ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, STATE OF TEXAS, et al.	)	
Petitioners,	)	Case No. 15-1363 (consolidated with Nos. 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)
v.	)	
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and REGINA A. MCCARTHY, Administrator,	)	
Respondents.	)	

UNOPPOSED MOTION BY PEABODY ENERGY CORP.
FOR LEAVE TO INTERVENE IN SUPPORT OF PETITIONERS

TRISTAN L. DUNCAN
THOMAS J. GREVER
JUSTIN D. SMITH
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, Mo 64108
Tel: (816) 474-6550
tlduncan@shb.com
tgrever@shb.com
jxsmith@shb.com

LAURENCE H. TRIBE
420 Hauser Hall
1575 Massachusetts Ave.
Cambridge, Ma 02138
Tel: (617) 495-1767
tribe@law.harvard.edu

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

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), counsel certifies as follows:

A. Parties, Intervenors, and *Amici*.

Petitioners in No. 15-1363 include the 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. Respondents include the United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency.

Petitioners in No. 15-1364 include the State of Oklahoma, ex rel. E. Scott Pruitt, in his official capacity as Attorney General of Oklahoma, and the Oklahoma Department of Environmental Quality.

Petitioners in 15-1365 include the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO.

Petitioner in No. 15-1366 is Murray Energy Corporation.

Petitioner in No. 15-1367 is the National Mining Association.

Petitioners in No. 15-1368 is the American Coalition for Clean Coal Electricity.

Petitioners in No. 15-1370 include the Utility Air Regulatory Group and the American Public Power Association.

Petitioners in No. 15-1371 include the Alabama Power Company, Georgia Power Company, Gulf Power Company, and the Mississippi Power Company.

Petitioner in No. 15-1372 is the CO2 Task Force of the Florida Electric Power Coordinating Group, Inc.

Petitioner in No. 15-1373 is Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

Petitioner in No. 15-1374 is the Tri-State Generation and Transmission Association, Inc.

Petitioner in No. 15-1375 is the United Mine Workers of America.

Petitioners in No. 15-1376 include the 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

Power 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, Inc., 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.

Petitioner in No. 15-1377 is Westar Energy, Inc.

Petitioner in No. 15-1378 is NorthWestern Corporation, doing business as NorthWestern Energy.

Petitioner in No. 15-1379 is the National Association of Home Builders.

Petitioner in No. 15-1380 is the State of North Dakota.

Petitioners in No. 15-1382 include the 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 and Steel Institute, American Wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and the Portland Cement Association.

Petitioner in No. 15-1383 is the Association of American Railroads.

Petitioners in No. 15-1386 include 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.

Respondents in all cases include the Environmental Protection Agency and Regina A. McCarthy, Administrator, U.S. Environmental Protection Agency

B. Rulings under Review. The motion relates to EPA's Final Rule styled *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric* Utility *Generating Units*, issued Aug. 3, 2015 (published at 80 Fed. Reg. 64,662 (Oct. 23, 2015) and codified at 40 C.F.R. pt. 60).

C. Related Cases: This Court has previously issued opinions and orders in the related cases of *In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. June 9, 2015); *West Virginia v. EPA*, Nos. 14-1112, 14-1146, 14-1151 (D.C. Cir. June 9, 2015); *In re West Virginia*, No. 15-1277 (D.C. Cir. Sept. 9. 2015) (*per curiam*); *In re Peabody Energy Corp.*, No. 15-1284 (D.C. Cir. Sept. 9. 2015) (*per curiam*).

Dated: October 29, 2015 /s/ Tristan L. Duncan

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Peabody Energy Corporation ("Peabody") provides the following disclosure:

Peabody is a publicly-traded company on the New York Stock Exchange ("NYSE") under the symbol "BTU." Peabody has no parent corporation and no publicly held corporation owns more than 10% of Peabody's outstanding shares.

Dated: October 29, 2015 /s/ Tristan L. Duncan

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Regulations

* Authorities principally relied upon are marked with an asterisk.

I. Introduction

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(d), Peabody Energy Corp. ("Peabody") respectfully moves for leave to intervene in support of Petitioners State of West Virginia and State of Texas, *et al*. in this proceeding. Pursuant to D.C. Circuit Rule 15(b), this motion constitutes a motion to intervene in all petitions for review of the agency action.

Counsel for Peabody has conferred with counsel for Petitioners and Respondents in No. 15-1363 and the consolidated cases. Counsel for all Petitioners except North Dakota have stated that they consent to the instant motion. North Dakota, Petitioner in No. 15-1380, states that it takes no position on this motion. The United States Department of Justice, as counsel for the Environmental Protection Agency ("EPA"), has indicated that EPA takes no position on this motion.

This case involves EPA's Final Rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," published at 80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Rule"). The Rule seeks to restructure the energy industry in the United States and to compel a reduction in the use of coal, traditionally the most reliable and affordable source of electricity. It requires fossil fuel-fired electric generating units ("EGUs") to meet a national

performance rate that forces the reduction of CO2 emissions by as much as 40 percent, or forces States to meet equivalent state-wide CO2 emission "goals."

Peabody's interest is set out in the Declaration of Bryan A. Galli ("Galli Decl."), which is attached hereto as Exhibit A. Peabody is the world's largest private-sector coal company, the largest producer of coal in the United States, and is a publicly-traded company. Galli Decl. at ¶ 3. Its products fuel nearly 10% of America's electricity. *Id.* at ¶ 5.

By Order of February 12, 2015 in No. 14-1151, this Court previously granted Peabody leave to intervene in an action seeking an extraordinary writ of prohibition against the proposed version of the Rule, and Peabody's counsel participated in oral argument in that case. *See In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. June 9, 2015). In addition, Peabody has previously sought an extraordinary writ against the final but not yet published version of the Rule. *In re Peabody Energy Corp.*, No. 15-1284 (D.C. Cir. Sept. 9. 2015) (*per curiam*).

The Rule is aimed squarely at coal, and Peabody has an important interest in this proceeding. Accordingly, Peabody's motion to intervene should be granted.

II. Interest of Proposed Intervenor

Peabody has an estimated 6.6 billion tons of proven and probable coal reserves in the United States. Galli Decl. ¶ 4. Peabody's annual United States coal production was approximately 185 million tons in 2013 and 190 million tons in

2014. *Id.* In 2014, about 95% of Peabody's total U.S. coal sales (by volume) went to more than 150 U.S. electricity generating stations in approximately 30 states. *Id.* at ¶ 5. Peabody owns interests in 16 active coal mining operations in the United States. *Id.* at ¶ 6.

In addition to Peabody's mining operations, Peabody markets and brokers coal from its operations and other coal producers, and trades coal and freight-related contracts through trading and business offices in the United States and abroad. *Id.* at ¶ 7. Peabody also owns an interest in a 1,600 megawatt coal-fueled electricity generation plant in the United States. *Id.*

Peabody has made substantial investments in its business of providing coal as a reliable and affordable fuel source to power plants throughout the country. *Id.* at ¶ 8. However, the Rule is significantly harming and will continue to significantly impair Peabody's interests because it is aimed at reducing coal use in the United States. *Id.* at ¶ 9. EPA's Regulatory Impact Assessment shows that the Rule will substantially reduce coal production for power sector use. *Id.* at ¶ 10.

EPA's own modeling reveals that the agency expects that the Rule will force the full or partial closure of many coal-fueled Electric Generating Units ("EGUs") ***as early as 2016***. In particular, EPA's own modeling based on the Rule shows the shutdown of 11 gigawatts of coal-fueled generation ***in 2016***, which translates into

the loss of more than 30 coal-fueled EGUs, including customers of Peabody. *Id.* at ¶ 11.

Because Peabody and its utility customers must make future planning and investment decisions for existing plants and resources on a multi-year time horizon, irreversible closure decisions must be made years before actual closure. *Id.* at ¶¶ 12-13. Peabody's customers already have begun making plant closure and curtailment decisions in anticipation of the Rule. *Id.* This will result in lost business. *Id.* The pace of those closure and curtailment decisions will pick up now that the Rule has been announced and formally published. Plant closure and curtailment will harm Peabody as well as its workers, suppliers, and their communities. *Id.* at ¶ 13.

In short, this proceeding itself has already adversely affected Peabody's interests, and the formal promulgation of the Rule inevitably increases Peabody's injury with each passing day. Reports have indicated that "[t]he U.S.' largest coal producer, Peabody Energy Corporation stands to lose the most as the newly-proposed rules will harm local consumption of coal." *Id.* at ¶ 9. The New York Times reported that "[t]he rule will probably lead to the closing of hundreds of coal-fired power plants." *Id.*

III. Grounds For Intervention

"Intervention in this court is governed by Fed. R. App. P. 15(d)." *Process*

Gas Consumers Group v. FERC, 912 F.2d 511, 515 (D.C. Cir. 1990). "Rule 15(d) simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Financial Corp. v. Board of Governors of Federal Reserve System*, 952 F.2d 426, 433 (D.C. Cir. 1991). This Court has set out the legal standard for intervention:

> In deciding whether a party may intervene as of right, we employ a four-factor test requiring: 1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor's interest.

Crossroads Grassroots Policy Strategies v. FEC, 782 F.3d 312, 320 (D.C. Cir. 2015). Peabody meets this standard. In fact, by Order of February 12, 2015 in No. 14-1151, this Court recognized as much by previously granting Peabody leave to intervene in a related action. *See In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. 2015). Intervention is amply warranted here.

A. The Intervention Motion Is Timely.

Peabody's motion has been filed at the very outset of this litigation, just after Petitioners have filed their petitions for review, and well within the 60-day period of judicial review prescribed by Section 307(b)(1) of the Clean Air Act (42 U.S.C. § 7607(b)(1)). This Court assesses the timeliness of a motion to intervene by examining the circumstances of the case, including the amount of time elapsed since the inception of the action, the probability of prejudice to existing parties, the

purpose for which intervention is sought, and the need for intervention as a means for preserving the putative intervenor's rights. *Karsner v. Lothian*, 532 F.3d 876, 885-86 (D.C. Cir. 2008); *United States v. British Am. Tobacco Australian Servs.*, 437 F.3d 1235, 1238 (D.C. Cir. 2006) (quoting *United States v. Am. Tel. & Tel. Co.*, 642 F.2d 1285, 1295 (D.C. Cir. 1980)). There can be no question that Peabody's intervention is timely.

B. Peabody Has a Legally Protectable Interest, Which The Case Will Impair or Impede.

Next, an intervenor must identify a "legally protected" interest, which the action may impair or impede. *Karsner*, 532 F.3d at 885. "The inquiry is not a rigid one: consistent with the Rule's reference to dispositions that may 'as a practical matter' impair the putative intervenor's interest, Fed.R.Civ.P. 24(a)(2), courts look to the 'practical consequences' of denying intervention." *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 13 (D.D.C. 2010) (quoting *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 735 (D.C. Cir. 2003)). "[T]he 'interest' test is primarily a practical guide to disposing of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process." *Foster v. Gueory*, 655 F.2d 1319, 1324 (D.C. Cir. 1981) (quoting *Nuesse v. Camp*, 385 F.2d 694, 700 (D.C. Cir. 1967)). Thus, in environmental litigation, the Court has held that proposed intervenors need only an interest in the litigation – not a cause of action or permission to sue. "[T]he lack of a cause of action does not, in

and of itself, bar a party from intervening." *Jones v. Prince George's County*, 348 F.3d 1014, 1018 (D.C. Cir. 2003).

Peabody easily satisfies this standard. It has a significant interest in the litigation. The Rule is aimed squarely at coal and seeks to reduce the use of coal for electricity generation. Peabody is the world's largest private-sector coal company and the largest producer of coal in the United States. *See* Galli Decl. ¶ 3. Its products fuel nearly 10% of America's electricity. *Id.* at ¶ 5. EPA's own modeling shows the closure of dozens of coal-fueled EGUs beginning in 2016, including customers of Peabody. *Id.* at ¶ 11. Peabody has a direct and practical interest in this litigation.

In *Fund for Animals, Inc. v. Norton*, 322 F.3d 728 (D.C. Cir. 2003), for example, this Court permitted the Department of the Ministry of Nature and Environment of Mongolia ("NRD") to intervene as a defendant in a suit challenging action by the Fish and Wildlife Service ("FWS"). NRD established a protectable interest by alleging that, if a certain kind of sheep were declared an endangered species, Mongolia would lose tourist dollars associated with sheep hunting and a consequent reduction in funding for its conservation program. *Id.* at 733. This Court found NRD's "threatened loss of tourist dollars" and the "consequent reduction in funding for Mongolia's conservation program" constituted a "concrete and imminent injury." *Id.* This Court opined that "loss of

revenues during any interim period" would qualify to support intervention. *Id.* at 735.

In *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998), this Court permitted intervention based on potential revenue losses from reduced sale of military munitions. This Court described the loss of business as "concrete injury" and opined that it conferred standing for intervention. *Id.*

Peabody's interest in this case is stronger than the interests of parties in prior cases where this Court has upheld the right to intervene. The Rule directly impairs Peabody's interests and clearly warrants intervention under the established law of this Circuit.

C. The Existing Parties Do Not Adequately Represent Peabody's Interests.

The Supreme Court has held that this "requirement of the Rule is satisfied if the applicant shows that representation of his interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n. 10 (1972). Hence, the burden on putative intervenors to show inadequacy of representation "is not onerous," *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir.1986), and the interests they assert "need not be wholly 'adverse' before there is a basis for concluding that existing representation of a 'different' interest may be inadequate." *Nuesse*, 385 F.2d at 703; *see also Foster*, 655 F.2d at 1325 ("This burden is minimal and is met

if appellants show that representation of their interests 'may' be inadequate."); *U.S. v. American Tel. & Telegraph Co.*, 642 F.2d 1285, 1293 (D.C. Cir. 1980) (stating that a petitioner "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee"); *Tell v. Trs. of Dartmouth Coll.*, 145 F.3d 417, 419 (1st Cir. 1998) (stating that "without a perfect identity of interests, a court must be very cautious in concluding that a litigant will serve as a proxy for an absent party"); *Sw. Ctr. for Biological Diversity v. Berg*, 268 F.3d 810, 824 (9th Cir. 2001) ("It is sufficient for Applicants to show that, because of the difference in interests, it is likely that Defendants will not advance the same arguments as Applicants.").

Peabody meets this standard in this case because it can show differences in interest in kind or degree, including differences in the intensity of interest, among the parties to this litigation. Peabody is a publicly-traded energy company and the largest producer of coal in the United States. No other party in this proceeding has the precise interests of Peabody. Petitioner States are governmental entities whose interests arise from their obligation to regulate utilities and provide reliable and affordable energy. Other Petitioners include business advocacy associations that represents their members' interests as energy consumers. Still other Petitioners include utilities and the Utility Air Regulatory Group, which represents owners and operators of EGUs that rely in part on coal; these parties will be harmed by the

Rule, but they do not hold the same interests in our nation's coal development and delivery infrastructure as Peabody. Other coal companies are involved in this proceeding, but they are either privately owned (like Murray Energy), not publicly traded, of very different size and geographic scope, or both. In short, while Peabody's interests are aligned with those of many of the Petitioners in this proceeding, none of these parties has identical interests to Peabody's.

Moreover, Peabody has filed distinctive comments with EPA on the Rule, raising particular constitutional infirmities of the Rule that are pertinent to the Court's consideration of the merits of the case. Peabody respectfully submits that its participation in this proceeding will provide unique, not duplicative, arguments and prove beneficial to the Court.

IV. Conclusion

For the reasons set forth above, the Court should grant Peabody's Motion for Leave to Intervene.

Dated: October 29, 2015 Respectfully submitted.

/S/TRISTAN L. DUNCAN
TRISTAN L. DUNCAN
THOMAS GREVER
JUSTIN D. SMITH
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, Mo 64108
Tel: (816) 474-6550
tlduncan@shb.com
tgrever@shb.com
jxsmith@shb.com

LAURENCE H. TRIBE
420 Hauser Hall
1575 Massachusetts Ave.
Cambridge, Ma 02138
Tel: (617) 495-1767
tribe@law.harvard.edu

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

CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 21(d) because it does not exceed 20 pages, excluding the parts of the motion exempted by Rule 21(d). This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times Roman.

/s/ Tristan L. Duncan

CERTIFICATE OF SERVICE

I hereby certify that on this day, October 29, 2015, I filed the above document using the ECF system, which will automatically generate and send service to all registered attorneys participating in this case.

/s/Tristan L. Duncan

EXHIBIT A: DECLARATION OF BRYAN A. GALLI

I, Bryan A. Galli, declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. I am Group Executive Marketing & Trading of Peabody Energy Corporation ("Peabody").

2. I provide this declaration in support of Peabody's motion to intervene in challenges to the Rule issued by the United States Environmental Protection Agency ("EPA"), "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Rule"). This declaration is based on my personal knowledge of facts and analysis conducted by my staff and me.

Peabody's Business

3. Peabody is the world's largest private-sector coal company, the largest producer of coal in the United States, and is a publicly-traded company.

4. Peabody has an estimated 6.6 billion tons of proven and probable coal reserves in the United States. Peabody's annual United States coal production was approximately 185 million tons in 2013 and 190 million tons in 2014.

5. Peabody's products fuel nearly 10% of America's electricity. In 2014, about 95% of Peabody's total U.S. coal sales (by volume) went to more than 150 U.S. electricity generating stations in approximately 30 states.

6. Peabody owns interests in 16 active coal mining operations in the United States. These mines are located in Arizona (Kayenta), Colorado (Twentymile), Illinois (Cottage Grove, Gateway North, Wildcat Hills), Indiana (Bear Run, Francisco, Somerville Central, Somerville North, Somerville South, Wild Boar), New Mexico (El Segundo, Lee Ranch), and Wyoming (Caballo, North Antelope Rochelle, Rawhide).

7. In addition to Peabody's mining operations, Peabody markets and brokers coal from its operations and other coal producers, and trades

coal and freight-related contracts through trading and business offices in the United States and abroad. Peabody also owns an interest in a 1,600 megawatt coal-fueled electricity generation plant in the United States.

8. Peabody has made substantial investments in its business of providing coal as a reliable and affordable fuel source to power plants throughout the country.

Summary of Harms from the Rule

9. The Rule is aimed at reducing coal use in the United States. Press reports have stated that "[t]he U.S.' largest coal producer, Peabody Energy Corporation stands to lose the most as the newly-proposed rules will harm local consumption of coal."[1] The New York Times reported that "[t]he rule will probably lead to the closing of hundreds of coal-fired power plants."[2]

10. EPA's Regulatory Impact Assessment accompanying the Rule predicts that the Rule will reduce coal production for power sector use by 5-7% by 2020, 14-17% by 2025, and 24-25% by 2030. Table ES-11, p. ES-24.

[1] "How Peabody Energy Corporation Has Responded To EPA's New Carbon Rules," Bidness Etc., Aug. 4, 2015 (available at http://www.bidnessetc.com/49291-how-peabody-energy-corporation-has-responded-to-epas-new-carbon-rules/); *see also* "Only One Loser In Obama's Clean Power Plan," Forbes, Aug. 4, 2015 (available at http://www.forbes.com/sites/jamesconca/2015/08/04/only-one-loser-in-obamas-clean-power-plan/) ("The only big loser in the U.S. from these rules will be coal *producers*.") (emphasis in original).

[2] "5 Questions About Obama's Climate Change Plan," N.Y. TIMES, Aug. 3, 2015 (available at http://www.nytimes.com/2015/08/04/us/politics/5-questions-about-obamas-climate-change-plan.html).

EPA predicts that the Rule will reduce coal-fueled electric generation by 5-6% by 2020, 12-15% by 2025, and 22-23% by 2030. Table 3-11, p. 3-26.

11. In fact, EPA's modeling reveals that the agency expects that the Rule will force the full or partial closure of many coal-fueled Electric Generating Units ("EGUs") ***as early as 2016***. In particular, EPA's own modeling based on the Rule shows the shutdown of 11 gigawatts of coal-fueled generation ***in 2016***, which translates into the loss of more than 30 coal-fueled EGUs, including customers of Peabody.

12. Because Peabody and its utility customers must make future planning and investment decisions for existing plants and resources on a multi-year time horizon, irreversible closure decisions must be made years before actual closure. Peabody's customers already have begun making plant closure and curtailment decisions in anticipation of the Rule. In our discussions with our utility customers, we are already hearing of cutbacks in coal purchases based on the Rule. This will result in lost business.

13. The pace of those closure and curtailment decisions will pick up now that the Rule has been announced. Plant closure and curtailment will irreparably harm Peabody as well as its workers, suppliers, and their communities.

Executed this 29th day of October, 2015.


Bryan A. Galli