

**EN BANC ORAL ARGUMENT HELD SEPTEMBER 27, 2016
IN CASE NO. 15-1363
ORAL ARGUMENT NOT SCHEDULED IN CASE NO. 17-1014**

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

STATE OF WEST VIRGINIA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

No. 15-1363 (and
consolidated cases)

STATE OF NORTH DAKOTA,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, *et al.*,

Respondents.

No. 17-1014 (and
consolidated cases)

**PETITIONERS AND PETITIONER-INTERVENORS'
REPLY IN SUPPORT OF MOTIONS TO DISMISS**

The undersigned Petitioners and Petitioner-Intervenors have moved to dismiss as moot the petitions for review in these two sets of consolidated cases.¹ ECF Nos. 1797267, 1798600. Respondent United States Environmental Protection Agency (“EPA” or “Agency”) supports those motions. ECF Nos. 1797703, 1798780. No Petitioner opposes the motions.

State and Public Health and Environmental Respondent-Intervenors, however, filed an opposition to the motions. ECF No. 1799095. Importantly, Respondent-Intervenors do not dispute that EPA’s final action repealing the Clean Power Plan, 84 Fed. Reg. 32,520 (July 8, 2019) (“Rule”), renders these cases moot. *See* ECF No. 1799095 at 4 (conceding “once an agency has rescinded or replaced a regulation, litigation challenging that regulation ordinarily becomes moot”). They argue instead that the motion to dismiss is premature because these cases will only become moot on the Rule’s September 6, 2019 effective date, and not before that date. *Id.*

Respondent-Intervenors are incorrect as to the timing of mootness. In the Rule, the Agency took final rulemaking actions repealing the Clean Power Plan in its entirety and replacing it with new emission guidelines. 84 Fed. Reg. at 32,521. That Rule has been final and subject to judicial review for nearly one month—indeed, some

¹ Petitioner Local Government Coalition for Renewable Energy did not join the initial motion to dismiss in Case No. 15-1363 but separately moved to dismiss its petition for review as moot on July 25, 2019. ECF No. 1799127.

Respondent-Intervenors have already filed a petition for review of the Rule.² *See Am. Lung Ass'n v. EPA*, No. 19-1140 (D.C. Cir. filed July 8, 2019). As a final rulemaking action under the Clean Air Act, the Rule (including the effective date of the Clean Power Plan repeal) cannot be rescinded, replaced, or amended without further notice-and-comment rulemaking proceedings. *See* 42 U.S.C. § 7607(d). EPA supports these motions to dismiss and has not given any indication that it intends to undertake a new rulemaking to alter the Rule. *See* ECF Nos. 1797703, 1798780. Accordingly, EPA has definitively “rescinded and replaced [the] challenged regulation,” and the Court should follow the “perfectly uncontroversial and well-settled principle of law” and find that these cases are now moot. *Akiachak Native Cmty. v. U.S. Dep’t of the Interior*, 827 F.3d 100, 113 (D.C. Cir. 2016). No one can be prejudiced in any way by the dismissal of a moot case.

Because EPA and Respondent-Intervenors agree with the undersigned Petitioners and Petitioner-Intervenors that EPA’s promulgation of the Rule renders these consolidated cases moot, the Court should grant these motions to dismiss now.

² The fact that some Respondent-Intervenors have already filed a petition for review of the Rule undermines their theory that these cases will not be moot until the Rule’s effective date. If that were true, then there would not yet be an Article III case or controversy providing the basis for judicial review, which would make the Clean Air Act’s judicial review provisions illogical. *See* 42 U.S.C. § 7607(b)(1) (tying timing for filing petitions for review to Federal Register publication and not to a rule’s effective date).

Dated: August 1, 2019

/s/ Allison D. Wood

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

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

/s/ Carroll W. McGuffey III

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

*Counsel for Petitioner National Mining
Association*

Respectfully submitted,

/s/ Lindsay S. See

Patrick Morrissey
ATTORNEY GENERAL OF WEST
VIRGINIA
Lindsay S. See
Solicitor General
Counsel of Record
Thomas T. Lampman
Assistant Solicitor General
State Capitol Building 1, Room 26-E
Charleston, WV 25305
Tel: (304) 558-2021
Fax: (304) 558-0140
lindsay.s.see@wvago.gov
thomas.t.lampman@wvago.gov

Counsel for Petitioner State of West Virginia

/s/ Kyle D. Hawkins

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

Counsel for Petitioner State of Texas

/s/ Peter D. Keisler

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

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

/s/ Edmund G. LaCour Jr.

Steven T. Marshall
ATTORNEY GENERAL OF ALABAMA
Edmund G. LaCour Jr.
Solicitor General
Counsel of Record
501 Washington Avenue
Montgomery, AL 36130
Tel: (334) 353-2196
elacour@ago.state.al.us

Counsel for Petitioner State of Alabama

/s/ Oramel H. Skinner

Mark Brnovich
ATTORNEY GENERAL OF ARIZONA
Oramel H. Skinner
Solicitor General
Counsel of Record
Keith J. Miller
Assistant Solicitor General
Arizona Attorney General's Office
2005 North Central Avenue
Phoenix, AZ 85004-1592
Tel: (602) 542-3702
Fax: (602) 542-8308
o.h.skinner@azag.gov
keith.miller@azag.gov
SolicitorGeneral@azag.gov

Counsel for Petitioner Arizona Corporation Commission

/s/ Thomas A. Lorenzen

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

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

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

Counsel for Petitioner National Rural Electric Cooperative Association

/s/ Nicholas J. Bronni

Leslie Rutledge
ATTORNEY GENERAL OF ARKANSAS
Nicholas J. Bronni
Solicitor General
Counsel of Record
323 Center Street, Suite 200
Little Rock, AR 72201
Tel: (501) 682-6302
nicholas.bronni@arkansasag.gov

Counsel for Petitioner State of Arkansas

/s/ Daniel W. Bell

Ashley Moody
ATTORNEY GENERAL OF FLORIDA
Amit Agarwal
Solicitor General
Daniel W. Bell
Counsel of Record
Deputy Solicitor General
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
Tel: (850) 414-3818
Fax: (850) 410-2672
Amit.Agarwal@myfloridalegal.com
Daniel.Bell@myfloridalegal.com

Counsel for Petitioner State of Florida

/s/ Eric L. Hiser

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

*Counsel for Petitioner Arizona Electric Power
Cooperative, Inc.*

/s/ Brian A. Prestwood

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

*Counsel for Petitioner Associated Electric
Cooperative, Inc.*

/s/ David Crabtree

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

*Counsel for Petitioner Deseret Generation &
Transmission Co-operative*

/s/ Andrew A. Pinson

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

Counsel for Petitioner State of Georgia

/s/ Thomas M. Fisher

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

Counsel for Petitioner State of Indiana

/s/ John M. Holloway III

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

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

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

*Counsel for Petitioner East Kentucky Power
Cooperative, Inc.*

/s/ Patrick Burchette

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

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

/s/ Jeffrey A. Chanay

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

Counsel for Petitioner State of Kansas

/s/ Sarah Ellen Adkins

Andy Beshear
ATTORNEY GENERAL OF KENTUCKY
Sarah Ellen Adkins
Assistant Attorneys General
700 Capital Avenue
Suite 118
Frankfort, KY 40601
Tel: (502) 696-5611
sarah.adkins@ky.gov

*Counsel for Petitioner Commonwealth of
Kentucky*

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

*Counsel for Petitioner Golden Spread Electrical
Cooperative, Inc.*

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

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

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

*Counsel for Petitioner Wabash Valley Power
Association, Inc.*

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

Counsel for Petitioner State of Louisiana

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

*Counsel for Petitioner State of Louisiana
Department of Environmental Quality*

/s/ Megan H. Berge

Megan H. Berge
Evan A. Young
Emily J. Wilson
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
evan.young@bakerbotts.com
emily.wilson@bakerbotts.com

*Counsel for Petitioner Western Farmers Electric
Cooperative*

/s/ Steven C. Kohl

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

*Counsel for Petitioner Wolverine Power Supply
Cooperative, Inc.*

/s/ Lesley Foxhall Pietras

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

*Counsel for Petitioner Louisiana Public Service
Commission*

/s/ Harold E. Pizzetta, III

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

Counsel for Petitioner State of Mississippi

/s/ Donna J. Hodges

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

*Counsel for Petitioner Mississippi Department
of Environmental Quality*

/s/ Christina F. Gomez

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

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

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

*Counsel for Petitioner Basin Electric Power
Cooperative*

/s/ Todd E. Palmer

Todd E. Palmer
William D. Booth
John A. Sheehan
MICHAEL, BEST & FRIEDRICH LLP
601 Pennsylvania Ave., N.W., Suite 700
Washington, D.C. 20004-2601
Tel: (202) 747-9560
Fax: (202) 347-1819
tepalmer@michaelbest.com
wdbooth@michaelbest.com
jasheehan@michaelbest.com

*Counsel for Petitioner Mississippi Public Service
Commission*

/s/ D. John Sauer

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

Counsel for Petitioner State of Missouri

/s/ Stacey Turner

Stacey Turner
SOUTHERN COMPANY SERVICES, INC.
600 18th Street North
BIN 14N-8195
Birmingham, AL 35203
Tel: (205) 257-2823
staturner@southernco.com

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

/s/ C. Grady Moore, III

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

Counsel for Petitioner Alabama Power Company

/s/ Margaret Claiborne Campbell

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

Counsel for Petitioner Georgia Power Company

/s/ Matthew T. Cochenour

Timothy C. Fox
ATTORNEY GENERAL OF MONTANA
Matthew T. Cochenour
Deputy Solicitor General
Counsel of Record
215 North Sanders
Helena, MT 59620-1401
Tel: (406) 444-2026
mcochenour2@mt.gov

Counsel for Petitioner State of Montana

/s/ Justin D. Lavene

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

Counsel for Petitioner State of Nebraska

/s/ M. Brant Pettis

M. Brant Pettis
BALCH & BINGHAM LLP
1310 Twenty Fifth Avenue
Gulfport, MS 39501-1931
Tel: (228) 214-0426
Fax: (228) 864-8221
bpettis@balch.com

*Counsel for Petitioner Mississippi Power
Company*

/s/ James S. Alves

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

*Counsel for Petitioner CO₂ Task Force of the
Florida Electric Power Coordinating Group, Inc.*

/s/ Megan H. Berge

Megan H. Berge
Evan A. Young
Emily J. Wilson
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
evan.young@bakerbotts.com
emily.wilson@bakerbotts.com

Counsel for Petitioner Entergy Corporation

/s/ Paul M. Seby

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

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

Counsel for Petitioner State of North Dakota

/s/ Paul J. Zidlicky

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

Counsel for Petitioners GenOn Mid-Atlantic, LLC; Indian River Power LLC; Louisiana Generating LLC; Midwest Generation, LLC; NRG Chalk Point LLC (n/k/a GenOn Chalk Point, LLC); NRG Power Midwest LP (n/k/a GenOn Power Midwest, LP); NRG Rema LLC (n/k/a GenOn REMA, LLC); NRG Texas Power LLC; NRG Wholesale Generation LP (n/k/a GenOn Wholesale Generation, LP); and Vienna Power LLC

/s/ David M. Flannery

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

Counsel for Petitioner Indiana Utility Group

/s/ Benjamin M. Flowers

Dave Yost
ATTORNEY GENERAL OF OHIO
Benjamin M. Flowers
State Solicitor
Counsel of Record
Cameron F. Simmons
30 E. Broad Street, 17th Floor
Columbus, OH 43215
Tel: (614) 466-8980
bflowers@ohioattorneygeneral.gov
cameron.simmons@ohioattorneygeneral.gov

Counsel for Petitioner State of Ohio

/s/ F. William Brownell

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

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

*Counsel for Petitioner LG&E and KU Energy
LLC*

/s/ David B. Rivkin, Jr.

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

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

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

/s/ P. Stephen Gidiere III

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

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

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

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

/s/ James Emory Smith, Jr.

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

Counsel for Petitioner State of South Carolina

/s/ Steven R. Blair

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

Counsel for Petitioner State of South Dakota

/s/ Ronald J. Tenpas
Ronald J. Tenpas
VINSON & ELKINS LLP
2200 Pennsylvania Avenue, N.W.
Washington, D.C. 20037
Tel: (202) 639-6791
rtenpas@velaw.com

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

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

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

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

Counsel for Petitioner State of Utah

/s/ Megan H. Berge

Megan H. Berge
Evan A. Young
Emily J. Wilson
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
evan.young@bakerbotts.com
emily.wilson@bakerbotts.com

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

/s/ Joshua R. More

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

*Counsel for Petitioner Prairie State Generating
Company, LLC*

/s/ Allison D. Wood

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

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

/s/ James Kaste

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

Counsel for Petitioner State of Wyoming

/s/ Dennis Lane

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

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

/s/ Megan H. Berge

Megan H. Berge

Evan A. Young

Emily J. Wilson

BAKER BOTTS L.L.P.

1299 Pennsylvania Avenue, N.W.

Washington, D.C. 20004

Tel: (202) 639-7700

megan.berge@bakerbotts.com

evan.young@bakerbotts.com

emily.wilson@bakerbotts.com

Counsel for Petitioner Westar Energy, Inc.

/s/ Jeffrey R. Holmstead

Jeffrey R. Holmstead

Brittany M. Pemberton

BRACEWELL LLP

2001 M Street, N.W., Suite 900

Washington, D.C. 20036

Tel: (202) 828-5852

Fax: (202) 857-4812

jeff.holmstead@bracewelllaw.com

*Counsel for Petitioner American Coalition for
Clean Coal Electricity*

/s/ John D. Lazzaretti

John D. Lazzaretti

SQUIRE PATTON BOGGS (US) LLP

4900 Key Tower

127 Public Square

Cleveland, OH 44114

Tel: (216) 479-8350

john.lazzaretti@squirepb.com

*Counsel for Petitioner Murray Energy
Corporation*

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

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

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

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

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

/s/ Robert G. McLusky

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

*Counsel for Petitioner West Virginia Coal
Association*

/s/ Eugene M. Trisko

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

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

/s/ Eugene M. Trisko

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

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

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

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

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

*Counsel for Petitioner United Mine Workers of
America*

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

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

/s/ Peter Tolsdorf

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

*Counsel for Petitioner National Association of
Manufacturers*

/s/ Richard S. Moskowitz

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

*Counsel for Petitioner American Fuel &
Petrochemical Manufacturers*

/s/ Karen R. Harned

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

*Counsel for Petitioner National Federation of
Independent Business*

/s/ Megan H. Berge

Megan H. Berge
Evan A. Young
Emily J. Wilson
BAKER BOTTS L.L.P.
1299 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: (202) 639-7700
megan.berge@bakerbotts.com
evan.young@bakerbotts.com
emily.wilson@bakerbotts.com

*Counsel for Petitioner National Association of
Home Builders*

/s/ Kathryn D. Kirmayer

Kathryn D. Kirmayer
General Counsel
Alice Koethe
Assistant General Counsel
ASSOCIATION OF AMERICAN RAILROADS
425 3rd Street, S.W.
Washington, D.C. 20024
Tel: (202) 639-2100
kkirmayer@aar.org
akoethe@aar.org

*Counsel for Petitioner Association of American
Railroads*

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

*Counsel for Petitioner Energy and Environment
Legal Institute*

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

Counsel for Petitioner Denbury Onshore, LLC

/s/ Adam R.F. Gustafson

C. Boyden Gray

Adam R.F. Gustafson

Counsel of Record

James R. Conde

BOYDEN GRAY & ASSOCIATES, PLLC

801 17th Street, N.W., Suite 350

Washington, D.C. 20006

Tel: (202) 955-0620

gustafson@boydengrayassociates.com

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

Sam Kazman

COMPETITIVE ENTERPRISE INSTITUTE

1310 L Street, N.W., 7th Floor

Washington, D.C. 20005

Tel: (202) 331-1010

Sam.Kazman@cei.org

*Counsel for Petitioner Competitive Enterprise
Institute*

Robert Alt

BUCKEYE INSTITUTE FOR PUBLIC POLICY

SOLUTIONS

88 E. Broad Street, Suite 1300

Columbus, OH 43215

Tel: (614) 224-4422

robert@buckeyeinstitute.org

*Counsel for Petitioner Buckeye Institute for
Public Policy Solutions*

/s/ Tristan L. Duncan

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

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

/s/ Jonathan S. Massey

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

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

*Counsel for Petitioner and Petitioner-Intervenor
Peabody Energy Corporation*

/s/ Michael J. Nasi

Michael Nasi

JACKSON WALKER L.L.P.

100 Congress Avenue, Suite 1100

Austin, TX 78701

Tel: (512) 236-2000

Fax: (512) 236-2002

mnasi@jw.com

Douglas Bryan Hughes

LAW OFFICES OF D. BRYAN HUGHES

701 N. Pacific Street

Mineola, TX 75773

Tel: (903) 569-8880

bryan@hughesfirm.com

*Counsel for Petitioner-Intervenor Gulf Coast
Lignite Coalition*

CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27(d)(2) and 32(g) of the Federal Rules of Appellate Procedure and Circuit Rules 32(a)(1) and 32(e)(1), I hereby certify that the foregoing document contains 506 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court.

Dated: August 1, 2019

/s/ Allison D. Wood

Allison D. Wood

CERTIFICATE OF SERVICE

I hereby certify that, on this 1st day of August 2019, a copy of the foregoing document was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Allison D. Wood

Allison D. Wood