matter. *See also Sabre, Inc. v. Dep't of Transp.*, 429 F.3d 1113, 1119 (D.C. Cir. 2005) (harm to economic interests constitutes standing).

D. This motion is timely.

Federal Rule of Appellate Procedure 15(d) requires a motion to intervene in a proceeding to be filed within 30 days after the petition for review is filed. In this case, the petition was filed on October 23, 2015. This motion is thus timely filed within 30 days of that date.

CONCLUSION

For the foregoing reasons, NextEra respectfully requests that this motion be granted and that NextEra be designated as an intervenor-respondent in the above-captioned proceedings and, pursuant to D.C. Circuit Rule 15(b), in any future petitions for review challenging the Final Rule.

Dated: Nov. 5, 2015

Respectfully submitted,

/s/ Richard Ayres

Richard Ayres (DC Bar No. 212621)
Jessica Olson (DC Bar No. 497560)
John Bernetich (DC Bar No. 1018769)
AYRES LAW GROUP LLP
1707 L Street, N.W., Suite 850
Washington, D.C. 20036
(202) 452-9200
ayresr@ayreslawgroup.com
olsonj@ayreslawgroup.com
bernetichj@ayreslawgroup.com

Counsel for NextEra Energy, Inc.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, movant-intervenor NextEra Energy, Inc. states that it has neither a parent corporation, nor is any publicly held corporation the owner of 10% or more of NextEra Energy, Inc. stock. NextEra Energy, Inc. is a publicly-traded company on the New York Stock Exchange under the symbol "NEE."

CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), the Petitioners in the above-captioned case are:

- 15-1363: States of West Virginia, Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, the Arizona Corporation Commission, the State of Louisiana Department of Environmental Quality, the State of North Carolina Department of Environmental Quality, and Attorney General Bill Schuette on behalf of the People of Michigan
- 15-1364: State of Oklahoma and Oklahoma Department of Environmental Quality
- 15-1365: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO
- 15-1366: Murray Energy Corporation
- 15-1367: National Mining Association
- 15-1368: American Coalition for Clean Coal Electricity
- 15-1370: Utility Air Regulatory Group and American Public Power Association

- 15-1371: Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company
- 15-1372: CO2 Task Force of the Florida Electric Power Coordinating Group
- 15-1373: Montana-Dakota Utilities Co.
- 15-1374: Tri-State Generation and Transmission Association
- 15-1375: United Mine Workers of America
- 15-1376: National Rural Electric Cooperative Association, Arizona Electric Power Cooperative, Inc., Associated Electric Cooperative, Inc., Big Rivers Electric Corporation, Brazos Electric Power Cooperative, Inc., Buckeye Power, Inc., Central Montana Electric Power Cooperative, Central Power Electric Cooperative, Inc., Corn Belt Power Cooperative, Dairyland Power Cooperative, Deseret Generation & Transmission Co-operative, Inc., East Kentucky Power Cooperative, Inc., East River Electric Cooperative, Inc., East Texas Electric Cooperative, Inc., Georgia Transmission Corporation, Golden Spread Electric Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., Minnkota Power Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Northwest Iowa Power Cooperative, 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, 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., Upper Missouri G. & T. Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Western Farmers Electric Cooperative, and Wolverine Power Supply Cooperative, Inc.

- 15-1377: Westar Energy, Inc.
- 15-1378: NorthWestern Corporation
- 15-1379: National Association of Home Builders
- 15-1380: State of North Dakota
- 15-1382: 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
- 15-1383: Association of American Railroads

- 15-1386: Luminant Generation Co., Oak Grove Management Co., Big Brown Power Co., Sandow Power Co., Big Brown Lignite Co., Luminant Mining Co., and Luminant Big Brown Mining Co.
- 15-1393: Basin Electric Power Cooperative, Inc.
- 15-1398: Energy & Environmental Legal Institute

Respondents are the United States Environmental Protection Agency and Regina A. McCarthy, Administrator of the United States Environmental Protection Agency. Movant-intervenors are the States of New York, California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, Washington, the Commonwealths of Massachusetts and Virginia, the District of Columbia, the Cities of Boulder, Chicago, New York, Philadelphia, and South Miami, and Broward County, Florida, American Wind Energy Association, Advanced Energy Economy, American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, Sierra Club, Solar Energy Industries Association, and Peabody Energy Corp.

MOTION TO INTERVENE BY NEXTERA ENERGY, INC.
15-1363

EXHIBIT 1

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, Regina McCarthy, Administrator, United States Environmental Protection Agency, Respondents.	No. 15-1363 (consolidated with 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398)

DECLARATION OF RANDALL R. LABAUVE IN SUPPORT OF MOTION TO INTERVENE BY NEXTERA ENERGY, INC.

I, Randall R. LaBauve, hereby declare under penalty of perjury as follows:

1. I submit this declaration in support of this Motion to Intervene as Respondent by NextEra Energy, Inc. ("NextEra").

2. I am Vice President of Environmental Services for NextEra. I have served in that position since July 10, 2002.

3. As Vice President of Environmental Services, I am responsible for leading the environmental strategy, licensing, compliance and environmental relations efforts for the company, including its two principal subsidiaries, Florida Power & Light Company (FPL) and NextEra Energy Resources, LLC.

4. NextEra is a leading clean-energy company with consolidated revenues of approximately $17 billion, and possesses approximately 44,900 megawatts of generating capacity, which includes megawatts associated with non-controlling interests related to NexEra Energy Partners, LP (NEP), and approximately 13,800 employees as of year-end 2014. NextEra is headquartered in Juno Beach, Florida.

5. NextEra's principal subsidiaries are Florida Power & Light Company, which serves approximately 4.8 million customer accounts in Florida, and is one of the largest rate-regulated electric utilities in the United States; and NextEra Energy Resources, LLC, which is the world's largest generator of renewable energy, doing business and operating renewable energy generation facilities in over twenty-five states throughout the U.S.

6. By the end of 2016, NextEra's generation portfolio will include over 15,000 MW of wind and solar generation throughout the U.S. and Canada, more than any other company in North America.

7. For more than 15 years, NextEra generating companies, NextEra Energy Resources, the world's largest generator of wind and solar electricity, and Florida Power & Light Company, the largest investor-owned electric utility in the State of Florida have been transitioning our generation profile to more efficient, lower-emitting and zero-emitting technologies.

8. NextEra supports the overall objective of achieving meaningful CO_2 emission reductions from existing power plants and encouraging investment in a clean energy future, while maintaining electric system reliability. One of NextEra's priorities is supporting the Environmental Protection Agency (EPA) and states in implementation of the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Clean Power Plan"), the subject of this litigation. NextEra filed extensive public comments on the proposed rule.

9. EPA's Clean Power Plan recognizes and increases the current opportunity to reduce carbon emissions by transitioning the United States electric grid from a fossil fuel dominant fuel mix to a balanced energy portfolio that includes a higher penetration of zero-emitting renewable generation and low-emitting natural gas generation. The Clean Power Plan will require affected electric generating units ("EGUs") within each state to reduce their carbon emissions, thus presenting the opportunity for utilities and states to choose policies that will shift electricity generation towards sources such as wind and solar energy, which generate no carbon emissions, or natural gas, which generates lower carbon dioxide emissions than coal steam generation. The EPA has already recognized the importance of low- and zero-carbon energy and the role for clean or renewable energy to play in this transition. As part of the best system of emission reduction

(BSER) adequately demonstrated to reduce emissions from affected EGUs, EPA has included as potential state emission reduction strategies both (1) shifting generation from coal-fired EGUs to existing natural gas combined cycle EGUs; and (2) substituting more renewable energy for existing fossil fuel-fired EGUs.

10. These measures are part of the BSER because renewable energy and generation shifts toward natural gas combined cycle are technologically feasible, available at a reasonable cost, result in reduced carbon emissions, provide other health and environmental benefits, and promote technological development without negatively affecting the electric grid.

11. NextEra has and will continue to develop significant renewable power generation facilities that will be directly impacted by the outcome of the Final Rule. NextEra is deeply concerned about the impact that a negative ruling on the EPA Clean Power Plan could have on the company. EPA's modeling data predict that States will choose emission control strategies to meet their obligations under the Clean Power Plan that will spur the development of significant additional capacity of renewable energy generation and natural gas combined cycle generation in the U.S. by 2030. If petitioners were to prevail in this case the benefits to NextEra likely to follow from the Clean Power Plan will be reduced or eliminated.

12. NextEra has made and continues to make substantial investments in

developing clean or renewable energy projects in electricity markets across the United States. In order for NextEra to plan its development, capital, and maintenance spending, to prepare all of its existing facilities, and to develop new facilities in responses to markets affected by the new greenhouse gas regulations, it is of critical importance that EPA provide a clear, dependable regulatory pathway for regulation of greenhouse gases. NextEra's interests could be adversely affected if the company fails to bring the proper amount of new or existing electricity generation to market due to uncertainty in the legal status of the Final Rule. The value of the investments now being planned would be jeopardized by a decision remanding or vacating the Final Rule challenged here.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed at Juno Beach, Florida on November 5, 2015.

Randall R. LaBauve

CERTIFICATE OF SERVICE

I hereby certify that the foregoing UNOPPOSED MOTION TO INTERVENE IN SUPPORT OF RESPONDENTS BY NEXTERA ENERGY, INC., associated Declaration, Corporate Disclosure Statement, and Certificate of Parties have been served upon counsel of record in Case No. 15-1363 and consolidated cases via the Court's ECF system this 5th day of November, 2015.

/s/ Jessica L. Olson
Jessica L. Olson
Ayres Law Group LLP