ORAL ARGUMENT NOT YET SCHEDULED
No. 15-1382

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

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,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY; and GINA MCCARTHY, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondents.

On Petition for Review of a Final Rule of the United States Environmental Protection Agency

MOTION FOR STAY OF EPA'S FINAL RULE

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A) EPA, *Clean Energy Now and in the Future*, *available at* http://www.epa.gov/airquality/cpp/fs-cpp-clean-energy.pdf ("EPA Factsheet")

B) U.S. Energy Information Administration, *Most States Have Renewable Portfolio Standards*, *available at* http://www.eia.gov/todayinenergy/detail.cfm?id=4850 ("EIA Renewable Statistics")

C) Press Release, H.R. Energy & Commerce Comm. (July 23, 2014), *available* at http://energycommerce.house.gov/press-release/pollution-vs-energy-lacking-proper-authority-epa-can%E2%80%99t-get-carbon-message-straight ("House Press Release")

D) Coral Davenport, *Strange Climate Event: Warmth Toward U.S.*, N.Y. Times (Dec. 11, 2014), *available at* http://www.nytimes.com/2014/12/12/world/strange-climate-event-warmth-toward-the-us.html?_r=4 ("Kerry Statement")

E) Joby Warrick, *White House set to adopt sweeping curbs on carbon pollution*, Wash. Post (Aug. 1, 2015), *available at* https://www.washingtonpost.com/national/health-science/white-house-set-to-adopt-sweeping-curbs-on-carbon-pollution/2015/08/01/ba6627fa-385c-11e5-b673-1df005a0fb28_story.html ("White House Factsheet")

F) Remarks of Gina McCarthy, Administrator, EPA, at RFF Leadership Forum (Sept. 25, 2014), *available at* http://www.rff.org/files/sharepoint/Documents/Events/RFF-Sept25-GinaMcCarthyPLF.pdf ("McCarthy Remarks")

G) Brian Deese, *President Obama's Clean Power Plan Is a Strong Signal of International Leadership* (Aug. 5, 2015), *available at* https://climate.america.gov/clean-power-plan-strong-signal-international-leadership/ ("Deese Article")

H) Interagency Working Group on Social Cost of

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I) Remarks by President Obama (Aug. 3, 2015), *available at* https://www.whitehouse.gov/the-press-office/2015/08/03/remarks-president-announcing-clean-power-plan ("President's Remarks")

J) U.S. Energy Information Administration, *Monthly power sector carbon dioxide emissions reach 27-year low in April* (Aug. 5, 2015), *available at* http://www.eia.gov/todayinenergy/detail.cfm?id=22372 ("EIA Chart")

K) Settlement Agreement between EPA and New York *et al.*, attached to *West Virginia v. EPA*, No. 14-1146, Dkt. No. 1510473 (Sept. 3, 2014) ("Settlement Agreement")

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* *Authorities upon which we chiefly rely are marked with asterisks.*

STATUTES AND REGULATIONS

LEGISLATIVE HISTORY

OTHER AUTHORITY

GLOSSARY

Act (or CAA)	Clean Air Act, 42 U.S.C. § 7401, *et seq.*
BACT	Best Available Control Technology
EPA	United States Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
New Source Rule	EPA, *Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units*, 80 FR 64510 (Oct. 23, 2015)
Movants	Chamber of Commerce of the United States of America National Association of Manufacturers National Federation of Independent Business American Chemistry Council American Coke and Coal Chemicals Institute American Foundry Society American Forest & Paper Association American Fuel & Petrochemical Manufacturers American Iron & Steel Institute American Wood Council Brick Industry Association Electricity Consumers Resource Council Lignite Energy Council National Lime Association National Oilseed Processors Association Portland Cement Association
MW	Megawatt
NPRM Legal Mem.	EPA, *Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units*
NPRM	EPA, Proposed Rule, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 FR 34830 (2014)
Rule	EPA, Final Rule, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Rule*, 80 FR 64662 (Oct. 23, 2015)

The Court should stay EPA's attempt to "'aggressive[ly] transform[] … the domestic energy industry.'" White House Factsheet, Ex. 8-E. The Rule exceeds the established bounds of EPA's authority under the CAA, sweeping virtually all aspects of electricity production within EPA's control. States and industry must begin now to overhaul the power sector, including passing new laws to ensure the permitting, construction, and funding of EPA's preferred power sources, as well as shutting down existing disfavored plants that would otherwise be dispatched to meet demand.

EPA's Rule rests entirely on a single phrase plucked from a rarely used provision authorizing EPA to establish "a procedure" for States to issue "standards of performance" for existing "sources." CAA §111(d)(1). EPA may not invoke this provision to bootstrap from a "long-extant statute an unheralded power to regulate 'a significant portion of the American economy.'" *Util. Air Reg. Grp. v. EPA*, 134 S. Ct. 2427, 2444 (2014) ("*UARG*"). That is particularly true where, as here, Congress has repeatedly considered and rejected giving EPA the new authority it now claims, and where EPA is attempting to assert primacy over a sector traditionally regulated by the States. *ABA v. FTC*, 430 F.3d 457, 471 (D.C. Cir. 2005). Certainly, a provision that exclusively addresses *existing* sources cannot supply a statutory basis for EPA to mandate the construction of EPA's new preferred sources.

The Rule seeks to create a new "clean energy economy," EPA Factsheet 2, Ex. 8-A, by, in the words of a senior administration official, "decarboniz[ing]" the electricity sector, Deese Article, Ex. 8-G. This mandate will impose enormous,

immediate, and unrecoverable costs not only on States, who never have been asked to make such extensive changes in so little time, but also on Movants' member companies. A stay is warranted so this Court may assess whether EPA has the unprecedented legal authority the Rule purports to exercise.[1]

BACKGROUND

CAA §111(d)(1) authorizes EPA to require States to establish "standards of performance for any existing source ... to which a standard of performance under this section would apply if such existing source were a new source" regulated under §111(b) (emphasis added). To regulate a "new source" under §111(b), EPA must first find that the source category "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." CAA §111(b)(1)(A).

In a separate rulemaking under §111(b), EPA imposed performance standards on carbon emissions from new fossil fuel-fired generating units. 80 FR 64510 (Oct. 23, 2015). Section 111(d)(1) therefore confines the Rule at issue here to mandating emission reductions for existing fossil fuel-fired generating units, which would be regulated "under [§111(b)] if such existing source[s] were ... new source[s]." CAA §111(d)(1). This statutory limitation posed a difficulty for EPA, because— as EPA acknowledges — technological and economic factors constrain reductions that can be

[1] Movants notified EPA's counsel before filing this motion. Several movants asked EPA to stay the Rule on October 2, 2015, but EPA has not acted on that request.

achieved at existing fossil fuel-fired power plants. *See* 80 FR 64662, 64751, 64787-89 (Oct. 23, 2015).

In the NPRM, EPA nonetheless proposed to reduce carbon emissions from existing power plants by 30% as of 2030. EPA could achieve such reductions only by regulating entities and activities in addition to existing fossil fuel-fired generating units. 79 FR 34830, 34832, 34835 (2014). The NPRM claimed such regulation would be lawful. It asserted that because a "standard of performance" means the emissions limits "'achievable through the application of the best system of emission reduction,'" and because the word "system" means "'[a] set of things working together as parts of a mechanism or interconnecting network,'" *id.* at 34885, EPA "may include [within its authority] anything that reduces emissions," including obligations imposed on entities beyond the regulated sources themselves. NPRM Legal Mem. 51-52, Ex. 6-C.

In the final Rule—in response to many comments demonstrating that its proposed approach would violate the CAA—EPA purported to switch course. EPA now claims to regulate only actions "implementable by the sources themselves." 80 FR at 64762. Yet the same beyond-the-source obligations remain. The Rule requires States to make even deeper emission reductions than the proposed rule. *Compare* 80 FR at 64665 (reducing emissions by 32%) *with* 79 FR at 34832 (reducing emissions by 30%). And the Rule acknowledges that only a small fraction of those reductions can be accomplished on-site at existing plants. *See* 80 FR at 64727.

Specifically, the final Rule imposes nationwide ceilings on the "rate" of carbon

emissions from coal- and natural gas-fired plants: 1,305 lb. CO_2/MW-hours for coal and 771 lb. CO_2/MW-hours for gas. *Id.* at 64667. These ceilings are the "chief regulatory requirement of th[e] rulemaking" and constitute EPA's "application of the [best system of emission reduction] to the affected" plants. *Id.* at 64823.[2] The ceilings are more stringent than the emission ceilings for *new* plants, which are 1,400 lb. CO_2/MW-hours for coal-fired plants and 1,000 lb. CO_2/MW-hours for gas-fired plants, 80 FR at 64512-13, even though the new source ceilings are based on "state-of-the-art means of control," *id.* at 64540. This disparity makes clear that the "existing source" ceilings cannot be achieved by existing sources themselves.

Emissions Ceilings for New and Existing Sources		
	Newly-constructed	**Existing**
Coal	1,400 lb. CO2/MW-hours	1,305 lb. CO2/MW-hours
Natural Gas	1,000 lb. CO2/MW-hours	771 lb. CO2/MW-hours

EPA calculated these rates based on three "building blocks": 1) on-site efficiency improvements by fossil fuel-fired generating units, 2) shifting electricity generation from coal-fired units to lower-emitting gas-fired units; and 3) shifting generation from both coal- and gas-fired units to new renewable energy sources. 80 FR at 64667. EPA based the national emission ceilings on the reductions it believes States could achieve by implementing these "building blocks." *Id.* at 64719-20, 64752.

The Rule finds that block 1 on-site efficiency improvements are capable of

[2] EPA also issued rate- and mass-based goals for each State; they consist simply of mathematical application of these national emission rate ceilings to each State's existing power plants. 80 FR at 64821-23.

improving efficiency at coal generating units by at most 4.3%. *Id.* at 64727. While block 2 assumes that coal-fired generation can be displaced by increased gas-fired generation, *id.* at 64724, EPA projects that ultimately gas-fired generation will be *reduced* by 1-4% under the Rule by 2030, *id.* at 64927, tbl.17.

Thus, the bulk of the emission reductions the Rule mandates are based on block 3, which assumes States will require the construction and dispatch of a vast amount of new, renewable generation to displace coal-fired generation. EPA forecasts that the Rule will result in about 540,000,000 MW-hours of new renewable energy generation by 2030. Goal Computation TSD 23, Ex. 6-A. This increase would nearly double the share of generation by renewable energy plants. EPA Factsheet 3, Ex. 8-A. Correlatively, EPA projects that coal-fired generating capacity will be cut nearly in half, from roughly 336,000 MW in 2012 to 183,000 MW in 2030. Regulatory Impact Analysis 2-3, 3-24, Ex. 6-B; *see also* EPA Factsheet 3, Ex. 8-A (showing loss of share of coal-based generation).

In the Rule, EPA does not dispute that existing plants will be unable to achieve the strict national emission ceilings for coal- and gas-fired plants by making changes at the sources themselves. Instead, EPA explains that existing sources will be able to comply because their *owners* can make arrangements with *other* independent sources that can produce electricity with lower emissions. For example, EPA says a coal-fired plant can "average [the plant's] emission rate with [credits] issued on the basis of incremental generation from an existing [gas-fired] unit" or a new renewable power

unit that the coal-fired plant's owners also own. 80 FR at 64753. The coal-fired unit's owners could also enter into "a bilateral transaction with the owner/operator of the [gas-fired or renewable] unit" to obtain credits, or enter into "a transaction for [credits] through an intermediary," such as in an emissions trading market, *id.*—an approach EPA singled out as "integral" to the Rule, *id.* at 64734.

States must submit complex compliance plans for EPA approval by September 2016 (or by September 2018, if EPA grants an extension). *Id.* at 64669. If a State fails to submit an approvable plan, EPA will take control of the State's electricity sector by imposing a federal plan, *id.* at 64664, 64840, presumably comprised of an emissions trading program, *see* 80 FR 64966, 64966 (Oct. 23, 2015).

ARGUMENT

In reviewing a motion for stay, this Court considers: (1) the likelihood that the movant will prevail on the merits; (2) the prospect of irreparable injury if relief is withheld; (3) the possibility of substantial harm to others if relief is granted; and (4) the public interest. *See Wash. Metro. Area Transit Comm'n v. Holiday Tours*, 559 F.2d 841, 842-43 (D.C. Cir. 1977). All four factors weigh strongly in favor of a stay here.

I. MOVANTS ARE LIKELY TO PREVAIL ON THE MERITS

In developing the Rule, EPA faced a "dilemma." 80 FR at 64769. It sought massive reductions in the carbon emitted by fossil fuel-generated electricity. But EPA knew that carbon emissions are inherent in how those facilities generate power, that retrofitting "carbon capture" technology industry-wide on existing facilities is not

technologically or financially feasible, and that upgrades that could practicably be undertaken by existing facilities could at best achieve only a small fraction of the emission reductions EPA desired. *See supra* pp. 2-4; 80 FR at 64751, 64787-89. Thus, the reductions sought by EPA could not be achieved under its established CAA powers through "standards of performance" for "existing sources." Instead, such reductions would require a fundamental shift in energy policy—one requiring States to enact a host of new laws to ensure construction of costly new energy sources and infrastructure and the shuttering of plants that would otherwise provide efficient, reliable, and cost-effective electricity for businesses and consumers. *See supra* p. 5.

Section 111(d) provides no authority for EPA to "aggressive[ly] transform[]" the domestic electricity sector to achieve EPA's vision of how that sector should be constituted. The Executive Branch may be frustrated that Congress rebuffed attempts to enact laws authorizing the "cap-and-trade" regime that the Rule now seeks to replicate, *e.g.* H.R. 2454, 111th Cong. (2009); S.2191, 110th Cong. (2007), but EPA cannot circumvent the political process by legislating through regulation. Movants' challenge has a strong probability of success.

1. The Act, at most, permits EPA to impose emission reduction obligations based only on the reductions that can be achieved by the actual fossil fuel-fired generating unit subject to regulation under §111(d). Section 111(d)(1)(A) addresses "standards of performance *for any existing source*" (emphasis added). The CAA defines "source," in turn, as "any building, structure, facility, or installation which emits or

may emit any air pollutant." CAA §111(a)(3). Thus, §111(d) permits EPA to require States to establish performance standards only for the building, structure, facility, or installation whose "emi[ssions]" are being controlled.

In the few instances in which EPA has applied §111(d), it has read the statute consistently with the plain text and established emission guidelines based on reductions achievable by implementing emission-reducing technology or practices only at the regulated source. *See* 61 FR 9905, 9907 (Mar. 12, 1996); 45 FR 26294, 26294 (Apr. 17, 1980); 44 FR 29828, 29829 (May 22, 1979); 42 FR 55796, 55797 (Oct. 18, 1977); 42 FR 12022, 12022 (Mar. 1, 1977). Indeed, just last year EPA acknowledged that standards of performance are "based on the BSER *achievable at [the regulated] source*." 79 FR 36880, 36885 (June 30, 2014) (emphasis added).

2. As noted, EPA now concedes it lacks the authority it claimed in the NPRM to regulate "*anything* that reduces emissions" by fossil fuel-fired generating units. NPRM Legal Mem. 51, Ex. 6-C (emphasis added); 80 FR at 64761-62. EPA agrees that §111(d) permits it to require only actions "that are implementable by the sources themselves." 80 FR at 64762; *id.* at 64720. Despite this purported change, the Rule seeks to impose emission reduction obligations *deeper* than those proposed in the NPRM and that indisputably cannot be met by installation of control technologies or practices at fossil fuel-fired generating facilities. *Supra* pp. 2-4.

EPA's own analysis conclusively demonstrates that the Rule regulates far more than "the sources themselves." 80 FR at 64762. EPA's block 1 analysis found that

"control measures" that could be implemented at individual fossil fuel-fired generating units "yield only a small amount of emission reductions." *Id.* at 64769. Similarly, as noted *supra* p. 4, even a *new* coal or gas plant with state-of-the-art controls could not achieve the emission rate the Rule demands.

Thus, EPA ultimately concedes that it is, in fact, regulating beyond the regulated source. 80 FR at 64761 (acknowledging the Rule regulates "actions that may occur off-site and actions that a third party takes"). EPA tries to justify its approach by claiming it may regulate any "action[] taken by the *owners or operators* of the sources" that can reduce emissions. *Id.* at 64720 (emphasis added); *see also id.* at 64762 ("As a practical matter, the 'source' includes the 'owner or operator' of any building, structure, facility, or installation for which a standard of performance is applicable."). And it is only by regulating the source's "owner"—rather than the actual source—that EPA tries to justify imposing building blocks 2 and 3. *Id.* (EPA may require building blocks 2 and 3 "because they consist of measures that the owners/operators of the affected [sources] can implement to achieve their emission limits"); *see also id.* at 64761-62. For example, EPA says that a coal-fired source can satisfy its emission limit because the owner theoretically can build new renewable plants and get credit for generation shifted to those plants; the owner can buy credits from another renewable energy generator in a trading market; or the owner can shift generation to a gas plant it already owns. *See, e.g.*, *id.* at 64753-54.

But EPA has no authority to require an *owner* of a source to take specific action

beyond the regulated source merely because that action might impact overall emissions. Section 111(d)(1)(A) permits EPA only to require States to establish "standards of performance *for any existing source,*" and an existing source is specifically defined in §111(a) as "any building, structure, facility, or installation which emits or may emit any air pollutant." Section 111(a)(5) separately defines "owner or operator," but §111(d) does not authorize "standards of performance" for "owners or operators," only for an "existing source."

Indeed, §111(e) confirms EPA's error in claiming that "the 'source' includes the 'owner or operator.'" *Id.* at 64762. That provision declares it unlawful "for any owner or operator of any new source to operate such source in violation of any standard of performance applicable to such source." CAA §111(e). Thus, Congress specifically *distinguished* the "sources" subject to performance standards from the "owners or operators" of those "sources." "'[W]here different terms are used in a single piece of legislation, the court must presume that Congress intended the terms to have different meanings.'" *Transbrasil S.A. Linhas Aereas v. Dep't of Transp.*, 791 F.2d 202, 205 (D.C. Cir. 1986). Congress needed to adopt a specific provision to hold an "owner or operator" of a new source liable precisely because, contrary to the Rule's central assumption, the owner *is* legally distinct from the "source"—and §111(d) gives EPA no authority to impose the Rule's obligations on existing sources' "owners."

In addition to improperly conflating "sources" with their "owners," EPA's interpretation of §111(d) is independently unlawful because it regulates sources

collectively rather than on an individual basis. EPA asserts that it may require reductions at a coal plant because the owner of the plant can, for example, construct a renewable plant elsewhere or agree to shift demand to a different gas plant—even a plant located thousands of miles away. 80 FR at 64753-54. In effect, EPA treats these distant and unrelated facilities as the same "stationary source." But *ASARCO, Inc. v. EPA*, 578 F.2d 319 (D.C. Cir. 1978), forecloses this interpretation, squarely holding that the "basic unit" regulated under §111 is the individual source and not "a combination of such units." *Id.* at 327 (emphasis omitted). In all, EPA's limitless interpretation is not only without precedent for the electricity sector, but, if affirmed, could enable the agency to fundamentally restructure any industry as long as EPA can allege that shifting production among market participants may reduce emissions.

3. The Rule's approach to defining a regulated source's obligations—based on anything its owner theoretically might do elsewhere to reduce emissions—also conflicts with the structure of the CAA, particularly §111(b). In its parallel rulemaking to establish standards of performance for new units, EPA expressly *rejected* the Rule's beyond-the-source approach—even though §111(b) and §111(d) apply precisely the same "standard of performance" definition set forth in §111(a). 80 FR at 64627. To the contrary, EPA stated that it would not set new source performance standards for coal plants based on the ability to shift generation from the new coal plant to other sources with lower emissions. *Id.*

But §111(a)'s term "system" cannot be given one meaning when applied in

§111(b) and another when applied in §111(d). *See Brown v. Gardner*, 513 U.S. 115, 116 (1994). Indeed, in its implementing regulations, EPA asserted the authority to adopt "substantive" obligations under §111(d) in large part precisely *because of* the strong parallels between §111(b) and (d). 40 FR 53340, 53342-43 (Nov. 17, 1975). EPA emphasized that both provisions require a "technology-based approach" and that EPA would be able to take advantage of its analysis of the "availability and costs of control technology" for new sources in determining the best "control technology" for existing sources. *Id.* By instead imposing an entirely different and more stringent performance standard on *existing* units than on *new* units, EPA's approach in the Rule is the exact opposite of what was intended by Congress in §111.[3]

Other statutory CAA provisions fortify the conclusion that "system of emission reduction" must refer to a system applied to individual sources themselves, not to anything beyond those sources that might reduce emissions overall. For instance, in CAA §407, Congress referred to the "retrofit application" of a "system of continuous emission reduction." The term "retrofit" refers to "modification or addition of equipment (as on an aircraft or automobile) to include changes made for later production models." *Webster's Third New Int'l Dictionary* 1940 (1993). A "system of continuous emission reduction" that can be required in "retrofitting" must necessarily be a system capable of installation at a particular facility; it makes no sense to speak of

[3] Imposing more stringent standards under §111(d) than under §111(b) is especially perverse given that the range of control technologies that can be cost-effectively retrofitted to existing units is necessarily more restricted.

"retrofitting" an owner, let alone "retrofitting" the power sector. The same is true for the substantively identical phrase used in §111. *See, e.g.*, *Nat'l Credit Union Admin. v. First Nat'l Bank & Trust Co.*, 522 U.S. 479, 501 (1998) ("similar language contained within the same section of a statute must be accorded a consistent meaning").

Similarly, standards of performance under §111(d) set a regulatory floor in the Act's pre-construction permitting program for stationary sources, known as "PSD." *See* CAA §169(3). This is because the "best available control technology" (or "BACT") standard used in the PSD program must be at least as stringent as the "best system of emission reductions" of §111. *Id.* The PSD program results in permit conditions that are imposed directly on the specific new or modified facility and, therefore, are necessarily source-based. *See id.* §165(a)(1). That Congress elected to make standards of performance under §111 the floor for BACT determinations confirms that §111(d) performance standards must also be source-based.[4]

4. The CAA's text and structure is more than sufficient to foreclose EPA's "capacious" reading of §111(d). 80 FR at 64761. But even if there were some ambiguity on this score, controlling canons of construction preclude EPA's assertion of authority to fundamentally restructure the power sector.

[4] Applying EPA's beyond-the-source analysis as the BACT floor would also produce absurd results. EPA acknowledges that existing coal-fired power plants cannot achieve the proposed emission reduction targets on their own. Yet, because standards of performance under §111(d) could be applied as a BACT floor if an existing source triggers PSD permitting obligations, permitting authorities could apply as a "best available control technology" limitation an emissions limit that *cannot be achieved* by control technology available to even a *new* facility. *Supra* p. 4.

First, when Congress wishes to assign a "question of deep economic and political significance ... to an agency," Congress speaks "expressly." *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015). Such a clear statement is doubly necessary in this case, where EPA claims to discover for the first time vast powers "in a long-extant statute"—a claim courts greet with well-deserved skepticism. *UARG*, 134 S. Ct. at 2444.

Certainly, §111(d) contains no clear mandate. Until now, EPA viewed §111(d) as an unimportant provision: "Over the last forty years, under CAA section 111(d), the agency has regulated four pollutants from five source categories," 80 FR at 64703, with only one of these rulemakings in the last three decades, *see* 61 FR 9905 (Mar. 12, 1996). EPA now contends that Congress intended in this obscure provision to confer authority on it to govern electricity production, distribution, and reliability—a field which has long been subject to extensive regulation by the States and, to a lesser extent, FERC, but not EPA. Under EPA's reading, §111(d)'s importance would dwarf the remainder of §111—and indeed, the remainder of the CAA. But "Congress ... does not alter the fundamental details of a regulatory scheme in ... ancillary provisions" like §111(d). *Whitman v. Am. Trucking Ass'ns*, 531 U.S. 457, 468 (2001).

In any event, even if Congress had intended to assert federal power *sub silentio* over the mix of generation facilities that must exist in each State, it is inconceivable that Congress would have selected *EPA* (rather than FERC) to exercise such authority. As the Supreme Court recently restated, Congress is "especially unlikely" to make an implicit delegation of regulatory power to an agency with "no expertise" in

the statute's subject matter. *King*, 135 S. Ct. at 2489; *see also Delaware Dep't of Natural Res. v. EPA*, 785 F.3d 1, 18 (D.C Cir. 2015) ("[G]rid reliability is not a subject of the Clean Air Act and is not the province of EPA.").

EPA cannot dispute that this Rule is of "deep economic and political significance." As the Administration emphasized, the Rule is intended to "transform[]" and "decarboniz[e]" the energy industry. White House Factsheet, Ex. 8-E; Deese Article, Ex. 8-G. The Rule imposes a broad new "cap-and-trade" regime comparable to failed legislative efforts. *E.g.* H.R. 2454, 111th Cong. (2009); S. 2191, 110th Cong. (2007). EPA's analysis shows the Rule requires nationwide decommissioning of coal plants and constructing a vast fleet of new renewable power plants. *Supra* p. 5. And EPA recognized the Rule can undermine the reliability of the nation's grid, and required States to try to mitigate those impacts. *Id.* at 64668.

Second, "[f]ederal law 'may not be interpreted to reach into areas of State sovereignty unless the language of the federal law compels the intrusion.'" *ABA*, 430 at 471. "[T]he regulation of utilities is one of the most important of the functions traditionally associated with the police power of the States," *Ark. Elec. Coop. Corp. v. Ark. Pub. Serv. Comm'n*, 461 U.S. 375, 377 (1983), and the States retain "traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns," *Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n*, 461 U.S. 190, 205 (1983) ("*PG&E*"). Particularly relevant here, the "[n]eed for new power facilities [and] their economic

feasibility … are areas that have been characteristically governed by the States"—indeed, the "'franchise to operate a public utility … is a special privilege which … may be granted or withheld at the pleasure of the State.'" *Id.* Congress has guaranteed, time and again, that federal regulation of the power sector may not deprive the States of this traditional role. *See, e.g.*, 16 U.S.C. §§824(a), 824(b)(1), 824o(i)(2). Indeed, the United States recently acknowledged to the Supreme Court that "promot[ion of] new generation facilities" is "an area expressly reserved to state authority." Pet. for Cert. at 26, *FERC v. Elec. Power Supply Ass'n*, No. 14-840 (S. Ct. Jan. 15, 2015).

Under the Rule, however, EPA, not the States, would exercise these important "police powers" and determine the "need for new power facilities." Until now, the States have determined for themselves the extent to which they should (or should not) mandate particular levels of renewable generation, balancing such generation's benefits against the risks that energy dependent on weather events (such as wind speeds and hours of cloud cover) often pose to the grid's reliability.[5] Indeed, the very reason EPA seeks to adopt the Rule is because to date States have not sought to "decarboniz[e]" their economies to the extent favored by EPA. Correlatively, the Rule requires decommissioning of coal-fired generation throughout the country, *see supra* p. 5, even in States that have decided, as a policy matter, to encourage diversified

[5] EIA Renewable Statistics, Ex. 8-B (while Congress has rejected federal renewable portfolio standards, "30 States and the District of Columbia had enforceable RPS or other mandated renewable capacity policies," and seven had adopted voluntary renewable energy goals).

generation within their borders. Whatever level of ambiguity exists in 111(d), it does not provide a "clear and manifest" intent to legislate "in a field the States have traditionally occupied." *PGE*, 461 U.S. at 206.[6]

II. MOVANTS WILL SUFFER IRREPARABLE HARM ABSENT A STAY

The seismic change to the power industry—and the national economy—required by the Rule presents the type of extraordinary circumstances that warrant a stay. The Rule requires a fundamental restructuring of the power sector, compelling States, utilities, and suppliers to adopt EPA's preferred sources of power and fuel and to redesign their electricity infrastructure in the process. Never before in the CAA's history have the States and industry been ordered to do so much in so little time. Such an extraordinary alteration of the national economy warrants the exercise of this Court's extraordinary authority so it can review the petitions before these fundamental changes to the economy occur and cannot be undone. *See Nken v. Holder*, 556 U.S. 418, 434 (2009) (the fundamental purpose of a stay is to preserve the *status quo*).

A stay is also warranted because these fundamental changes will cause Movants' members immediate, irreparable harm. According to Secretary Kerry, the Rule's purpose is to "'take a bunch of [coal-fired power plants] out of commission,'" Kerry Statement, Ex. 8-D, and the Rule's own modeling confirms that will start

[6] Movants understand that other challengers will argue the Rule is unlawful because EPA already regulates emissions from existing fossil fuel-fired generating units under §112, and §111(d) prohibits regulating air pollutants "emitted from a source category which is regulated under" §112. Movants agree this argument also presents a strong likelihood of success.

happening soon. Under the modeling, the Rule would cause scores of generating units representing at least 10,793-11,430 MW of coal-fired generation (and almost certainly more) to retire in 2016. *See* Harbert Decl. ¶17, Ex. 7-A.[7] The loss of these primary assets would irreparably harm their owners, businesses, and workforces. *See id.* ¶¶17, 21. Consumers will see their electricity rates rise as affordable power sources close and utilities are forced to build expensive new plants. *See id.* ¶18-19. The closures will also cause immediate, collateral harms. Coal mines associated with the shuttered plants will have to reduce operations or close entirely, laying off numerous employees in the process. *See id.* ¶¶20, 22. Thousands of businesses providing support services to coal-fired plants and coal mines will see their customer base shrivel; many will have to lay off workers and face the prospect of closing their doors. *See, e.g.*, Howard Decl. ¶¶4-8, Ex. 7-D; Thompson Decl. ¶¶5-6, Ex. 7-G; Young Decl. ¶7, Ex. 7-E; Voigt Decl. ¶¶7-12, Ex. 7-C; Hammes Decl. ¶¶9-10, Ex. 7-K.

These losses will cause immediate, irreparable harm to the surrounding areas. In many areas, power generation and mining jobs are the principal drivers for the local economy. Harbert Decl. ¶26, Ex. 7-A; Blanton Decl. ¶¶7-8, Ex. 7-J; Witherspoon Decl. ¶¶4-6, Ex. 7-N. Taxes from utilities and mines are crucial for many counties and

[7] The reason why EPA's modeling shows immediate plant closures is that maintaining coal-fired plants is very expensive; if the Rule will render the plants inoperable when it comes fully into effect, many plant owners will choose to shut down their plants during the period of judicial review rather than make pointless investments in units that will ultimately have to be closed. Harbert Decl. ¶¶14, 19, Ex. 7-A. Administrator McCarthy herself has emphasized that the Rule is already causing significant shifts in investments. McCarthy Remarks, Ex. 8-F.

towns, *see, e.g.*, Taylor Decl. ¶5, Ex. 7-F, and the loss of that revenue would dramatically affect those communities, potentially causing counties to reduce civil services and schools to reduce staff and make cuts to educational programs. *See* Rinas Decl. ¶¶10-11, Ex. 7-B; Pierce Decl. ¶10, Ex. 7-H; Smith Decl. ¶13, Ex. 7-L. These harms will be exacerbated as towns and counties located near power plants and mines see their populations dwindle when laid-off employees are forced to relocate in search of new employment. *See, e.g.*, Rinas Decl. ¶¶6-7, Ex. 7-B; Dick Decl. ¶¶5-10, Ex. 7-I; Kennedy Decl. ¶¶8-11, Ex. 7-M.

III. THE BALANCE OF EQUITIES FAVORS A STAY

Although the Rule will immediately harm States and industry, *supra* §II, its immediate implementation will not protect the environment. The balance of harms and public interest favor a stay.

President Obama has stated that "[n]o single action[] [and] no single country will change the warming of the planet on its own." President's Remarks, Ex. 8-I. Indeed, the government acknowledges that "[e]ven if the United States were to reduce its greenhouse gas emissions to zero, that step would be far from enough to avoid substantial climate change," Interagency TSD 14, Ex. 8-H, and that the Rule is merely a "step" in a "series of long-term actions" to combat climate change, 80 FR at 64677. Furthermore, EPA admits the purported benefits the Rule, along with other measures, is intended to achieve will not be realized in the near term. EPA's "Endangerment Finding"—the basis of EPA's finding of the harm to be addressed by the Rule—

explains that the relevant timeframe for considering climate effects is "the next several decades, and in some cases to the end of this century," 74 FR 66496, 66524 (Dec. 15, 2009)—not the limited time implementation would be delayed by a stay. After all, emission reductions are intended to bring about benefits over "centuries and millennia." 80 FR at 64682. EPA's own three-year delay in issuing the Rule demonstrates that it is not designed to alleviate immediate harm. *See* Settlement Agreement, Ex. 8-K (committing to release Rule by May 2012). In light of EPA's delay, the timeframe at issue in the Rule, and the many additional measures, domestic and foreign, the Administration admits are needed to address climate change, a short stay of the Rule will not impair the public interest.

Finally, EPA cannot contend that, without the Rule, no progress towards its goals will be made. EPA acknowledges the electricity market "is already changing," as "advancements in innovative power sector technologies and ... low-carbon fuel," renewable energy, and efficiency technologies are implemented. 80 FR at 64678. In fact, in the last decade, America reduced "total carbon pollution more than any other nation on Earth," President's Remarks, Ex. 8-I, and monthly CO_2 emissions from coal-fired plants reached a 27-year low this year, *see* EIA Chart, Ex. 8-J.

The public interest is best served by allowing the Court to address petitions for review before the Rule's sweeping changes begin to occur. *See Nken*, 556 U.S. at 429.

CONCLUSION

The Court should grant the requested stay.

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CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of October 2015, I will cause to be served electronically one copy of the foregoing Motion for Stay of EPA's Final Rule, along with associated exhibits, upon each of the following:

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Exhibit 1

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

The following information is provided pursuant to D.C. Circuit Rules 18(a)(4) and 28(a)(1):

(A) Parties and *Amici*

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 Iron and Steel Institute

American Foundry Society

American Forest & Paper Association

American Wood Council

Brick Industry Association

Electricity Consumers Resource Council

Lignite Energy Council

National Lime Association

National Oilseed Processors Association

Portland Cement Association

Respondents

United States Environmental Protection Agency

Gina McCarthy, Administrator, United States Environmental Protection Agency

(B) Rulings Under Review

This petition challenges EPA's final rule, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 FR 64662 (Oct. 23, 2015).

(C) Related Cases

This case has never appeared before this or any other Court. Counsel is aware of five related cases that, as of the time of filing, have appeared before this Court:

(1) *In re: Murray Energy Corporation*, No. 14-1112

(2) *Murray Energy Corporation v. EPA*, No. 14-1151 (consolidated with No. 14-1112)

(3) *State of West Virginia v. EPA*, No. 14-1146

(4) *In re: State of West Virginia*, No. 15-1277

(5) *In re: Peabody Energy Corp.*, No. 15-1284 (consolidated with No. 15-1277)

Counsel understands that other petitioners are today filing petitions for review of the same final rule.

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

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, Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY; and GINA MCCARTHY, ADMINISTRATOR, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondents.	No. _____ October 23, 2015

CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and L. R. 18(a)(4) and 26.1, the Chamber of Commerce of the United States of America, the National Association of

Manufacturers, the American Fuel & Petrochemical Manufacturers, the National Federation of Independent Business, the American Chemistry Council, the American Coke and Coal Chemicals Institute, the American Foundry Society, the American Forest & Paper Association, the American Iron and Steel Institute, the American Wood Council, the Brick Industry Association, the Electricity Consumers Resource Council, the Lignite Energy Council, the National Lime Association, the National Oilseed Processors Association, and the Portland Cement Association respectfully submit this Corporate Disclosure Statement and state as follows:

1. The Chamber of Commerce of the United States of America (the "Chamber") states that it is the world's largest business federation. The Chamber represents 300,000 direct members and indirectly represents the interests of more than 3 million companies, state and local chambers, and trade associations of every size, in every industry sector, and from every region of the country. The Chamber has no parent corporation, and no publicly held company has 10% or greater ownership in the Chamber.

2. The National Association of Manufacturers ("NAM") states that it is the largest manufacturing association in the United States, representing small and large manufacturers in every industrial sector and in all 50 states. Manufacturing employs nearly 12 million men and women, contributes more than $1.8 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for two-thirds of private-sector research and development. The NAM is the powerful

voice of the manufacturing community and the leading advocate for a policy agenda that helps manufacturers compete in the global economy and create jobs across the United States. The NAM has no parent corporation, and no publicly held company has 10% or greater ownership in the NAM.

3. The American Fuel & Petrochemical Manufacturers ("AFPM") states that it is a national trade association whose members comprise more than 400 companies, including virtually all United States refiners and petrochemical manufacturers. AFPM's members supply consumers with a wide variety of products that are used daily in homes and businesses. AFPM has no parent corporation, and no publicly held company has 10% or greater ownership in AFPM.

4. The National Federation of Independent Business ("NFIB") states that it is a nonprofit mutual benefit corporation that promotes and protects the rights of its members to own, operate, and grow their businesses across the fifty States and the District of Columbia. NFIB has no parent corporation, and no publicly held company has 10% or greater ownership in NFIB.

5. The American Chemistry Council ("ACC") states that it represents the leading companies engaged in the business of chemistry. ACC members apply the science of chemistry to make innovative products and services that make people's lives better, healthier, and safer. ACC is committed to improved environmental, health, and safety performance through Responsible Care®, common sense advocacy designed to address major public policy issues, and health and environmental research

and product testing. The business of chemistry is an $801 billion enterprise and a key element of the nation's economy. ACC has no parent corporation, and no publicly held company has 10% or greater ownership in ACC.

6. The American Coke and Coal Chemicals Institute ("ACCCI") states that, founded in 1944, it is the international trade association that represents 100% of the U.S. producers of metallurgical coke used for iron and steelmaking, and 100% of the nation's producers of coal chemicals, who combined have operations in 12 states. It also represents chemical processors, metallurgical coal producers, coal and coke sales agents, and suppliers of equipment, goods, and services to the industry. ACCCI has no parent corporation, and no publicly held company has 10% or greater ownership in ACCCI.

7. The American Foundry Society ("AFS") states that, founded in 1896, it is the leading U.S. based metalcasting society, assisting member companies and individuals to effectively manage their production operations, profitably market their products and services, and equitably manage their employees. The association is comprised of more than 7,500 individual members representing over 3,000 metalcasting firms, including foundries, suppliers, and customers. AFS has no parent corporation, and no publicly held company has 10% or greater ownership in AFS.

8. The American Forest & Paper Association ("AF&PA") states that it is the national trade association of the paper and wood products industry, which accounts for approximately 4 percent of the total U.S. manufacturing gross domestic

product. The industry makes products essential for everyday life from renewable and recyclable resources, producing about $210 billion in products annually and employing nearly 900,000 men and women with an annual payroll of approximately $50 billion. AF&PA has no parent corporation, and no publicly held company has 10% or greater ownership in AF&PA.

9. The American Iron and Steel Institute ("AISI") states that it serves as the voice of the North American steel industry and represents 19 member companies, including integrated and electric furnace steelmakers, accounting for the majority of U.S. steelmaking capacity with facilities located in 41 states, Canada, and Mexico, and approximately 125 associate members who are suppliers to or customers of the steel industry. AISI has no parent corporation, and no publicly held company has 10% or greater ownership in AISI.

10. The American Wood Council ("AWC") states that it is the voice of North American traditional and engineered wood products, representing over 75% of the industry that provides approximately 400,000 men and women with family-wage jobs. AWC members make products that are essential to everyday life from a renewable resource that absorbs and sequesters carbon. AWC has no parent corporation, and no publicly held company has a ten percent (10%) or greater ownership interest in AWC.

11. The Brick Industry Association ("BIA") states that, founded in 1934, it is the recognized national authority on clay brick manufacturing and construction,

representing approximately 250 manufacturers, distributors, and suppliers that historically provide jobs for 200,000 Americans in 45 states. BIA has no parent corporation, and no publicly held company has 10% or greater ownership in BIA.

12. The Electricity Consumers Resource Council ("ELCON") states that it is the national association representing large industrial consumers of electricity. ELCON member companies produce a wide range of industrial commodities and consumer goods from virtually every segment of the manufacturing community. ELCON members operate hundreds of major facilities in all regions of the United States. Many ELCON members also cogenerate electricity as a by-product to serving a manufacturing steam requirement. ELCON has no parent corporation, and no publicly held company has 10% or greater ownership in ELCON.

13. The Lignite Energy Council ("LEC") states that it is a regional, non-profit organization whose primary mission is to promote the continued development and use of lignite coal as an energy resource. The LEC's membership includes: (1) producers of lignite coal who have an ownership interest in and who mine lignite; (2) users of lignite who operate lignite-fired electric generating plants and the nation's only commercial scale "synfuels" plant that converts lignite into pipeline-quality natural gas; and (3) suppliers of goods and services to the lignite coal industry. LEC has no parent corporation, and no publicly held company has 10% or greater ownership in LEC.

14. The National Lime Association ("NLA") states that it is the national

trade association of the lime industry and that it is comprised of U.S. and Canadian commercial lime manufacturing companies, suppliers to lime companies, and foreign lime companies and trade associations. NLA's members produce more than 99% of all lime in the U.S., and 100% of the lime manufactured in Canada. NLA provides a forum to enhance and encourage the exchange of ideas and technical information common to the industry and to promote the use of lime and the business interests of the lime industry. NLA is a non-profit organization. It has no parent corporation, and no publicly held company has 10% or greater ownership in NLA.

15. The National Oilseed Processors Association ("NOPA") states that it is a national trade association that represents 12 companies engaged in the production of vegetable meals and vegetable oils from oilseeds, including soybeans. NOPA's member companies process more than 1.6 billion bushels of oilseeds annually at 63 plants in 19 states, including 57 plants which process soybeans. NOPA has no parent corporation, and no publicly held company has 10% or greater ownership in NOPA.

16. The Portland Cement Association ("PCA") states that it is a not-for-profit "trade association" within the meaning of Circuit Rule 26.1(b). It represents companies responsible for more than 80 percent of cement-making capacity in the United States. PCA members operate manufacturing plants in 35 states, with distribution centers in all 50 states. PCA conducts market development, engineering, research, education, technical assistance, and public affairs programs on behalf of its members. Its mission focuses on improving and expanding the quality and uses of

cement and concrete, raising the quality of construction, and contributing to a better environment. PCA has no parent corporation, and no publicly held company owns a 10% or greater interest in PCA.

Respectfully submitted,

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Exhibit 7

Exhibit 7 - A

No. __-____

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

DECLARATION OF KAREN ALDERMAN HARBERT, PRESIDENT AND CHIEF EXECUTIVE OFFICER, INSTITUTE FOR 21st CENTURY ENERGY

I, Karen Alderman Harbert, declare as follows:

1. I am the president and chief executive officer of the Institute for 21st Century Energy (the "Institute"), a part of the U.S. Chamber of Commerce (the "Chamber"). As head of the Institute, I have led our development of the comprehensive *Energy Works for US* platform, which provides policy recommendations to secure our nation's energy future and create millions of jobs, billions of dollars in revenue, and trillions of dollars of private investment. Before accepting my current position, I was the assistant secretary for policy and international affairs at the Department of Energy. In that role I served as the primary policy advisor to the Secretary of Energy, negotiated and managed bilateral and multilateral agreements with other countries, and also served as vice chairman of the International Energy Agency, which provides advice to its 28 member nations on energy policy issues and orchestrates international responses to energy supply disruptions. I have over 20 years of experience forming and advising on energy policy at the highest

levels. I testify regularly before Congress and provide analysis of energy issues to policymakers and industry leaders.

2. The Chamber is the world's largest business organization, representing the interests of more than three million businesses of all sizes, sectors, and regions, as well as state and local chambers and industry associations. The Institute is dedicated to advancing constructive energy policies on behalf of the business community. It exists to unify energy policymakers, regulators, business leaders, and the American public behind a commonsense strategy that ensures affordable, reliable, and diverse energy supplies; improves environmental stewardship; promotes economic growth; and strengthens national security.

3. From my professional role in an organization representing the interests of millions of companies across all sectors of the United States economy, I have extensive knowledge of energy-related issues confronting American industries and the economy as a whole. Part of my role is to advise on the effects of national and state regulations on energy production, sale, dispatch, and consumption, as well as on energy reliability and national security. I am consequently very familiar with the energy regulatory regimes at the federal and state levels. Furthermore, one of my principal tasks is explaining the impact of energy issues—including federal energy regulations, changes in supply, price, and infrastructure, and shifts in energy generation among various types of generating units—on industries and local communities. I regularly consult with industry leaders from a wide array of sectors, as

well as with civic and community leaders, to understand and explain the impact of energy issues on their companies and communities. I am consequently very familiar with the effects of various energy policies on industries and local communities.

4. I am also familiar with EPA's final Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (the "Rule"), which was signed on August 3, 2015 and subsequently published in the Federal Register.[1]

5. Many electric utilities are members of the Chamber and have shared with me the impact of EPA's Rule on their operations and viability. Likewise, many mining companies and others involved in energy-related industries are members and have explained the Rule's impact on demand for their products and services and consequent effects on their own operations. Finally, I have heard from many member companies who purchase and rely upon electricity to power their manufacturing processes and day-to-day operations. Relationships across every American industry make the Chamber uniquely well-positioned to provide a perspective on the Rule's effect on the economy as a whole.

6. As discussed below, based on my experience and information from our members and others in the business community, it is my view that the Rule will impose significant harms on a broad cross-section of American industry. The Rule, if

[1] Citations are to the pre-Federal Register version of the Rule, *available at* http://www2.epa.gov/sites/production/files/2015-08/documents/cpp-final-rule.pdf.

left intact, will irreversibly reconfigure and irreparably harm America's power sector while upending the authority of the States to regulate electric generation for their residents. The Rule's effects will also extend much more broadly, raising the cost of operations for every business that uses electricity and threatening to drive trade-exposed heavy manufacturing jobs overseas. In short, the Rule will inflict significant damage on American business and industry. It promises to be disastrous for the many communities—often small towns in poor, rural areas of the country—that rely on power generation and coal-related industries as the principal sources of employment. Jobs in these industries often provide the best wages in these areas; closing coal-fired power plants, coal mines, and related industries threatens to send many of these communities into a downward spiral of widespread unemployment and economic decline. And by forcing the shutdown of reliable and inexpensive generation facilities, the Rule threatens to increase the price of electricity for millions of American households. It is no exaggeration to say that the Rule's adverse impacts will be felt by every American who uses electricity or the everyday products and services for which electricity is a necessary input or resource.

7. As the White House has explained, the Rule will "aggressive[ly] transform[]" the American electricity sector.[2] The Rule creates carbon "emission

[2] *See* Ex. A, Joby Warrick, *White House set to adopt sweeping curbs on carbon pollution*, Wash. Post (Aug. 1, 2015), *available at* https://www.washingtonpost.com/national/health-science/white-house-set-to-adopt-sweeping-curbs-on-carbon-

standards" and requires States to submit implementation plans that achieve the emission reductions resulting from these standards. EPA admits that the efficiency improvements it recommends for coal-fired power plants can achieve only minimal reductions, *see* Rule at 333—far less than the agency demands from each plant, *see* Rule at 16. The only way, then, for States to satisfy the Rule's requirements is to force coal-fired plants to drastically reduce their electrical output or retire. Under the Rule, there will be a vast shift of generation capacity—between 153 and 162 GW—away from existing coal-fired plants, to be replaced principally by new renewable sources and also by the increased utilization of natural gas-fired plants.[3] In fact, EPA projects that 46-48% of America's coal-fired generating capacity will close by 2030 under the Rule.[4] The Rule also mandates drastic revisions to State electricity policies and renewable portfolio standards and requires State officials to evaluate and issue permits for hundreds or thousands of new renewable energy facilities.

8. A key method by which EPA intends for those sources that continue to operate to comply with the Rule is through participation in emission-trading programs, which the Rule strongly encourages States to include in their

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pollution/2015/08/01/ba6627fa-385c-11e5-b673-1df005a0fb28_story.html (quoting White House fact sheet).

[3] *See* EPA, *Regulatory Impact Analysis for the Clean Power Plan Final Rule* tbls. 2-1, 3-12 (2015), *available at* http://www2.epa.gov/cleanpowerplan/clean-power-plan-final-rule-regulatory-impact-analysis.

[4] *Id.*

implementation plans. *See, e.g.*, Rule at 367. Indeed, the Rule looks very little like previous emissions standards and instead resembles "cap-and-trade" legislation that Congress declined to enact. *See, e.g.*, H.R. 2454, 111th Cong. (2009). That cap-and-trade legislation would have set limits on emissions that many sources would have been unable to meet, and would have relied on an emissions trading program, in which higher-emitting sources purchase credits or allowances for their emissions from lower-emitting sources, to allow sources to continue to operate. The Rule encourages States to adopt precisely such a scheme, and explains that trading is particularly critical to enable compliance by smaller companies. *See* Rule at 471.

9. Similarly, the Rule creates a "Clean Energy Incentive Program" that incentivizes, *inter alia*, building out wind and solar generating sources. *See* Rule at 75. In this respect, the Rule resembles the Renewable Electricity Production Tax Credit, which established incentives for the production of electricity from wind power and other eligible technologies. Congress allowed the program to expire at the beginning of 2015, thereby foreclosing access to this credit by undeveloped renewable electricity resources. *See* U.S. Dep't of Energy, *Renewable Electricity Production Tax Credit (PTC)*, *available at* http://energy.gov/savings/renewable-electricity-production-tax-credit-ptc.

10. This Rule is fundamentally different from previous EPA Clean Air Act § 111 emission standards, which never have required technological or operational changes that only could be implemented beyond the regulated facility. To my knowledge, until now, EPA has never asserted the authority under Clean Air Act

§ 111 to set standards that look beyond the boundaries of individual regulated facilities to mandate systemic changes in the relationships between various facilities and throughout an entire industry. Nor has EPA ever before used § 111 to regulate an entire sector of the economy under the Clean Air Act by dictating which types of facilities may produce and which facilities may not, or to transform the supply structure of an industry by requiring construction of hundreds or thousands of new facilities. And it has never before invoked § 111 to base a facility's emissions reduction requirements on the theoretical ability of the owner of such facility to instead purchase such facility's output from another source at a different location or the ability to construct a new and different type of facility to produce output.

11. Electricity generation, transmission, and distribution have long been regulated by the Federal Energy Regulatory Commission ("FERC") and the States. Essentially, FERC regulates interstate transmission of electricity and interstate sales at wholesale; the States regulate everything else, particularly including whether to license new power plants and what type of generation to permit. Both FERC and the States have built up considerable experience in regulating America's power supply.

12. If FERC had issued the Rule, it would be one of that agency's most significant regulations ever and would mark a very significant expansion of federal jurisdiction into decisions about what types of generation to encourage or permit—an area that has traditionally been the province of the States. It is all the more remarkable that such an extremely important energy regulation should come from

EPA, rather than FERC. To my knowledge, EPA has never before asserted such sweeping authority over an industry historically and statutorily committed to regulation by the States and another federal agency.

13. As many state officials have declared, the Rule requires immediate planning on the part of State governments if States are to have any hope of meeting EPA deadlines for submitting state plans. *See, e.g.*, *In re State of West Virginia*, No. 15-1277, Gross Decl. ¶ 6; Hodanbosi Decl. ¶ 4 (D.C. Cir. Aug. 13, 2015). The Rule demands that States submit final state implementation plans by September 6, 2016 (or September 6, 2018, if EPA grants an extension).[5] Fundamentally recreating State energy regimes is an enormous task involving "collaboration among ... state agencies, stakeholders and other states," and changes must be "implemented gradually to preserve reliability of the electric grid." *Id.*, Nowak Decl. ¶ 8. As a consequence, many States have said that they must immediately begin working on their implementation plans. *See, e.g.*, *id.*, Gross Decl. ¶ 6; Hodanbosi Decl. ¶ 4. Indeed, many States have declared that they have already begun to expend efforts toward preparation of their state implementation plans. *See id.*, Gross Decl. ¶ 6. Because the Rule requires State regulators to take action for which they lack statutory authority,

[5] To achieve an extension, a State must 1) identify the final plan approaches it is considering and the progress made to date, 2) explain why it needs more time to prepare its final plan, and 3) demonstrate that is has engaged in "meaningful engagement with stakeholders" and that it will continue to do so. Rule at 1009. Even if EPA grants an extension until 2018, a State must still advance "draft or proposed legislation or regulations" by 2017. Rule at 1024.

the Rule will require State legislatures to enact new statutes. *See, e.g.*, Hyde Decl. ¶ 33 (attached to motion for stay of Rule being filed by State of West Virginia and State of Texas, *et al.*). This necessity poses special hardship for State legislatures, such as Texas's, that meet only biennially. *See id.* ¶ 34. The Texas Legislature will not reconvene in regular session until January 2017; for Texas to comply with the Rule, the Governor is expected to have to call one or more special sessions, causing significant public expense and disruption. *See id.*

14. Absent a stay, thousands of companies must also begin compliance efforts immediately. The changes the Rule demands require many years of lead time. For instance, "[d]epending on the type of generation ..., new generation plants require from four to seventeen years to obtain regulatory approvals, plan, site, design, permit, construct, and commission." Heilbron Decl. ¶ 7 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*). To meet the Rule's deadlines, companies must begin now to seek permits for new renewable energy or natural gas combined cycle units (or modifying existing such units to increase capacity) to comply with the Rule. *See, e.g.*, Pemberton Decl. ¶ 20-21 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (utility must spend up to $102 million in 2016-2017 to replace coal-fired generation projected to close by EPA with natural gas); Jura Decl. ¶ 28 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (utility must "choose and evaluate potential sites and apply for the requisite environmental and local permits *by 2017* at a cost of

approximately $2 million" if it chooses to replace coal-fired generation by 2022 (emphasis in original)); McLennan Decl. ¶ 20-21 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (if utility constructs gas-fired facility to comply with the Rule, it must "spend approximately $8 million on just the preliminary portions" of constructing such facility in the next 2-3 years). Furthermore, because modifying a power plant is extremely capital-intensive, companies do not modify plants unless they believe they will be able to operate the plants for many years into the future to recover their investment. Companies thus are deciding now whether to make needed improvements to coal-fired generating units or instead forbear in anticipation of the retirement of those units. *See* Jura Decl. ¶ 30 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*).

15. Some companies must begin immediately constructing new infrastructure to meet the new transmission demands imposed by the Rule. For instance, one utility must spend $72 million on infrastructure improvements in 2016-17 to replace generation EPA projects will close in 2016 under the Rule. *See* Heilbron Decl. ¶ 22 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*).

16. Because States have not yet proposed their implementation plans, companies are forced to undertake these compliance measures in the dark, without knowing whether their measures will satisfy the implementation plans finalized by the State or States in which those companies operate. This uncertainty may last for years,

because a State's implementation plan is not final until EPA approves it—which, for States that receive an extension, will likely not occur until 2019. *See* Rule at 1030 (granting EPA 12 months to evaluate proposed State implementation plans). Nor do companies have the benefit even of EPA's own model trading plan to guide their compliance efforts, as this model plan will not be finalized until the summer of 2016, if not later. *See* Federal Plan Requirements for Greenhouse Gas Emissions from Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations 17 (Aug. 3, 2015) ("Proposed Rules"), *available at* http://www3.epa.gov/airquality/cpp/cpp-proposed-federal-plan.pdf. Businesses are simply unable to predict with any degree of certainty which of the many compliance pathways EPA claims the Rule makes available will be chosen by their States. Absent a stay, companies are thus caught on the horns of a dilemma: If they do not begin compliance measures now, they will not be able to comply when the Rule becomes effective. But if they do begin compliance measures now, they cannot know if their measures will ultimately comport with whatever implementation plans EPA approves for their States. *See, e.g.*, Ledger Decl. ¶ 11 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) ("AEPCO will need to make planning and resource allocation decisions long before Arizona adopts its state plan implementing the Clean Power Plan, EPA approves or disapproves such a plan, and even before EPA's proposed Federal Plan is finalized").

17. The Rule is premised on the fact that companies will need to shutter coal-fired generating units. Indeed, EPA's own modeling projects that the Rule will shutter scores of generating units, driving down American net coal-fired generation capacity by 10,793-11,430 MW by 2016. *See* Schwartz Decl. ¶¶ 28, 30 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*). The actual reduction in coal-fired capacity by 2016 is likely much higher, because EPA's calculation excludes reductions that it (incorrectly) claims would occur regardless of the Rule.[6] *Id.* ¶¶ 18-26. EPA's modeling further projects that additional closures will continue to occur after 2016. *See id.* ¶ 28. The immediate closure of generating units that would otherwise not be retired will cause irreparable harm to the owners of these units, to businesses and consumers that rely on these units for power, and to the communities that depend upon these facilities for jobs, revenue, and economic development. Coal-fired generating units constitute a substantial investment by companies. I am familiar with several companies that are facing the conclusion that they must close certain coal-fired generating units as a result of EPA's Rule. A stay of the Rule would allow these companies to continue to operate, maintain, and run units until the legality of the Rule has been settled.

18. Furthermore, forcing utilities to retire some of their generating units would, in the near term, compel those utilities to shift to higher-priced fuels, which

[6] EPA's exclusion is contrary to the Energy Information Administration's projection. *See* Schwartz Decl. ¶¶ 18-26.

will result in higher electricity rates. Raising rates will adversely affect all electricity consumers, from major customers such as heavy manufacturers to individual Americans in their homes. *See, e.g.*, Pemberton Decl. ¶ 19 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) ("retirements and generation shifts shown in EPA's compliance solution" would create "economic impact on Georgia Power customers from ... higher production costs ... [of] approximately $270 million ... during the 2016-2017 time period"); Campbell Decl. ¶ 24 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (absent a stay, electricity end users will suffer rate increases before decision on the Rule's validity is issued).

19. Furthermore, many companies are today faced with decisions on whether to make costly capital improvements to coal-fired generating units (including improvements that would reduce the carbon footprint of these units or foster compliance with other environmental rules). For instance, one utility must decide now whether to begin the tremendously expensive process of installing selective catalytic reduction systems at some of its units to comply with EPA's Regional Haze Program—a capital-intensive program that must begin in 2016 if it is to be completed in time to make the utility's units compliant. *See* McInnes Decl. ¶ 21 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*). The hundreds of millions of dollars spent on these improvements will be wasted if the Rule remains in effect and forces the premature closure of the affected units. *Id.*

Absent a stay, the utility must make a decision now either to close the affected units or proceed with the improvements—in either case risking irreparable harm. *Id.* I am aware of other utilities facing the same choice. Other companies would forgo improvements that would enhance their plants' environmental profile if they believe such plants will be forced to close by the Rule, thereby rendering such investments a waste. *See* Jura Decl. ¶ 30 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) ("If one or more unit(s) will be forced to retire under the final 111(d) Rule, Associated would forgo spending anywhere from $14,005,339 to $62,173,337 ... which were elective expenditures designed to increase efficiency and protect the environment but which were not required by any applicable regulatory rules or standards."). These decisions do not simply affect utility companies; they are critical for consumers. If companies are left to pay for investments in an asset that can no longer be operated under the Rule, they will face the dilemma of either raising rates to recoup these stranded investments, or absorbing those costs, which could leave those companies with fewer financial resources to adequately address other critical challenges, such as aging infrastructure and cybersecurity. Utilities operating in regulated markets will face additional uncertainty and costs as they seek permission from rate-setting authorities to recoup asset losses by raising rates.

20. Similarly, the Rule is already having a detrimental effect on the coal mines that provide fuel for power plants. Like building a power plant, opening or expanding a mine is an extremely capital-intensive enterprise that requires profitable

operation for several years to recover the substantial associated investment. A mine also often does not produce an appreciable amount of coal for several years after ground is broken. Mining companies must therefore decide now whether to invest in new or expanded mines to supply coal for the next decade, or instead to shut down operations as existing mines are exhausted. The Rule makes investing in new mines tremendously risky, because it drastically shrinks the customer base of mining companies. Many of these strategic capital investment decisions will not be recoverable or reversible in the event the rule is invalidated. In response, and absent a stay, some mining companies are choosing not to invest in new coal mines or expand existing mines. For instance, Rosebud Mining Company is declining to make capital investments in new mines, infrastructure, and equipment as a result of the Rule. *See* Forrest Decl. III ¶¶ 8-9 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*). The same is true for The North American Coal Corporation. *See* Neumann Decl. ¶¶ 16-18 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*). I am aware of other companies now making similar decisions.

21. The immediate impacts to utilities and mines will cause widespread and immediate job loss. Employees of generating units that are shut down as a consequence of the Rule will be laid off. Generating units can employ hundreds of employees, and often employ contractors during outages or maintenance. Thus, if the Rule results in the closure of only those plants EPA projects will close, the Rule will

cause the loss of thousands of jobs in 2016. And the Rule would continue to cause the loss of jobs as generating units continue to close in anticipation of the Rule's mandates. Other generating units will be forced to curtail their generation to comply with the generation-shifting the Rule demands; these units will be forced to lay off employees as they curtail generation. *See* McInnes Decl. ¶ 12 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (coal-fired units will have to curtail operations); Johnson Decl. ¶ 12 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (curtailing operations would result in substantial layoffs).

22. Similarly, employees of mining companies will be laid off as mines close or reduce production and mining companies decline to open new mines. Lignite mines will fare particularly poorly under the Rule. Because of the high moisture content and low heat content of this type of coal, it generally cannot be economically transported far from the mine. *See* Neumann Decl. ¶ 4 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*). Many lignite mines thus are only able to sell coal to a single nearby power plant. If that plant closes, the mine will necessarily close and lay off its workers. For example, under EPA's modeling, the Coyote generating plant in North Dakota will close as early as 2016. *See id.* ¶ 7. If the Coyote plant closes, the Coyote Creek Mine, which employs 90 people and exists solely to supply fuel to the Coyote plant, would be forced out of business and required to lay off all of its workers. *See id.*

23. Layoffs may be particularly severe at small companies, especially small rural power cooperatives which often have smaller fleets composed primarily of fossil-fueled power plants. *See, e.g.*, Brummett Decl. ¶ 4 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*); McLennan Decl. ¶ 4 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*); Johnson Decl. ¶ 8 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*). The shutdown of a single plant will often deal a fatal blow to such cooperatives and utilities by wiping out all or the principal part of their revenue streams. *See* Brummett Decl. ¶ 7 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*) (running its coal-fired plant is cooperative's "only effective means ... to generate revenue"). A cooperative or utility may be forced to curtail business operations and lay off the majority of its employees if its sole generating unit is shut down.

24. Layoffs will also occur over the course of the next few months at employers who do business with coal-fired generating units and coal-mining companies. As noted above, EPA's own modeling projects that coal-fired generating units will begin to close by 2016; mines that supply these units will have to close as well. Other generating units and coal mines will close or curtail operations in the following months to avert the risk of making capital-intensive investments that are needed to sustain operations but that, under the Rule, are likely to be unrecoverable. As plants and mines close, employers who do business with these facilities will see

their customer base shrink, in some cases radically, and many will have to close. For instance, employers who produce mining equipment will see their sales plummet as mines close and companies decline to open new mines. Such companies will be forced to lay off substantial portions of their workforce. *See, e.g.*, Thompson Decl. ¶¶ 5-6, Ex. 7-G. Likewise, companies that provide services to coal-fired power plants and coal mines will see their customer base shrivel. For instance, the Rule will drive down revenues of railroads that transport coal to power plants, *see* Lawson Decl. ¶ 12 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*), forcing the railroads to lay off employees. And it will wreak havoc with the livelihoods of skilled workers who have built their careers around servicing the unique equipment installed at coal-fired plants. As the business manager of a boilermakers' union explained, because of this completely unique technology, forcing the closure of coal-fired plants would leave these skilled workers stranded, their decades of experience non-transferable and thus wasted. *See* Voigt Decl. ¶¶ 5-14, Ex. 7-C.

25. At a minimum, the Rule casts a cloud of uncertainty over the future of coal mining and coal-fired generation in the United States. In light of this uncertainty, many companies have already begun shifting their capital away from coal-related industries to other investments they believe are less risky. Absent a stay, many investors are expected to irretrievably commit resources to other projects; these resources will be unavailable for investment in coal-related industries.

26. The impact of the Rule will extend far beyond the companies directly affected by closures. Power plants and mines provide jobs for large numbers of people; they are often the largest employers in the counties in which they are located. Coal mines, in particular, are often located in historically economically disadvantaged counties and provide wages that are significantly higher than the area median wage. *See, e.g.*, Siegel Decl. ¶ 7 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*) (Bowie #2 mine, which may close under the Rule, employs 204 people with average compensation of over $110,000 in an area with few high-paying jobs); Bissett Decl. ¶ 5 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*) (miners in Kentucky average $72,779 per year in wages, among the highest paid blue collar workers in the State). The elimination of hundreds or thousands of high-paying jobs will devastate communities already struggling with widespread unemployment and poverty. *See, e.g.*, Raney Decl. ¶ 5 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*) (9 West Virginia counties with highest coal production have poverty rates between 15.3% and 24.9%).

27. Plant and mine closures will also wipe out the most important sources of tax revenue for many affected counties and towns, thus endangering the counties' and towns' ability to provide education and other basic services. For instance, a reduction in production from the Falkirk mine in North Dakota—following on the closure of one of the generating units at the Coal Creek plant, as EPA's modeling projects by

2018—could deprive the tiny City of Washburn of more than $1,335,100 in tax revenue. *See* Rinas Decl. ¶¶ 4, 10-11, Ex. 7-B. Thirty percent of these funds would have gone to financing Washburn's schools. *Id.* ¶ 10. Some States are highly dependent on revenue generated by coal production; the steep reduction in coal mining that the Rule will create will severely harm those States. *See, e.g.*, Downing Decl. ¶¶ 4-5 (attached to motion for stay of Rule being filed by National Mining Association, *et al.*) (11% of Wyoming's revenue derives from coal mining, with one third of these funds going to education). And the financial harm felt by companies that service plants and mines will also reduce state and local revenues. *See, e.g.*, Taylor Decl. ¶ 5, Ex. 7-F (noting diminution in state and local income tax from layoffs at equipment dealer caused by Rule).

28. The closure of power plants, mines, and other employers threatens to break up rural communities, where families may be forced to move away from communities historically centered around energy production to other areas of the country in search of work. For instance, Carbon County, Utah—a community in which energy production has historically played a prominent role—lost one of its power plants earlier this year. The plant's closure resulted in job losses that forced a number of families to move away; the local real estate market has yet to recover. *See* Letter from Carbon County Chamber of Commerce 1, Ex. A. Carbon County's experience will be duplicated in other similar counties across rural America as plants, mines, and other employers are forced to close. The irreparable social cost of the

breakup of these communities is difficult to quantify, but for the families involved it is certain to be vast.

29. While I have focused here on the harms the Rule will immediately cause to the energy sector and industries and communities most directly tied to it, very few industries will escape unscathed. Essentially every industry relies on the electricity sector to provide reliable and affordable power. In fact, the United States' comparative advantage in providing affordable electricity is one key pillar supporting the competitiveness of American manufacturing today. The Rule will quickly erode that competitive advantage. By forcing the shutdown of reliable and inexpensive coal-fired power plants, along with requiring development of new renewable generating facilities and associated infrastructure, the Rule will inevitably raise the price of electricity. As my recent discussions with leaders of many different companies have confirmed, operating costs are one of the most significant considerations for companies when assessing whether to relocate. As Europe has recently found, a significant increase in the price of electricity forces energy-intensive industries to relocate to countries with more favorable electricity prices. *See, e.g.*, Testimony of Karen Harbert to House Committee on Science, Space, and Technology (April 15, 2015), *available at* http://www.energyxxi.org/sites/default/files/04.15.15%20KAH%20House%20Committee%20on%20Science%20INDC%20Hearing%20FINAL%20with%20cover%20page_0.pdf. As a consequence of the electricity price increases it forces, the Rule may

drive industries to countries where less rigorous environmental and carbon emission controls permit cheaper electricity, and these industries will therefore contribute to global carbon emissions at the same or even a potentially higher rate than they do now.

30. A stay is critical to preventing these harms to industry and countless workers, businesses, customers, and communities. As noted above, the lead time required to undertake the industry-wide changes demanded by the Rule is extremely long; absent a stay, companies will have no choice but to immediately invest in irrevocable changes—such as beginning construction on new renewable sources or infrastructure and decommissioning existing coal-fired plants—while this litigation is pending. As just one example, companies that build additional transmission capacity to comply with the Rule will be forced to acquire long-term property rights from landowners to run power lines across their land. *See* Heilbron Decl. ¶ 22 (attached to motion for stay of Rule being filed by Utility Air Regulatory Group, *et al.*). Acquisition of such property rights cannot simply be unwound at the acquiring utility's pleasure if the Rule is struck down. *See id.* In fact, the Rule's very purpose, according to Administrator McCarthy, is to create "investment opportunit[ies]" in "renewable and clean energy." Ex. 8-C. Once such irrevocable investments are made, the legality of the Rule becomes in many ways of secondary importance: companies are already locked into the arrangements EPA has ordained for them, regardless of whether the Rule is subsequently upheld. Recent history confirms this

point. In June, the Supreme Court held EPA's extraordinarily costly Mercury and Air Toxics Standards ("MATS") rule invalid. *See Michigan v. EPA*, No. 14-46, 14-47, and 14-49 (Jun. 29, 2015). Shortly before the Court's ruling, Administrator McCarthy explained that even if the Court ruled against EPA, "[m]ost [companies] are already in compliance," and "investments have been made." Timothy Cama & Lydia Wheeler, *Supreme Court overturns landmark EPA air pollution rule*, The Hill (Jun. 29, 2015), *available at* http://thehill.com/policy/energy-environment/ 246423-supreme-court-overturns-epa-air-pollution-rule. A stay is absolutely critical here to protect the electric power sector—and the workers, businesses, customers, and communities inextricably linked to the electricity it provides—from a subsequent round of generation unit closures and the associated economy-wide harms driven by another subsequently invalidated EPA rule.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 23rd day of October, 2015.

Karen Alderman Harbert

District of Columbia: SS
Subscribed and sworn to before me in my presence,
this 23rd day of October, 2015.
Marissa Alisa Martinez, Notary Public, D.C.
My commission expires October 14, 2020.

Exhibit A

CARBON COUNTY
Chamber of Commerce

October 2, 2015

To Whom It May Concern:

Our letter is intended to defend the production of power by coal-generated power plants as well as the current coal mining in Carbon County. As a Chamber of Commerce representing over 150 members in our rural community, we cannot find a legal, rational or environmental reason to require power plants to meet impossible regulations.

Current production of coal-power is the cheapest form of electricity and no other form of power can come close to replacing it. Coal produces 80% of Utah's power and 40% of this nation's electricity. In 2014, the retail cost per kWh in Utah was 9.26 cents. In 2014 across the U.S., residential power costs were 11.3 cents per kilowatt hour. Everyday gadgets and cars that we all enjoy using and cannot live without are derivatives of fossil products. Imagine the cost of those fancy cars and technology gadgets without coal not to mention the cost of heating/cooling our homes as well.

The economics of coal use are compelling. Coal is far less expensive than other fuels on an energy-equivalent basis which makes America's economy stronger, more prosperous, more competitive on the global market and more independent of foreign reign. Coal is burned more cleanly than ever before. In 2014, across the U.S., consumption of coal was three (3) times higher than in 1970 but emitted 98% less pollution. It is virtually impossible to expect a power plant to become any cleaner yet that is what the current environmental activists are irrationally pushing.

It is unreasonable to address climate concerns unilaterally. China is now the largest emitter of CO2 which means no matter how "clean" the U.S. forces our power plants to become, global solutions need to be addressed. Fires are another major polluter in the U.S. Year-to-date, more than 42,820 wildfires have burned at least 7.6 million acres which is a ten year high with even more acres being destroyed by active fires burning in the west. Environmental activists' regulations and mismanaging our local forests have created an explosive tinder box and now they expect us to trust them to regulate our power plants with that track record.

Carbon County faced a closure of the Carbon Power Plant in 2015 which resulted in 74 direct job losses. Those individuals were forced to find other income at a much lower pay rate, or they had to uproot their families and move where other employment is available. Our streets are lined with houses that have been vacant for several months.

81 North 200 East, #3 Price, Utah 84501
Telephone (435) 637-2788 Fax (435) 637-7010 Email ccchamber@priceutah.net

One power plant closing in Carbon County had a definite trickle-down effect in our community. Those support businesses for the Carbon Plant experienced a loss of income to their businesses which in turn trickled down to their employees in cut hours or job loss. It is a fact that for every coal miner or power plant employee that loses employment, the job multiplier is 5.5. With just the closure of the Carbon Power Plant, our community has experienced 407 lost jobs.

Carbon County is an energy producing county with few major, diverse businesses to supplement income. Closing of additional mines or power plants would suffocate our rural community. It would mean a continuing exodus of families, businesses closing their doors and our cities/county being unable to leverage funding to keep our community intact. It would be a dire future for Carbon County without the jobs from the power plants and coal mines.

It is our duty to comply with government regulations to maintain air quality. Those regulations need to be fair and consistent for the well-being of our economy and our citizens.

The Carbon County Chamber of Commerce Board of Directors and Membership offer our support and if you have need of any further information, please feel free to contact our office anytime.

Sincerely,

CARBON COUNTY CHAMBER OF COMMERCE

2015 BOARD OF DIRECTORS

2015 EXECUTIVE BOARD OF DIRECTORS:

Ann Anderson, 2015 President /ae
Castle Country Radio, Traffic/Promo Dir.

David Funk, Vice-President
Parkdale Nursing & Rehab, Administrator

Colleen Loveless, Treasurer
Love-Less Ash/Dustless Tech, Owner

Robert Oliver, Secretary
Oliver & Sitterud, Attorney

Mark Holyoak /ae
Mark Holyoak, Immediate Past-President
Castleview Hospital, CEO

2015 Board Members:

Kerrie Barker, Marketing
Community Nursing Services

Jenni Fasselin Publisher
Sun Advocate

Ben Heaton, COO
The Tony Basso Group

Jana Hopes, Owner
Carbon Copy Center

Kerry Jensen,Owner
ServiceMaster Restoration & Cleaning

Danny Mower, Sales Manager
Price Auto Group

Ryan Murray, Director
Small Business Dev. Ctr/Custom Fit

Richard Tatton, Owner
Tatton Insurance Agency

Sources: EIA, (2014 Data), State Electricity Profiles, Platts, Argus Coal Daily and NYMEX

Exhibit 7 - B

No. XX-XXXX

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

DECLARATION OF Brad Rinas, District Superintendent, Washburn Public School District

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I, Brad Rinas, declare as follows:

1. I am the District Superintendent for the Washburn Public School District (the "District") in the City of Washburn, North Dakota. I have been working in education for 33 years and am in my eighth year as superintendent of schools in Washburn. As District Superintendent, I oversee all aspects of finance and planning for the Washburn Public School District.

2. Washburn Public School District is a rural school district located in the City of Washburn, which has a population of approximately 1200 people. The District covers pre-school through 12th Grade. The majority of the student population is located in the City of Washburn or within a mile and a half of the city.

3. Located nearby (approximately six miles away) is Great River's Coal Creek Station, as well as the Falkirk Mine, which supplies coal to that station. Many of our students have parents who are employed at the Coal Creek Station or Falkirk Mine, and many other students have parents or family members who are indirectly associated with that generating station or mine (e.g., through suppliers or contractors).

4. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the "Rule"). I understand that EPA's modeling predicts that the Rule will cause the shuttering of coal-fired generating units in the near future, including the closure of one of the two units at the Coal Creek Station in 2018. *See* Decl. of John D. Newman. I further understand that as a result of that unit's closing over 40% of the Falkirk Mine's workforce could be laid off. *See* Neuman Decl. ¶ 13. These would have a devastating effect on the Washburn Public School District. This declaration is based on my personal knowledge.

5. Shuttering a unit at the Coal Creek Station and laying off a substantial portion of the Falkirk Mine's workforce would cause multiple irreparable harms to the Washburn Public School District.

6. Closing a Coal Creek unit and laying off employees at the Falkirk Mine would likely result in a reduction of the District's student body. Because farms in the area are much larger than they once were, there are fewer farmers and consequently fewer students whose parents make their living from farming. This means that the impact of the energy industry on Washburn (and by extension the District) has been greatly magnified. As a result, the student population in the Washburn Public School District is primarily composed of students from families associated with the energy sector—namely, generating stations and mines, as well as the suppliers that service

them. If a unit at the Coal Creek Station were closed, and employees as the Falkirk Mine let go, then those parents who were employed at the Station and Mine would likely have to look outside Washburn for employment, and as a result the student body within the Washburn Public School District would decrease. Those families affected by job losses at the Coal Creek Station and Falkirk mine would have to look elsewhere because of the lack of replacement jobs within the City of Washburn. Jobs at the generating stations and mines are among the highest in the area, and Washburn, which has a population of 1200, is not large enough to absorb an influx of high earning individuals.

7. The Washburn Public School District would also likely experience a decrease in the student body as families employed by industries that service the Coal Creek Station's unit and the Falkirk Mine also move away in search of employment. Many of the jobs in Washburn and surrounding areas are connected to servicing the Coal Creek Station and the Falkirk Mine, as well as other generating facilities and mines. If a unit at the Coal Creek Station were shuttered, and production at the Mine reduced, then many of those jobs would cease or be relocated, and the Washburn Public School District would see a corresponding loss of students.

8. The loss of students in the Washburn Public School District is not only harmful to the educators who enjoy teaching and associating with these students, but it would be devastating to the continued vitality of the District. The loss of students is significant because funding for the Washburn Public School District is heavily

weighted on its enrollment numbers. If there is a reduction in the number of students, the impact on the District would be massive and would affect most aspects of the District's continued operations.

9. And the impacts would begin immediately. If the District expects a reduction in its student body beginning in 2018, the planning for that loss would have to happen much earlier. The District would need to beginning planning for staff cuts and cuts to various programs in the immediate future. Approximately 75-80% of the District's funding goes to paying personnel, and that would likely be the first area affected by a reduction in students (and the corresponding loss of funding).

10. These harms would be further magnified by the loss of taxes associated with the shuttering of a Coal Creek unit and reduced production at the Falkirk Mine. In addition to student enrollment, the Washburn Public School District is also funded by local property taxes and a coal severance tax. A reduction in coal production at the Falkirk Mine will translate directly into a loss of funds for the District. As I understand, reduced production at the Falkirk Mine could result in a $1,335,100 decline in tax payments, 30% of which would have gone to schools. *See* Neumann Decl. ¶ 15. Such a drastic reduction to the District's funding, on top of the other losses associated with the closure of a unit at Coal Creek Station and reduction of the Falkirk Mine, would be devastating to the continued operations of the District.

11. Moreover, the District would be deprived on the funding that comes from local property taxes, as individuals formerly employed by the Coal Creek Station and Falkirk Mine move away in search of employment.

12. Unless this Court stays the Rule, the Washburn Public School District would be immediately and irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 9th day of October, 2015.

Bradley Rinas, Supt.
Washburn Public School District 4

Exhibit 7 - C

No. [redacted]

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

DECLARATION OF Luke Voigt, Business Manager, International Brotherhood of Boilermakers Local 647

I, Luke Voigt, declare as follows:

1. I am the business manager for International Brotherhood of Boilermakers Local 647 (the "Local"). I am currently serving my second 3-year term in that capacity. I work at the Local's headquarters, in Ramsey, Minnesota and our offices in Mandan, North Dakota. As business manager of the Local, I ensure our financial viability and plan for our financial future. In particular, I formulate our business plan, line up contracts with Contractors that service the coal fired power plants, and project likely demand for our services in the future to ensure we have adequate manpower to meet demand. Because training new boilermakers requires the commitment of significant resources and takes years to complete, I typically project demand on a 10-year basis.

2. My role as business manager for the Local gives me detailed personal knowledge of the effect of regulations on coal-fired plants in the area and on Local 647 and our members. This declaration is based on my personal knowledge of facts and analysis conducted by my staff and me. I am providing this declaration in

support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the "Rule").

3. I have lived in North Dakota my entire life and have worked at all of the 9 coal-fired plants and each of the total 17 boilers in North Dakota at some point. I began my apprenticeship as a boilermaker in 1999 and completed it in 2003. I have been a member of the Local for seventeen years.

4. Each member of the Local is a trained boilermaker. The training process for becoming a boilermaker is difficult and expensive. To become a boilermaker, a person must undergo an apprenticeship of 4 years. Each year of the apprenticeship requires, at a minimum, 144 shop and/or classroom hours. This training varies from basic safety training to highly specialized welding and rigging training. The Local pays for the training that apprentices need. Providing training costs the Local between $40,000 and $60,000 per apprentice in the 4 year timeframe. These costs are recovered by the local through our membership agreeing to finance thru voluntary wage reductions and negotiated hourly contributions by our employers.

5. The boilers used in coal-fired generating units are unique; nothing like them is used in any other type of generation or any other industry. They involve many unique technological systems, and our entire industry has grown up to service these boilers exclusively. The Local's members are all trained to work primarily with the boilers found in coal-fired generating units and have very little other work

opportunities. The Boilermakers are an exclusive heavy construction craft and our training does not relate into other industries.

6. The Local has 180-200 members in North Dakota. In any given year, we work between 300,000 and 500,000 man-hours on coal-fired generating units in North Dakota. The Boilermakers are a nomadic workforce, and when the outages start we bring in people from all across the country to help staff the work. Repairs and maintenance to any given boiler are highly labor-intensive, these 300,000 to 500,000 hours are spent working on only 3-5 of generating units individual boilers. The closure of any one of these units would have a devastating effect on the Local and our members. The closure of more than one unit would be catastrophic to our craft as a whole.

7. I understand that EPA's modeling predicts that the Rule will cause the shuttering of multiple coal-fired generating units in North Dakota in the near future. This includes units at the Coyote Station power plant, in Mercer County, North Dakota, which EPA's modeling predicts will close as early as 2016 absent a stay of the Rule. *See* Decl. of John D. Neumann ¶ 7. Coyote Station is a 427 megawatt power plant. *Id.* ¶ 6. When it shuts down for major maintenance, which occurs once every three years, we spend approximately 125,000 man-hours maintaining and repairing its boiler; we spend around 5,000 man-hours in a year when the unit does not shut down for major maintenance. Coyote Station is scheduled to undergo major maintenance in the spring of 2016, and we have set aside manpower adequate to meet the unit's

needs. But if the Rule causes the unit's closure in 2016, we will have no work to do at Coyote Station. Even if the unit does not close until late 2016 or even 2017, the owners will certainly not invest millions of dollars in maintaining, repairing, and upgrading a unit they know is about to close.

8. The effect of Coyote Station's closure on the Local would be devastating. It would eliminate approximately 8-9% of our potential man-hours for 2016. Members of the Local would lose over $8,000,000 in wages and benefits.

9. I understand that EPA's modeling also predicts that one of the two units at Coal Creek Station, in McLean County, North Dakota, will close under the Rule in 2018 absent a stay. *See* Decl. of John D. Neumann ¶ 13. Coal Creek Station is an 1100 megawatt power plant. *Id.* ¶ 12. It closes for major maintenance every two out of three years, for at least a 6-8 week timeframe. During such years, we spend a massive number of man-hours—approximately 200,000—maintaining and repairing each unit. Coal Creek has massive outages scheduled in 2016 and 2017 and the boilermakers are projecting these outages to be some of the largest man-hours producers in recent history. Coal Creek is scheduled for major maintenance next spring, and we have set aside manpower adequate to meet its needs. But based EPA's own modeling, the Rule has doomed one of Coal Creek's two units to closure in 2018 and, as a result, the owners will not request maintenance or repairs for that unit this spring. If one or both of the units at Coal Creek is shut down, the adverse impact would be something our craft would be hard pressed to overcome. Losing a steady

200,000 man-hours 2 out of every 3 years, and no way to replace the work opportunities makes the future of our members livelihoods as boilermakers [illegible] sustain.

10. The effect of impending closure of one of the Coal Creek units would devastate the Local's members. It would eliminate 15-17% of our work for 2016. Members of the Local would lose approximately $13-14,000,000 in wages and benefits.

11. If the Rule is not stayed and we do not have work to do at the affected units at Coyote and Coal Creek Stations this spring, the damage to our members will be catastrophic. We will be unable to find work for large numbers of our veteran members, let alone for the men and women about to complete their apprenticeships. Many members, veteran and new alike, will find themselves out of work. And they will not be able to find work maintaining and repairing equipment at other types of industrial facilities, whose boilers are very different from the boilers used at coal-fired power plants. The extensive training that all our members possess, and the decades of experience that many of our veteran members have accrued, will be of little value.

12. Absent a stay, our members would suffer great harm even if review could occur very quickly and the Rule is struck down in a matter of months. Most work on the boilers in coal-fired power plants occurs during the spring and fall, when demand for electric power ebbs. Boilermakers have six to seven months—March through May in the spring and September through October or November in the

fall—in which to earn their income for the entire year. Even if review is expedited, I understand it is highly unlikely that a final decision will be reached before the end of May. As a result, absent a stay, our members will miss at least half a year's earnings.

13. Many experienced boilermakers have retired in recent years, and we have recruited a number of apprentice boilermakers to replace them. The Local has spent hundreds of thousands of dollars in recruitment efforts alone; the training we have given current and recent apprentices runs to millions of dollars. If the Rule is not stayed, that investment will be wasted. The Local expects to receive around $1,000,000 this year in contributions, to pay for the training of our apprentices. If, however, Coyote and Coal Creek cancel their spring 2016 outages, our local training fund would not be replenished and could not fulfill the training needs of our apprentices. As a result, we would simply have to stop training and taking any further members and apprentices.

14. The local is funded by our membership dues contributions, which are based on gross wages. When our members do not work, the local is put in the same financial stress as the individual member. This is the very concerning part of this entire issue, if our members do not work, we cannot afford to retrain or to look for other industries to attempt to find work for them.

15. Due to the uncertainty of the EPA's rules, our local has been, and continues to be affected by a very uncertain owner group. Everyone has been extremely hesitant to do any major changes to their facilities or expand them in any

way. New construction has been very limited and done only in an as needed basis to meet specific operational or regulatory requirements. Also, the owners have put major stresses on our man power resources by scheduling outages in a very narrow time frame to make sure they make compliance deadlines. For many years, the outages were fairly balanced in the spring and fall, but due to compliance deadlines being in the spring, most utilities have moved their outages to this timeframe, therefore local boilermakers has already been affected, as the work opportunities in the fall have sharply decreased.

16. Under the Rule, members and potential apprentices are apprehensive about the future of coal in America and the prospects for boilermakers. While we were previously trying to recruit new members to replace retirees, we now have no choice but to stop recruiting. If a stay is denied and the Rule is ultimately struck down, we would begin to recruit again, but because it takes years to train new boilermakers, there would be a gap of several years in which demand far exceeded supply due to retirements. This imbalance would prompt power plants to give priority to only the most pressing repairs while foregoing routine maintenance, which would, in the long run, risk serious damage to the plants and instability in the power grid.

17. Unless this Court stays the Rule, the Local and its members would be immediately and irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 10 day of October, 2015.

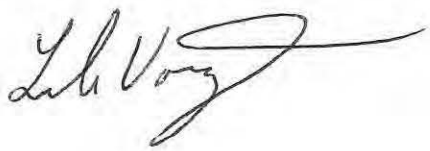


Exhibit 7 - D

DECLARATION OF JOSH HOWARD

I, Josh Howard, declare that the following statements made by me are true and accurate to the best of my knowledge, information, and belief:

1. I am the President of Aquatic Resources Management (ARM), a small environmental consultancy based in Lexington, Kentucky. We perform water and species-related environmental assessments and mitigation for companies that produce steam coal in Kentucky and Illinois. We help prepare permits, perform biological work with regard to Endangered Species Act obligations, collect fish samples to determine the pollution of waters based on species we find, analyze macroinvertebrate communities, perform water analysis for discharge ponds, perform whole effluent toxicity testing, and prepare annual reports to keep permittees in compliance with the Clean Water Act and other environmental laws. We currently have ten full-time employees and about 15 part-time employees.

2. I am originally from Williamson, West Virginia. My family has been involved in coal mining for generations. My grandfather worked in the coal mines for the better part of his life. My father and brother have worked intermittently in the coal mines as well. My stepfather works at a mine in Pennsylvania. I worked in coal mines in West Virginia and Kentucky throughout college. After college, I worked at an environmental engineering company and 2-3 years later went out on my own and started this company in 2008. I have more than eight years of experience in the environmental field, and have worked at ARM for seven years. During this time, I have conducted environmental assessments on many different types of projects including private development, residential development, and coal mining. I have a bachelor's degree in environmental studies from Eastern Kentucky University. I am certified in stream restoration Rosgen Levels I, II, III, and IV.

3. In 2012, we invested a significant amount of money to be able to perform a certain water analysis for these companies. We borrowed that money and are still making payments on it. This year, we are investing another significant amount based on new state requirements under the National Pollutant Discharge Elimination System (NPDES) regulations under the Clean Water Act to allow our clients to comply with that program.

4. As I understand it, the new Clean Power Plan (CPP) rule will put more pressure on our clients to be able to profitably produce coal. EPA even concedes that the CPP will reduce the amount of coal available to be used for electricity generation. There has already been a

significant reduction in coal demand because of the Mercury and Air Toxics Standards (MATS) rule. My company has already seen a significant reduction in revenue based on our clients going bankrupt as a result of implementing the MATS rule, which was later ruled illegal. Nonetheless, the long lag time associated with resolving the legal challenge led us to suffer lost revenue and a decline in our client base. The decision finding the MATS rule illegal failed to provide any relief. Similarly, we think the CPP is likely to put out of business our clients who are just getting by. That would in turn destroy my business.

5. This is not mere hyperbole. Case in point: on April 7, 2014, our number one client, James River Coal, filed for bankruptcy. We lost almost $350,000 in receivables that is now tied up in bankruptcy. We also lost two employees after that bankruptcy. We lost just over $40,000 in the 2012 Patriot Coal bankruptcy and had to lay off three people.

6. We are having conversations on a weekly basis about the future of the coal industry in our area and what impact the CPP will have on our business. Despite the uncertainties posed by the CPP, I am currently investing in a different rule – the new Kentucky NPDES program – which takes effect January 1, 2016. Coal mines were not subject to this particular rule before so there is demand for services to help them comply with this aspect of the Clean Water Act. We have to hire people with different qualifications to conduct the necessary assessments and mitigation for this particular rule. Beyond that new program, we are generally preparing to have fewer clients and are hunkering down. We are also concerned about getting paid to do this work that we are investing in. If there are no coal companies out there to help them comply with the Clean Water Act, then my investment will go out the door, and I will never receive payment for doing the work. I guess I'm a gambler. I hope I can make enough money to get through this. We keep investing in new Clean Water Act requirements, but if there are no clients, then it will be a complete loss of investment.

7. ARM hires and trains a lot of University of Kentucky and Eastern Kentucky University students to allow them get their required internships to graduate. If ARM's clients go out of business or go bankrupt, our ability to host and train paid student interns from both universities will be jeopardized. There will be fewer environmental companies generally working in the coal industry to provide these opportunities. We are also a good source of full-time skilled employment in the area.

8. Nothing positive will come from the CPP for my clients and for my business. Power plants will stop renewing contracts with coal companies, and the coal companies will go out of business. I am nervous about this and about my ability to employ people in the future. Even if the CPP is struck down, as we saw in the MATS rule, the damage will be irreparable, and my company – as well as its employees – will suffer the consequences.

I make this Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746, and I state that the facts set forth herein are true.

Josh Howard

Dated: August 24, 2015

Exhibit 7 - E

DECLARATION OF THOMAS E. YOUNG

I, Thomas E. Young, declare that the following statements made by me are true and accurate to the best of my knowledge, information, and belief:

1. I am the President of Hilltop Energy, Inc. ("Hilltop"), a subsidiary of D.W. Dickey & Son, headquartered in Lisbon, Ohio. D.W. Dickey & Son is a family-owned business that started in 1948. I graduated from Ohio University in Athens, Ohio, and entered the blasting business as a laborer on a shot crew right after college. After working for a major manufacturer for a few years after that, I came to D.W. Dickey & Son thirty years ago. In 1986, I was hired to run Hilltop, D.W. Dickey's blasting business, where I have been ever since.

2. Hilltop is a blasting service company and reseller of explosives. We have 80 employees in six different locations in Ohio, New York, Pennsylvania, and Michigan. We also service customers in Indiana, Kentucky, and West Virginia. We provide blasting services for quarries, site work, and surface coal mines. We take explosives to mine sites, place charges, and loosen the rock above coal seams for the coal to be mined.

3. Our coal mining business focuses only on surface mines. We are worried that these customers are about to become extinct due to the Clean Power Plan reducing demand for coal. Surface mines generally produce a higher quality product and require less processing than coal from underground mines. Surface mining is subject to a lot of regulations that underground mining is not, so the cost of surface-mined coal is several dollars a ton higher than coal mined underground. As such, surface mining is much more vulnerable to the rule than other types of coal. Surface mines have to monitor their impacts to streams, have to tie up money in bonds for 5-8 years, have reclamation liabilities, and have blasting restrictions – none of which apply to underground mines.

4. Over the last 25 years, due to increased regulations governing blasting, the number of surface mining operations that have done their own blasting has gone way down. Almost all blasting is now contracted out because training and insurance costs made having part-time blasters at coal companies cost-prohibitive. In terms of total number of mining companies, we are the dominant blaster in coal mining at present. The increased regulation of blasting has also served to consolidate the blasting industry. There used to be many family run blasting operations. Now, because of training and licensing requirements, it is much more expensive to run blasting operations. We have only two major competitors in each of our markets. To become a licensed blaster requires two years of training. Blasting is regulated by several industries, including the U.S. Department of Transportation (to transport explosives), the Bureau of Alcohol, Tobacco, and Firearms, the Mine Safety and Health Administration, the Occupational Safety and Health Administration, and the Environmental Protection Agency, which regulates stormwater discharges where we store bulk materials, as well as open burning of residuals.

5. We have seen changes in our revenue and business plan over the last few years due to the changes in the coal industry. We saw a marked decline in our coal mine business after EPA's scrubber rule came online, and even more after the mercury rule came into effect – which was later struck down, but damaged our income nonetheless. We are concerned that the Clean Power Plan will put the nail in the coffin of our coal business. We used to get all of our revenue from northeast Ohio. We now have to go as far as Plattsburg, NY, Indianapolis IN, and Morgantown, WV. Our employee numbers have stayed roughly the same as we have expanded geographically. Our footprint is now five times what it used to be to get the same revenue. In addition, in the 1980s, surface mines accounted for 70% of our revenue but are now just 17%. A

six-year history is below. The rest of our business is limestone quarries, salt, road work, and other site development.

	PERCENTAGE OF COAL SALES TO TOTAL HILLTOP SALES 2009-2014					
SITE	2009	2010	2011	2012	2013	2014
LISBON, OHIO	24.60%	16%	19%	16.20%	7.20%	1.30%
MINERAL CITY, OHIO	69.90%	74%	71.40%	69.10%	68.60%	59.60%
BRILLIANT, OHIO	100%	100%	100%	100%	100%	CLOSED
TOTAL COMPANY (ALL SITES)	46.10%	35.10%	32.90%	30.20%	24.20%	17.60%

6. We depend heavily on our coal mining customers. It will be hard to replace the coal mining part of our business if and when it goes away. Due to the consolidation of the blasting industry in recent years, it has become very difficult to enter new markets. In the past we have occasionally bought competitors to enter new markets. If that is not an option, it is a very painstaking process to enter a new market. Blasting is a service business based on long-term relationships. New entrants have to aggressively promote themselves and wait it out or cut prices which means much lower return or no return, and invites retaliation. The cost of entry into this business is very high now due to regulations and capital costs.

7. Our two field offices in Ohio are more reliant on coal mining than our other field offices, representing 25% of their business. One office has already been closed (in 2013). We are predicting that the Clean Power Plan will cause our coal business to decline to the point that we will have to close one of those remaining two offices and lay off several employees. We provide decent jobs and don't lack for applicants. We pride ourselves in providing a benefits package that is competitive with larger businesses, and in providing a very safe and nice culture. Our employees stay a long time. Our jobs pay around $20/hour, which is substantially more than

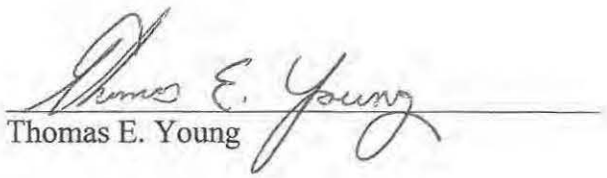
many of the jobs in some of the areas where we are located. Annual payroll for each of these field offices is around $1 million. Closing one of the sites would mean getting rid of a manager, magazine keeper and several blasters. These workers live in Columbiana, Carroll, or Tuscarawas Counties. Columbiana County is one of the northernmost counties in Appalachia and, as noted by the U.S. Census Bureau, has a very high poverty rate of 16.9%. Our highly skilled jobs pay substantially above the prevailing wage in these counties where the per capita income averages around $21,000. There are not a lot of other skilled jobs available in these locations and I am not sure where these employees would go. The unemployment rate in these counties is above average for the state. Public assistance outlays will have to be increased to account for greater unemployment. They will also have to increase to help residents with increased electric bills. In addition, if we were to close one of our two Ohio sites, while some equipment would be able to be redeployed, a lot would just sit.

8. We are taking several steps now to adjust to the new reality under the Clean Power Plan. We are preparing our employees to live out of motels to go on the road to find new markets. We are changing our business model to find newer markets and technical expertise and to figure out how to fight for business in new markets. Blasting is different in different applications and different training and expertise is required. To prepare for these new markets we have to invest a significant amount in new training for our employees. We would not have to undertake these efforts if the Clean Power Plan did not take effect.

9. In sum, I am very concerned about the negative impacts of the Clean Power Plan on my company in the next few years while the courts determine the final outcome. We are taking steps now to prepare for the loss of a significant portion of our business, and have begun to have conversations with our employees about potential layoffs and changing our business

model to expand to new markets farther away. This is a costly undertaking, not to mention heart-wrenching for these employees and their families. We are very concerned that we will have to begin laying off employees in the next few years and what impact those layoffs might have not only on those employees but on the communities in which they live. Once these good paying jobs are gone, they will not be replaced in these counties and will be difficult if not impossible to reestablish if the rule is later cast aside.

I make this Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746, and I state that the facts set forth herein are true.



Thomas E. Young

Dated: August 25, 2015

Exhibit 7 - F

Declaration of Kenneth E. Taylor

I, Kenneth E. Taylor, declare that the following statements made by me are true and accurate to the best of my knowledge, information, and belief:

1. I am a third generation owner, Chairman of the Board of Directors and President of Ohio CAT, the authorized and exclusive Caterpillar dealer for Ohio, northern Kentucky, and southeastern Indiana, headquartered in Broadview Heights, Ohio. I received my undergraduate Bachelor's Degree in Economics from Amherst College (Cum Laude, 1984), and I earned my MBA at the Weatherhead School of Management at Case Western Reserve University in 1997. Prior to my employment at Ohio CAT, I was a Research Assistant at the Board of Governors of the Federal Reserve System in Washington, DC (1984-1987). I joined Ohio CAT in 1988 as a Management Trainee, I worked in all areas of the business over a six-year period, and I've been President of the company since 1994.

Currently, I am an At-Large Director of the Associated Equipment Distributors (AED), and I am an active member of the Ohio Equipment Distributors Association (OEDA), the Ohio Contractors Association (OCA), the Ohio Coal Association, the Ohio Council of Retail Merchants (OCRM), the Fisher Institute for Professional Selling at the University of Akron, the Foundation for Appalachian Ohio (FAO), and the Digestive Disease Institute at the Cleveland Clinic Foundation.

In the past, I served as Chairman of the Governmental Affairs Committee of the Associated Equipment Distributors (AED) and as President of the Ohio Equipment Distributors Association (OEDA), and I served on the Board of Directors of the Cooperative Association of Tractor Dealers, Inc. (CATD) as well as the Associated Equipment Distributors Foundation (AEDF).

2. My company, Ohio CAT, fulfills our customers' needs through sales of Cat equipment and engines (as well as other non-Cat, complementary products), rentals of equipment and power systems products, parts support, service support and financial services support. We conduct our operations through three business divisions (the Equipment Division, the Power Systems Division and Ohio Ag Equipment, our agricultural division) and from a total of 21 distinct geographical locations. In addition, Ohio CAT operates ten (10) Cat Rental Stores to serve the unique needs of the equipment rental market, all but one of these stores being co-located at an Equipment Division location. With over 1,100 employees and total revenues in excess of $800 million, Ohio CAT is the largest equipment distributor in the state of Ohio. Historically, Ohio CAT was founded in 1945, and much of the company's early growth was fueled by the construction of our nation's interstate highway system. As Caterpillar's product line expanded, however, Ohio CAT began serving additional market segments including residential construction, heavy construction/site development, quarry and aggregates, and coal mining.

3. Of significant financial importance to Ohio CAT, the coal mining market segment is a major business focus including multiple product offerings and very robust in-house parts and service capabilities. Ohio CAT and Caterpillar have a very rich business history in the coal fields of eastern Ohio (primarily near our Cadiz, Youngstown and Zanesville locations), and we have a legacy of expertly supporting over 100 of Ohio's largest coal mining companies, past and present. When it comes to the heavy moving of soil, rock and coal, our customers use wheel loaders, bulldozers, hydraulic excavators and off-highway trucks. The backbone behind any mining operation is production in a non-stop environment, which means our parts and service personnel are essential to this industry. Mining machines typically run around the clock, and machine uptime is critical. Mining truly has been our economic engine for a long time, and our

investment in equipment, tooling and people to support this industry is indicative of its importance to our business portfolio and revenue stream.

4. In 2008, Ohio CAT made a significant investment to enhance our coal mining related business offerings—i.e., the purchase of a new facility in Bolivar, Ohio for $1.325 million, in part made possible by a $1 million Section 166 Direct Loan from the state of Ohio (15-year term). As part of this initiative, we purchased $1.4 million in fixed assets and we hired additional union and non-union personnel. These investments in assets and people were justified by expected increases in future revenues from our coal mining customers, revenues that are now in jeopardy because of the Clean Power Plan (CPP). Moreover, we are seriously concerned about the collectability of our coal mining customer accounts receivable; we estimate an accounts receivable write-off risk of between $300,000 and $2,300,000, depending on which customers are most adversely affected by the CPP.

In 2014, Ohio CAT purchased the distribution rights for Caterpillar's Expanded Mining Products (a.k.a. the Bucyrus product line) in our territory. Goodwill accounted for $4,342,939.08 of the total purchase price, which is to say Ohio CAT carries the risk of an additional $2,171,469.04 write-off expense should we lose half of our coal industry related revenues.

5. In Harrison County, Ohio, where our Cadiz operation is located, we pay an average annual salary of $69,938.01, which, according to the U.S. Census Bureau, is 79% above the average annual income of $39,002 per household in Harrison County. The county has a rate of poverty of 18.4%, which is 17% above the poverty rate in the State of Ohio (15.8%). Similarly, in Muskingum County, Ohio, where our Zanesville operation is located, we pay an average annual salary of $79,540.06, which, according to the U.S. Census Bureau, is 96% above the average annual income of $40,524 per household in Muskingum County. This county

also has a high rate of poverty, 18.1%, which is 15% above the poverty rate in the State of Ohio (15.8%).

The following are estimates of the local and state annual income tax amounts that are at risk, assuming an average annual salary of $72,100 (company average), because of the potential declines in revenue and employment due to the Clean Power Plan:

Cadiz		
	State	$29,020.25
	Local	$8,291.50
	Sub-total	$37,311.75
Zanesville		
	State	$29,020.25
	Local	$15,753.85
	Sub-total	$44,744.10
Total		$82,085.85

6. Surface mining related coal customer revenues, between 2012 and 2014, averaged 78% of our total revenues to coal customers in Ohio. Based on the high Sulphur content of coal mined in Ohio as well as the dominance of two consumers, American Electric Power and First Energy, who are closing coal-fired power plants and migrating to natural gas-fired power generation, we estimate that, indeed, 50% of surface mining related coal production will disappear, leading to a 50% drop in revenues from our surface mining customers. Moreover, we estimate that sales to our underground mining related coal customers, who comprise Ohio CAT's relatively small share of Ohio's underground coal mining customer purchases, will drop 50% or more. Therefore, in total, because of the Clean Power Plan, we are expecting at least an $18,437,132 drop in coal customer related revenues (i.e., 50% of the $36,874,263 in average

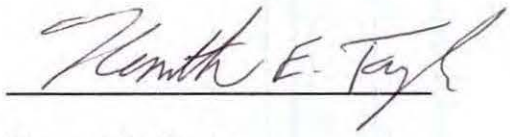
sales to coal mining customers between 2012 and 2014), and we are consequently projecting the loss of 23 jobs, including the loss of jobs for 17 union service technicians, four (4) union parts department employees, and two (2) supervisors.

7. The Harrison County and Muskingum County communities and employees cannot wait on the final determination regarding the legality of the CPP, which could take years. Harm from the CPP, both to these communities and, sadly, to our employees, will be immediate, and the harm will be permanent since these high paying jobs will be gone and will not be replaced.

Additionally, there will be a negative impact from the likely reduced participation in local events and charities by Ohio CAT (e.g., the annual contributions by both Ohio CAT and its employees to United Way campaigns).

In summary, the extreme nature of the Clean Power Plan, if and when it takes effect, will defeat and destroy what's left of the coal industry in eastern Ohio as well as the businesses, employees, families, citizens and governmental entities that are economically connected with eastern Ohio's coal industry.

I make this Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746, and I state that the facts set forth herein are true.



Kenneth E. Taylor

Dated: September 1, 2015

Exhibit 7 - G

DECLARATION OF MICHAEL D. THOMPSON

I, Michael D. Thompson, declare that the following statements made by me are true and accurate to the best of my knowledge, information, and belief:

1. I am the President and CEO of Thompson Tractor Co., Inc., a Caterpillar dealership based in Birmingham, Alabama, that serves customers in Alabama and Northwest Florida. We also supply forklifts in Georgia. Our company was started in 1957 by my father, and his father started a similar dealership in 1944. So, I am a third generation dealer who has worked in my family business since 1977 (38 years) and have been CEO since 1986 (29 years). I received a Commerce and Business Administration degree from the University of Alabama in 1977.

2. Thompson Tractor operates out of 30 locations with 1,300 employees. We sell or rent over 300 different products and over 100 different engines built by Caterpillar. Our customers are large and small earthmoving contractors. They are foresters. They collect and manage waste. Some quarry limestone and marble. Some build workboats and use our engines for prime and auxiliary power. Some build homes, shopping centers, and office buildings. Some grow crops. Many of our customers are involved in maintaining and building our roads and bridges. We also serve landscapers, electricians, and plumbers. We then provide parts for all the products we deliver and have a large staff of technicians (600) who provide labor to repair all of these products. We employ over 200 service vehicles to service the large machines we provide because it is easier to do the work in the field versus bringing the machines into our shop.

3. We serve an additional industry not mentioned above – our customers that mine coal. This industry accounted for 80% of our volume in 1981 but today the coal industry accounts for 14% of our total sales. The first reason for the decline is Caterpillar offers more

products to more industries, and we are a larger company. The second reason is we mine less coal and have fewer customers doing this work. In 1981 we had 300 coal customers. Today, we have 30. Our Alabama coal customers own 2.66 billion tons of recoverable coal. Alabama ranks 15th in the country in coal production (17,481,000 tons in 2014). The Alabama coal industry provides an economic impact of over $2 billion annually. There are 3,405 coal jobs in Alabama, with 12,000 support jobs for this industry.

4. Thompson Tractor's 1,300 employees are our greatest asset. We are proud to offer long term careers for our people and are proud that many choose us for a career and stay with us until retirement. I would estimate 20% of our workforce is dedicated to serving the coal industry. Today, this number would be 260 people. Coal accounts for 14% of revenue (10 year average) but it requires more people because the equipment is larger and more technical in nature. And larger equipment provides economical rebuilding of components which employ many of our personnel.

5. It is my belief the Clean Power Plan would have devastating effects across the United States and specifically to Thompson Tractor. This new regulation would force utilities to burn less coal by eliminating many coal-fired power plants. Utilities would switch fuel from coal to natural gas, and the coal industry would cease to provide coal to the United States utilities. In my company, the new rule would eliminate the need of 50 jobs. This includes a reduction of management, parts, service, sales, training, technical and administrative staff, all because of the reduced demand for coal caused by the Clean Power Plan. This would mean a loss of approximately $4,000,000 in wages and corresponding loss of tax base to the communities in Birmingham and Tuscaloosa, Alabama, where these employees live. I estimate that my company will lose over $10 million in annual sales to companies that formerly supplied thermal coal with a corresponding loss of taxes.

6. This rule will cause irreparable harm to my customers, my company and my community. 10 of my 30 coal mining customers supply thermal coal. This coal is purchased by the Alabama Coal Cooperative, which has a 2 million ton per year contract with Alabama Power Company through 2018 with extensions afterward. The new rule would force Alabama Power to end this contract and purchase no new coal from the Coop. This would end the life of these small companies and they would close. My company carries receivables in excess of $5 million to these small customers and this money will be uncollectable. These debts came from new and used equipment charges, component rebuilds, and loose parts. 250 miners who work at these companies will lose their jobs and these companies will cease operation. This will trigger Thompson Tractor terminating the 50 employees mentioned above. And our community will suffer with higher unemployment and a lower tax base. Energy costs will increase and our manufacturers will be less competitive in the world and their costs will rise. America will use less coal and more natural gas. The lack of competition of coal as a fuel will allow natural gas prices to increase. I believe all energy costs will rise with the absence of coal. The total cost of compliance for the Clean Power Plan through 2031 is estimated by Caterpillar to be $336,000,000,000. This is a terrible price to pay.

7. EPA and other federal agencies have acknowledged the Clean Power Plan will cause negative impacts of higher compliance costs, negative impacts to U.S. manufacturing, loss of thousands of U.S. jobs and eliminate many companies, coal fired power plants and harm suppliers such as my company: Thompson Tractor. The negative cost will far exceed the gain from this new rule.

I make this Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746, and I state that the facts set forth herein are true.

Michael D. Thompson

Dated: August 7, 2015

Exhibit 7 - H

No. XX-XXXX

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

DECLARATION OF Curtis Pierce, District Superintendent, Center-Stanton Public School District

---

I, Curtis Pierce, declare as follows:

1. I am the District Superintendent for the Center-Stanton Public School District (the "District") in Oliver County, North Dakota. I have been working in education for 29 years and am in my sixth year as superintendent of Center-Stanton schools. As District Superintendent, I oversee all aspects of finance and planning for the Center-Stanton Public School District, including hiring teachers, financing operations, and budgeting for facilities maintenance and improvements, as well as ensuring student safety and well-being.

2. Center-Stanton Public School District is a rural school district located in Oliver County, which has a population of approximately 700 people. The District covers pre-school through 12th Grade. We have a single school, Center Stanton, with a combined enrollment of 230 students.

3. Located nearby (approximately 34 miles away) is Great River's Coal Creek Station, as well as the Falkirk Mine, which supplies coal to that station. Many of our students have parents who are employed at the Coal Creek Station or Falkirk

Mine, and many other students have parents or family members who are indirectly associated with that generating station or mine (e.g., through suppliers or contractors).

4. Also located nearby is the Minnkota power plant.

5. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the "Rule"). I understand that EPA's modeling predicts that the Rule will cause the shuttering of coal-fired generating units in the near future, including the closure of one of the two units at the Coal Creek Station in 2018, which I anticipate would result in laying off all employees of that unit. *See* Decl. of John D. Neumann. I further understand that, as a result of that unit's closing, over 40% of the Falkirk Mine's workforce could be laid off as the Falkirk Mine cuts production. *See* Neumann Decl. ¶ 13. Furthermore, the Minnkotta plant provides significant financial support for Center-Stanton School District. The Coal Creek and Minnkota stations and Falkirk Mine also provide a large number of personnel who have students attending Center-Stanton and the closure of the plants would mean a loss of jobs. These layoffs would have a devastating, immediate, and irreparable effect on the Center-Stanton Public School District. This declaration is based on my personal knowledge.

6. These closures would almost certainly result in a reduction of the District's student body. About 25% the student population in the District is composed of students from families associated with the energy sector—namely,

nearby generating stations and mines, as well as the suppliers that service them. If the closures discussed above were to occur, then the parents of those students would likely not be able to find replacement jobs in the Oliver County area and would have to look elsewhere for employment. As a result the student body within the District would decrease. Jobs at the Coal Creek and Minnkota generating units and the Falkirk Mine are among the highest-paying in the area, and Oliver County, which has a population of 1900, is not large enough to absorb an influx of high-earning individuals. Indeed, the limited number of non-energy-related businesses in Oliver County would be unable to find even low-paying jobs for all the individuals who would be laid off if the Coal Creek and Minnkota generating units closed and the Falkirk Mine reduced production.

7. The District would also likely experience a decrease in the student body as families employed by industries that service the generating units and coal mines also move away in search of employment. Many of the jobs in Oliver County and surrounding areas are connected to servicing the units and the mine. If the generating units were shuttered, and production at the Mine reduced, then many of those jobs would cease or be relocated, and the District would see a corresponding loss of students.

8. The loss of so many students in the District would devastate the remaining students, teachers, and the Oliver County community at large. Oliver County is a small, tight-knit community, and Center-Stanton, the District's school,

plays an important role as a center of civic and community life. Center-Stanton School is the heart of our community. As a small rural community, the school provides much of the community gatherings including sporting events, music concerts, etc.

9. The loss of so many students and families from the area would gut the Oliver County community. Parents who have taken leadership roles in the local Parent-Teacher Association or otherwise been involved in volunteer efforts at Center-Stanton would leave. Friendships between families formed at Center-Stanton would be dissolved. And children who have grown close to their classmates and teachers would be displaced from their familiar environment. The tight-knit community atmosphere that characterizes Oliver County would be lost.

10. Furthermore, the closure of the Coal Creek and Minnkota units and reduced production at the Falkirk Mine would result in significant financial harm to the District. One of the most important sources of income for the District is local property taxes. As families move away in response to the closures and reduced production at the mine, the size of the tax base will shrink, thus cutting funding for the District. Our local taxable evaluation will decrease with flooding of houses on the market and the lack of prospective home buyers. The funding we have received from coal severance and conversion allows us to be competitive with other districts in staff salaries and educational opportunities. This loss of funding would force the District to lay off staff, cut vital programs, or both.

11. As the tax base shrinks, property tax rates would have to be increased to keep Center-Stanton open. This means, in effect, that the people who remain in the District will be taxed more heavily to make up for those who leave. While the increase in tax rates would not be enough to prevent teacher layoffs or cuts to critical programs, this additional taxation will constitute a substantial hardship on members of the community and will constitute an additional reason for families to move away from the District.

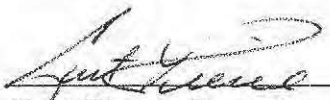
12. The impacts of these closures would begin immediately. If the District expects a significant reduction in revenues beginning in 2018, the planning for that loss would have to begin much earlier. Our long-term planning for building improvements would need to be placed on hold until definite funding is known. We will need to begin reviewing what programs would be necessary to keep and which ones would be the first to be cut if dollars are not available for funding.

13. Further, if the owners of the Coal Creek and Minnkota units believe those units are likely to close beginning in 2018, they are likely to invest less in maintenance and repairs beginning this year. This decrease in expenditure, in turn, would adversely effect families employed by businesses that provide such services to the units, who may begin to look for work elsewhere. And if employees of the unit and the Falkirk Mine believe they will lose their jobs within the next few years, many will begin looking for work elsewhere now, to avoid a period of unemployment after

their eventual termination from the units or the mine. The families of such employees would likely leave the District before the units are closed.

12. Unless this Court stays the Rule, the Center-Stanton Public School District would be immediately and irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 12th day of October, 2015.



Curt Pierce, Superintendent
Center-Stanton Public School District #1

Exhibit 7 - I

No. __-____

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

DECLARATION OF Brandt Dick, District Superintendent, Underwood Public School District

---

I, Brandt Dick, declare as follows:

1. I am the District Superintendent for the Underwood Public School District (the "District") in the City of Underwood, North Dakota. I have been working in education for 21 years and am in my fifth year as superintendent of schools in Underwood. As District Superintendent, I oversee all aspects of finance and planning for the Underwood Public School District, including hiring teachers and budgeting for facilities maintenance and improvements. Separately, I also serve on Underwood's Economic Development Board, where I work with other civic and business leaders to promote employment and attract new business to the area.

2. Underwood Public School District is a rural school district located in the City of Underwood, which has a population of approximately 778 people. The District covers pre-school through 12th Grade. The majority of the student population is located in the City of Underwood or within a few miles of the city. The two schools in the District, Underwood Elementary and Underwood High, have

combined enrollment of approximately 250 students in pre-school through 12th Grade.

3. Located nearby (approximately 6 miles away) is Great River's Coal Creek Station, as well as the Falkirk Mine, which supplies coal to that station. Many of our students have parents who are employed at the Coal Creek Station or Falkirk Mine, and many other students have parents or family members who are indirectly associated with that generating station or mine (e.g., through suppliers or contractors).

4. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the "Rule"). I understand that EPA's modeling predicts that the Rule will cause the shuttering of coal-fired generating units in the near future, including the closure of one of the two units at the Coal Creek Station in 2018, which I anticipate would result in laying off all employees of that unit. *See* Decl. of John D. Neumann. I further understand that, as a result of that unit's closing, over 40% of the Falkirk Mine's workforce could be laid off as the Falkirk Mine cuts production. *See* Neumann Decl. ¶ 13. These layoffs would have a devastating, immediate, and irreparable effect on the Underwood Public School District. This declaration is based on my personal knowledge.

5. Closing a Coal Creek unit and laying off employees at the Falkirk Mine would almost certainly result in a reduction of the District's student body. About half

the student population in the District is composed of students from families associated with the energy sector—namely, nearby generating stations and mines, as well as the suppliers that service them. If a unit at the Coal Creek Station were closed, and employees at the Falkirk Mine let go, then those parents who were employed at the Station and Mine would likely not be able to find replacement jobs in the Underwood area and would have to look outside Underwood for employment. As a result the student body within the District would decrease. Jobs at Coal Creek Station and the Falkirk Mine are among the highest in the area, and Underwood, which has a population of 778, is not large enough to absorb an influx of high-earning individuals.

6. The District would also likely experience a decrease in the student body as families employed by industries that service the Coal Creek Station's unit and the Falkirk Mine also move away in search of employment. Many of the jobs in Underwood and surrounding areas are connected to servicing the Coal Creek Station and the Falkirk Mine, as well as other generating facilities and mines. If a unit at the Coal Creek Station were shuttered, and production at the Mine reduced, then many of those jobs would cease or be relocated, and the Underwood Public School District would see a corresponding loss of students.

7. Furthermore, jobs would also be lost at the Blue Flint ethanol plant. Blue Flint is located near Coal Creek Station and derives its steam and hot water from Coal Creek Station. Closing one of the Coal Creek units would likely result in closure

of Blue Flint, too. Blue Flint employs 38 people; those employees would be laid off, and many would have to look for work elsewhere.

8. Because Underwood does not have employment opportunities sufficient to provide employment to the many men and women who would be laid off if the Coal Creek unit and Blue Flint plant close and the Falkirk Mine reduces production, the only way to avoid families moving away to find work is to attract another very large employer to the area. In my capacity as a member of the Underwood Economic Development Board, I have studied the potential for attracting new businesses to Underwood. My conclusion is that the possibility of attracting another employer large enough to replace the jobs lost from the Coal Creek unit, the Falkirk Mine, and the Blue Flint ethanol plant within the time needed to prevent a mass exodus of families is very slim. Bringing such a large employer to a rural area like Underwood usually takes years. Even if we were successful in someday persuading a large new plant to open in Underwood, it would almost certainly be too late to prevent families moving away from Underwood in search of work.

9. The loss of students in the District is not only harmful to the educators who enjoy teaching and associating with these students, but it would be devastating to the continued vitality of the District. The loss of students is significant because funding for the District is heavily weighted on its enrollment numbers. If there is a reduction in the number of students, the impact on the District would be massive and would affect most aspects of the District's continued operations.

10. Indeed, it is very possible that the layoffs caused by closure of the Coal Creek unit will force the District to close Underwood Elementary and Underwood High. When a major employer in a small, rural school district closes, it is very common for the district itself to close as well. I have seen this occur in several small communities near Underwood, which no longer have their own schools. I estimate that closing the Coal Creek unit, with accompanying layoffs at the Falkirk Mine and the Blue Flint ethanol plant, could result in a loss of half the District's students. Such a loss would leave the District with 125 students—only 7-8 students per grade. Such low enrollment would make coverage of basic operating expenses difficult.

11. Even if the District were to retain sufficient funding to meet operating expenses, closure of the Coal Creek unit would make continued operations difficult, because refurbishing our 1920s-era school building would become all but impossible. The building is in serious need of refurbishment; roofing issues and other issues with water coming into the building. Furthermore, we need to construct ramps and other improvements to make the building accessible for students with disabilities. To undertake these needed changes, we need to issue bonds that promise repayment over the course of 20 years. Given the devastating effect of the Coal Creek unit's closure on the District's finances, attracting purchasers of such bonds would be extremely difficult. Even if buyers could be found, the interest rate they would require in light of the District's imperiled financing would be ruinous.

12. The impacts of these closures would begin immediately. If the District expects a reduction in its student body beginning in 2018, the planning for that loss would have to happen much earlier. The District would need to begin planning for staff cuts and cuts to various programs in the immediate future. Approximately 75-80% of the District's funding goes to paying personnel, and that would likely be the first area affected by a reduction in students (and the corresponding loss of funding).

13. These harms would be further magnified by the loss of taxes associated with the shuttering of the Coal Creek unit, reduced production at the Falkirk Mine, and the likely closure of the Blue Flint ethanol plant. In addition to student enrollment, the District is also funded by local property taxes and a coal severance tax. A reduction in coal production at the Falkirk Mine will translate directly into a loss of funds for the District. As I understand, reduced production at the Falkirk Mine could result in a $1,335,100 decline in tax payments, 30% of which would have gone to schools. *See* Neumann Decl. ¶ 15. Such a drastic reduction to the District's funding, on top of the other losses associated with the layoffs discussed above, would be devastating to the continued operations of the District.

14. Moreover, the District would be deprived of the funding that comes from local property taxes, as individuals formerly employed by the Coal Creek Station, Falkirk Mine, and Blue Flint ethanol plant move away in search of employment.

12. Unless this Court stays the Rule, the Underwood Public School District would be immediately and irreparably harmed.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 12th day of October, 2015.

Brandt J. Dick

Exhibit 7 - J

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

DECLARATION OF Hollie Blanton, Owner, Templeton Air Conditioning and Refrigeration, Mount Pleasant, Texas

---

I, Hollie Blanton, declare as follows:

1. I am the owner of Templeton Air Conditioning and Refrigeration ("Templeton"), in Mount Pleasant, Texas. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the "Rule"). As a business owner, I am all too familiar with the effects the Rule, if not stayed, will have on Mount Pleasant and on my business. These effects will be catastrophic. This declaration is based on my personal knowledge.

2. I was born in Mount Pleasant in 1980 and now live nearby in Mount Vernon, Texas. My husband, Bobby, grew up in Mount Vernon as well. We have been married eleven years.

3. Bobby began working at Templeton in 1996. In 2006, the previous owners of the company retired, and we took over management of the company. We purchased the business in 2008. Templeton services commercial air-conditioning and

heating units. We have four employees, in addition to Bobby and myself. Bobby manages the employees and services units; I provide office support (maintaining payroll, etc.).

4. The vast majority of our business—85-90%—consists of servicing air-conditioning and heating units at two Luminant plants in the area, Monticello and Martin Lake. Our staff are onsite at these plants forty hours a week where we maintain an onsite maintenance shop. We have two employees dedicated to the Monticello plant and two to the Martin Lake plant. Our family has a long relationship with Luminant. Bobby's father has worked at Monticello for over thirty years, and my brother works at Oak Grove, another Luminant plant. We have always been happy with how Luminant has treated us and believe it is a good company.

5. I understand that the CO_2 performance rates EPA has established are simply not achievable by existing coal-fired electric generating units ("EGUs"), and furthermore any state action would likely require the shutdown of many coal units in order to meet the stringent CO_2 performance standards, whether rate or mass. I also understand that the IPM modeling on which EPA based the Rule assumes that two of the three generating units at the Monticello plant have been shut down.

6. The closure of the two Monticello units would be catastrophic for Templeton. We would lose roughly half of our business and would no longer be profitable. We would no longer have sufficient work or revenue to retain four employees and would have to let at least two go. I do not know what we would do if

the Monticello units close in the near future. While we would like to stay in the air conditioning business, it would be extremely difficult to replace such a large share of our business in a community the size of Mount Pleasant, and we would have to seriously consider branching into other kinds of work or even closing Templeton altogether. If the Rule forces us to close down, the last decade we have spent building our business will have been wasted.

7. I know countless employees of Luminant at Monticello. They make good salaries and have made their lives around the Mount Pleasant area because of the stability and the reputation Luminant holds of treating their employees with great fairness. Luminant is not limited to just producing power for our region; Luminant produces our way of life. The closing of the Monticello plant would fracture our families and our way of life in Northeast Texas.

8. These harms to our business and livelihood could, based on EPA's assumptions, come about just a few months from now unless this Court stays the Rule.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16th day of October, 2015.

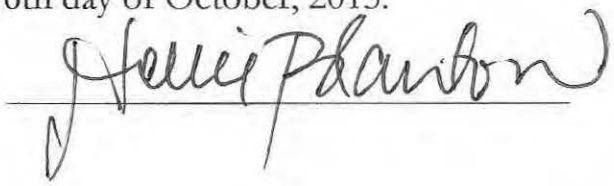


Exhibit 7 - K

No. __-____

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

DECLARATION OF Jeffrey Hammes, CEO and President, Industrial Contractors, Inc.

I, Jeff Hammes, PE declare as follows:

1. I am the CEO and president of Industrial Contractors, Inc. (ICI), a leading industrial construction contractor in the Upper Midwest and Rocky Mountains.

2. I graduated from the University of North Dakota (UND) with a Bachelors and Master of Science in Mechanical Engineering and received my Professional Engineers License in 2008. I completed studies as a graduate research assistant with the Upper Midwest Aerospace Consortium. I transitioned to ICI in 2012 as vice president and was promoted to CEO and president in 2014. I serve on the Board of Directors for the Lignite Energy Council; the Board of Trustees for the Boilermaker Local 647 Development and Training Fund; the Great Lakes Area Boilermakers Apprenticeship Program Board; and the Joint Electrical Apprenticeship and Training Committee for IBEW Local 714.

3. ICI was established in 1967, though it traces its roots back to 1918 with the founding of Lignite Combustion Engineering Corp. Headquartered in Bismark,

North Dakota, ICI offers project development and contractors for maintenance and construction of power-plants located in North Dakota and Wyoming. In particular, ICI has extensive experience specializing in boilers, piping, electrical, structural steel, power plant maintenance and all facets of the industrial construction market. Although ICI provides construction and maintenance services for a variety of markets, the heart of the company is focused on servicing coal-fired power plant units and almost solely in support of power generation. In 2013 ICI performed 1 million man hours of work with 67% performed in coal-fired power plants. In 2014, 87% of ICI's man hours were applied at coal-fired power plants. Indeed, the majority of ICI's man hours are devoted to the spring and fall, often referred to as the "shoulder months," when many coal-fired units are temporarily shutdown or run less often because of a decrease in demand for electricity and work can be done for repair and maintenance.

4. ICI performs work at coal-fired power plants in North Dakota, Wyoming, Colorado, and Montana. ICI regularly does work at Great River's Coal Creek Station, Otter Tail Power's Coyote Station, Minnkota Power Cooperative's Milton R. Young Station, and the generating stations owned by Basin Electric Power Cooperative, among others.

5. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the

"Rule"). The Rule will have devastating effects on ICI. This declaration is based on my personal knowledge of facts and analysis conducted by my staff and me.

6. I understand that EPA's modeling predicts that the Rule will cause the shuttering of multiple coal-fired generating units in North Dakota in the near future. This includes units at the Coyote Station power plant, in Mercer County, North Dakota, which EPA's modeling predicts will close as early as 2016 absent a stay of the Rule. *See* Decl. of John D. Neumann ¶ 7. Coyote Station is a 427 megawatt power plant. *Id.* ¶ 6. In prior years, Coyote has accounted for as much as 7% of ICI's total man hours in a year.

7. I understand that EPA's modeling also predicts that one of the two units at Coal Creek Station, in McLean County, North Dakota, will close under the Rule in 2018 absent a stay. *See* Decl. of John D. Neumann ¶ 13. Coal Creek Station is an 1100 megawatt power plant. *Id.* ¶ 12. Coal Creek has accounted for 10-16% of ICI's total man hours in a given year, depending on outage cycle.

8. I understand that EPA's modeling also assumes the closure of Minnkota's Milton R. Young Station. This Station has accounted for between 11-20% of ICI's man hours in a given year, depending on outage cycle.

9. Collectively, the closure of the units at these plants could be devastating to ICI. Together, these plants have made up nearly half of ICI's man hours in prior years. If the units at these plants close, ICI would need to explore diversifying and expanding its business into other areas. This could fundamentally alter ICI, which has

been focused on the power generation industry. And if these plant closures occur on the timeframe indicated by EPA's modeling, ICI would need to make changes now.

10. These closures would also make it impossible to maintain the same level of staffing. Even if ICI could diversify as a company, a large portion of our workforce cannot. This could mean that ICI would need to cut nearly half of its workforce or scale back the hours for people. Cutting back on the amount of work for individuals could also result in fewer employees as those individuals seek out other opportunities.

11. Absent a stay, the Rule could cause immediate and irreparable harm to ICI. It could fundamentally and irreparably alter the company and cause the loss of many jobs.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 16th day of October, 2015.

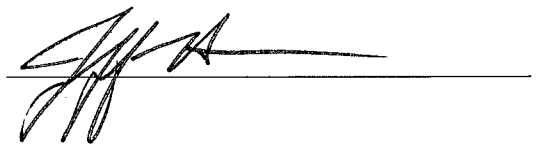


Exhibit 7 - L

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

DECLARATION OF Charles Smith, Executive Director of the City of Mount Pleasant Industrial Development Corporation, Mount Pleasant, Texas

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I, Charles Smith, declare as follows:

1. I am the Executive Director for the Mount Pleasant Industrial Development Corporation (MPIDC), which is a corporation organized under a Texas law that allows communities to develop a tax-funded corporation focused on creating new primary jobs in the community and encouraging new investment. As such, I am an employee of the City of Mount Pleasant. I am providing this declaration to support the U.S. Chamber of Commerce's motion to stay the Environmental Protection Agency's (EPA) new rule entitled Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (Rule). Below, I describe the devastating harm that the Rule will cause Mount Pleasant and Titus County if it is not suspended. The facts and opinions I state below are based on my personal knowledge and my years of experience both in the local community and as a certified professional in the field of economic development.

2. I received a degree in business management and marketing from Baylor University in 1974. I have spent the past twenty-nine years as a professional in the

field of economic development. I have been the executive director of the Chamber of Commerce in Castle Rock, Colorado; the executive director of the McNairy County Economic Development Commission in McNairy County, Tennessee; and the Executive Director of the Belton Economic Development Corporation in Belton, Texas. I have been with the MPIDC for eleven years now. I am also a Certified Economic Developer (CEcD) accredited by the International Economic Development Council (IEDC).

3. Mount Pleasant and Titus County are a small economy. The city has a population of approximately 16,113 with another 16,468 in the county (total 32,581). The unemployment rate is 6.4%, almost two points above the rate for the State of Texas. The county is home to two major coal fired generation facilities. One of which contains three generators operated by Luminant. The Luminant facility and its potential impact is the subject of this testimony. The Luminant facility, named the Monticello Power Station, includes three generators (EGU's). The Luminant facility employs approximately 165 persons at the EGUs with a payroll in excess of $20,000,000. The generators also employ additional persons in ancillary business as contractors to the power companies. These contractors pay an additional $3,000,000 in wages in the area, and those jobs are almost 100% supported by the generation facilities. The jobs they provides are exactly the type we strive to attract to Mount Pleasant—highly skilled jobs with good salaries and benefits. The median annual salary for the Luminant facility is roughly $72,000. If you include average overtime,

that increases to $93,000. That is higher than the median industrial wage of $35,620. The company contributes greatly to the local property tax base (which benefits the county government, school districts, community college, and hospital district) paying over $8,000,000 in property taxes in 2014. Mount Pleasant School District alone receives over $4,700,000. In addition to property taxes the companies pay sales taxes on the items which they purchase locally. The company and its employees benefit the community in other ways through their participation in and support for community programs and events.

4. I understand that the CO_2 performance rates EPA has established are simply not achievable by existing coal-fired electric generating units ("EGUs"), and furthermore any state action would likely require the shutdown of many coal units in order to meet the stringent CO_2 performance standards, whether rate or mass. I also understand that the modeling on which EPA based the Rule assumes that two of the three EGUs at Monticello have shut down by or before 2016.

5. The closing of this generation facility (two EGUs) will do much more than simply harm a company or investors; it will devastate Mount Pleasant. The loss of jobs will be very significant. Not only will many individuals lose stable, high quality jobs, but the community will feel the impact of those losses. The loss of these jobs will significantly impact retail and service jobs in the county. While the plant is in the county, most of the employees live and shop in the city. There is almost zero prospect for the employees to find comparable jobs in this area. The local economy

will not be able to absorb the hundreds of employees who will need work if the EGUs close or partially close. Many former Luminant employees will be forced to either retire permanently or to move out of the area to look for work.

6. I would estimate the cumulative lost salary with a Luminant closing will be in excess of $35 million per year, which will negatively impact the area. The loss of jobs will also adversely affect local sales tax revenue, which is used to support the City of Mount Pleasant and the MPIDC. In 2010, we experienced a 15% decrease in sales tax revenue, in part due to the relocation of the Pilgrim's Pride corporate offices. If the EGUs were to close, I expect that 2016 sales tax revenues will be reduced again with a similar impact. This would mean a reduction in sales tax revenue to the City of Mount Pleasant of over $600,000. Unfortunately, decreased sales tax revenues make it even harder for the Mount Pleasant area to invest in incentives and take other measures to attract other employers to the area.

7. Luminant also supports a significant influx of temporary workers (specialty maintenance and other contractors) who come to Mount Pleasant and Titus County, stay in our hotels, and eat in our restaurants, during facility maintenance outages and at other times. These periods, which are usually several weeks long at a time, have a major beneficial economic impact on our local community through hotel/motel taxes and revenues to our restaurants. According to Luminant, the company pays on average approximately $5,000,000 per year in per diem costs for contractors who work at the plant during outages and at other times. With a

shutdown of the EGUs, this amount will likely decrease dramatically. I conservatively estimate that $3,000,000 will be lost to the community.

8. The closures of the EGUs will surely lead to reductions in the valuation of these company's real property and equipment, which is used to determine the amount of ad valorem taxes due from the company. Luminant is the single largest property tax payer in the county. These taxes go to fund three different local school districts, the hospital district, the community college, and the city and county government. In 2014, for example, Luminant paid property taxes of approximately $8,093,300 total, of which $5,185,600 went to school districts and $2,907,400 went to the county, college, and hospital. I estimate that the changes caused by the EPA's CO_2 regulation could cause the current valuation of its plant to decrease by as much as 50% or more. Of course, the exact amount of the decrease is difficult to project accurately at this time, but given the importance and valuation of these assets to the county's property tax base, any major change will be very significant.

9. In addition to devastating the families of the workers who would lose their jobs if the generation facilities close, the closure would put enormous pressure on Mount Pleasant's and Titus County's social services at the precise time the city and county governments face a significantly reduced revenue stream as a result of the diminution in tax revenues. Mount Pleasant's and Titus County's free clinics, low-income housing, and other social services are already strained; these safety nets are

simply not strong enough to hold all the people who would need them if the two facilities close.

10. Furthermore, noneconomic contributions from the employees to the community are invaluable. These Luminant employees contribute to the local quality of life, in part through participation in and volunteer support of churches, local charities, and program. That contribution would cease as former employees move away to seek work.

11. In 2010, a major employer in this area (Pilgrim's Pride) merged with another company and moved its corporate headquarters from south of Mount Pleasant to Colorado. This caused the dislocation of several hundred white collar jobs held mainly by individuals who lived in and shopped in Mount Pleasant. The change had an immediate negative effect on local sales tax revenues. It also caused a glut in the housing market in the $250,000 price range and brought new home construction to a stop, further depressing local real estate values. The cumulative loss in sales tax revenue in the city was 15%. I anticipate that the effect of the closing or partial closing of the Luminant generation facilities will be even more devastating. With the Pilgrim's Pride closure, we did not lose the production jobs and we lost no ad valorem tax revenue. In this scenario we lose production jobs and white collar jobs and over $8 Million in ad valorem tax revenue.

12. I would project the actual total loss in salaries, ad valorem taxes, and other local revenue from per diem and contractor payments from a shutdown of the

two facilities or significant reduced operations to be $60,000,000. Every local community has a multiplier effect, meaning that for every dollar of salaries and taxes, there are additional dollars of salaries and taxes generated in the community. Multipliers typically range from 2 to 10. Based on my experience in this community and in the profession of economic development, I estimate the local multiplier effect to be 3, a relatively conservative estimate. With a multiplier effect of three, I estimate the losses due to generation facility closures and/or reduced operations will result in a cumulative negative impact of more than $180,000,000 annually to our local economy. I urge the Court to stay the Rule in order to avoid the very significant harm that will otherwise, based on EPA's assumptions, soon occur to Mount Pleasant and Titus County and extend for years to come.

13. In summary then we have a loss of direct wages by the utilities and contractors estimated at over $40,000,000. We are looking at a loss in tax revenue which primarily goes to our schools systems of over $7 million. This is almost 10% of the total MPISD annual budget with no decrease in student population. We are looking at an estimated loss of $1,785,600 to the County which is 20% percent of County budget. And finally a $180,000,000 impact when the multiplier of money is brought into consideration. It should be evident to the Court that these impacts will call for significant changes to County Services including roads and safety. Jobs not related to the power plants will be cut from private and public budgets. The most significant loss and most long lasting loss will no doubt be to the school children who

will find fewer teachers and larger classes, fewer opportunities to excel in the arts or career training because all non-essential classes will need to be cut. The economic impact to the region can very likely start a downward spiral that will be difficult to correct, and I would urge the Court to consider these human and quality of life costs as they consider the legality of this rule.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 20th day of October, 2015.

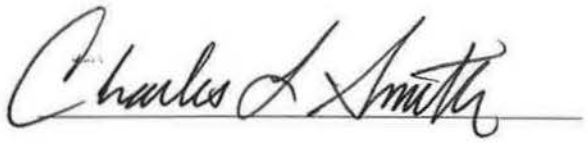

Exhibit 7 - M

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

DECLARATION OF Diana Kennedy, Realtor, Century 21 Landmark Associates, Mount Pleasant, Texas

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I, Diana Kennedy, declare as follows:

1. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO2 emission guidelines for existing stationary sources ("the Rule"). The Rule will have devastating economic and social effects on Mount Pleasant, Texas. I submit the following information with the hope that you will stay the Rule and the damaging effects it will produce for Mount Pleasant.

2. I am an Owner/Agent with Century 21 Landmark Associates, in Mt Pleasant, Texas. That is what I do to make a living, but there is more to me than what my job description tells you. I am considered a "B.I.M.P." (Born in Mt Pleasant), and that fact gives me an insight that some people may never have. I have been a resident here in Titus County for over 66 years. As a little girl, the best jobs in town were at the local refinery that produced gasoline. My Dad worked there for over 30 years where our family enjoyed a good pay scale and good benefits. When the Refinery closed, I was married and remember how it affected our local economy. The

Employees that had been there for many years, but not long enough for retirement, could not find jobs that offered what the Refinery had paid. As a result, many of our friends moved away to find jobs. Housing prices plummeted, as did the prices of Farm and Ranch property. Many of our residents moved or drove to other jobs in other towns and eventually sold and relocated.

3. In the early to mid-70's, however, construction began on Lake Bob Sandlin to make it possible to construct the Monticello power plant and once again to offer the prospect of a good pay scale and benefits in the Mt. Pleasant area. Luminant now owns the Monticello power plant and the associated lignite coal mines in Mt Pleasant. The power plant produces electricity not only for much of Northeast Texas, but also for the Dallas-Ft. Worth Metroplex. When the power plant opened, my husband left a position he had been in for over 10 years and took a cut in pay in order to work at the plant. This change allowed him to avoid a 110 mile drive, round trip 5 days a week, freeing up his time to spend with our family, which consists of 3 daughters (and eventually 3 son-in-laws and 11 Grandchildren, all of whom live in our area). He retired from Luminant in 1999, and we thank God for the wonderful life it afforded our family. It grieves us to think of all of the men and women who will not have the same opportunity, should the power plant be closed.

4. I understand that the CO_2 performance rates EPA has established are simply not achievable by existing coal-fired electric generating units ("EGUs"), and furthermore any state action would likely require the shutdown of many coal units in

order to meet the stringent CO_2 performance standards, whether rate or mass. I also understand that the IPM modeling on which EPA based the rule assumes that two of the three Electric Generating Units at the Monticello site are already shut down. That is not the case, however, and if the Monticello units were to shut down, as EPA's modeling assumes, that would result in severe impacts to our community.

5. Monticello is one of the largest employers in Mt. Pleasant and pays a higher than average salary for our area. Closing two of the Monticello EGUs would bring about a devastating blow to the economy and quality of life to the Mt. Pleasant Community and would even reach out as much as 60 miles from Mt. Pleasant, since many of those employed drive in to work from surrounding areas, and also shop in Mt Pleasant. A loss of employees at the power plant would hurt Mt. Pleasant businesses.

6. Furthermore, the closing of the two EGUs would have a catastrophic effect on my own company, Century 21 Landmark Associates and local real estate when the bottom falls out because of more real estate to sell than we have buyers.

7. In about 2007, Mt Pleasant was wounded when another large corporation, PILGRIMS, sold a large percent of their poultry producing company to JBS in Greely Colorado. More than 60% of mid- to upper-management either lost their jobs or were relocated to Greely. The homes and farm and ranches these employees lived in were listed for sale. When more than 200 homes and land flooded our market realtors could not find enough buyers for the real estate listed. Realtors

collectively calculated that they had one buyer for every 4 homes listed for sale. As a result, the homes and land that the Pilgrim employee had bought for top dollar sold at rock bottom prices. Every aspect of life in Mt. Pleasant was affected. The City of Mt. Pleasant, the County, the Hospital, the Schools, the College, the Merchants, and even Grocery Stores suffered.

8. Until now, the Monticello Power Plant has been a driving force for bringing new employees and their families to the Mt. Pleasant area, thus driving up demand for real estate. Due to the excellent salaries paid to Monticello employees, the property those employees buy are beautiful brick homes or outstanding farms or ranches. The average prices would range from $250,000 to over $450,000. Monticello's positive effect on real estate values will essentially vanish with the closing of two of its EGUs, and the effect would be felt almost immediately.

9. Our local economy will be unable to absorb the hundreds of employees who would be laid off if the two Monticello EGUs are shut down. Many of the employees at Monticello and their families will have no choice but to move away from the community in search of work elsewhere. There are simply not enough high paying positions comparable to those at the Monticello units. Those leaving our area will need to sell their homes and land. They will most likely list their property shortly after the EGUs are closed. That supply of property for sale will further depress real estate prices. Even property owners whose jobs are not affected by the closure of

Monticello EGUs will have their property values plummet as there are more places for sale than we have buyers. It is a simple supply and demand problem.

10. The closure of units at Monticello, and departure of employees, raises another major concern for this B.I.M.P. The employees who are forced to move to find work will leave a hole in our Mt. Pleasant community. The community ties will fray as those that are active in our civic organizations and community life move away. The mothers, fathers, children, and grandchildren in our community may also move to be close to their families. The disintegration of local communities will encourage yet more Mt. Pleasant residents to consider moving to other communities, and that will further depress the real estate values.

11. Life in small communities like Mt. Pleasant is dependent on the leadership of companies like Luminant, which supply a volunteer group that leads our town and county to greater heights. Those leaders from Luminant that volunteer their service serve on the Boards of our Hospital, Titus County Cares, Hospice, the Northeast Texas Community College, our School Boards, the Chamber of Commerce, and many other organizations. When small communities like Mt Pleasant lose employees to other town and communities, our merchants suffer and that tax revenue plummets. Luminant is now, and has always been, a great supporter of our schools, children's activities, our Chamber, and has always shown up where there has been a need in our community.

12. It is my belief that in order to avoid the detrimental effects described above, the Court should stay the Rule. That will relieve uncertainty for Mt. Pleasant and other similarly affected communities while the Court can consider the legal challenges to the rule.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21st day of October, 2015.

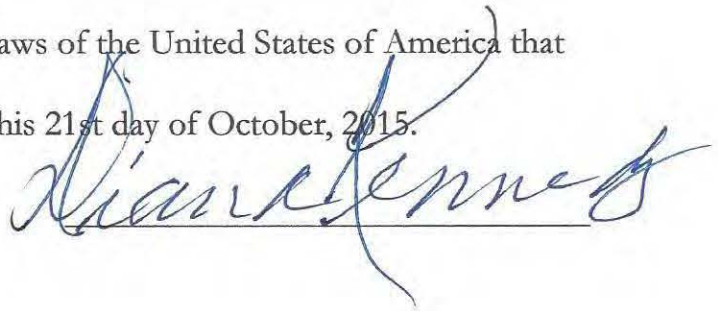

Exhibit 7 - N

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

DECLARATION OF Richard Witherspoon, Chairman, Mount Pleasant Chamber of Commerce, Mount Pleasant, Texas

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I, Richard Witherspoon, declare as follows:

1. I am the Chairman of the Mount Pleasant Chamber of Commerce, in Mount Pleasant, Texas. In that capacity, I come in contact with the business leaders of both large and small businesses all across the community. I get a real feel for what affects each business. I am providing this declaration in support of the U.S. Chamber of Commerce's motion to stay the U.S. Environmental Protection Agency's ("EPA") final rule establishing CO_2 emission guidelines for existing stationary sources (the "Rule"). The Rule will have devastating economic and social effects on Mount Pleasant. This declaration is based on my personal knowledge of facts and analysis conducted by me.

2. Luminant owns the Monticello power plant in Mount Pleasant. The power plant burns lignite coal and produces electricity for both Mount Pleasant and the surrounding regions of Texas.

3. I understand that the CO_2 performance rates EPA has established are simply not achievable by existing coal-fired electric generating units ("EGUs"), and furthermore any state action would likely require the shutdown of many coal units in

order to meet the stringent CO_2 performance standards, whether rate or mass. I also understand that the IPM modeling on which EPA based the Rule predicts that two of the three EGUs at the Monticello site have shut down.

4. The closing of these two Monticello EGUs would be devastating to Mount Pleasant. Monticello is one of the largest employers in Mount Pleasant. It employs approximately 165 people at the EGUs—over 5% of the employed population in Mount Pleasant. In a town with unemployment at 6.0%—46% higher than the Texas state unemployment rate—these jobs are critical.

5. Furthermore, the salaries that Monticello pays are significantly higher than the median salary in Mount Pleasant. The median salary at Monticello is roughly $72,000. If you include average overtime, that increases to $93,000. That is significantly in excess of Mount Pleasant's median salary, which is $35,602. The positive effect of these high salaries on the families of the residents who work at Monticello and on local retail and small businesses is difficult to overestimate.

6. In the event that Monticello closes two units, the economic impact of losing salaries totaling approximately $20 million would be devastating to the local economy. These salaries provide significant support to the local businesses. Lost sales tax dollars and lost ad valorem taxes to local schools and government entities would greatly affect school and government budgets. With reduced budgets, services to the citizens of the community would be reduced.

7. The jobs that will be lost if the two Monticello EGUs close down will be very difficult to replace. As noted, unemployment in Mount Pleasant is 6.0%. The local economy will not be able to absorb the hundreds of employees who will need jobs if these two EGUs close. And the sudden flood of supply in the labor market will make it much more difficult for people who are already unemployed to find work.

8. In addition to devastating the families of the workers who would lose their jobs if the two Monticello EGUs close, the closure would put enormous pressure on Mount Pleasant's social services at the precise time the city government is strapped for cash as a result of the diminution in tax revenues Monticello pays. Mount Pleasant's free clinics, low-income housing, and other social services are already strained by the high unemployment rate in the area; these safety nets are simply not strong enough to hold all the people who would need them if the two Monticello EGUs close.

9. The loss of Monticello's jobs will have negative effects far beyond the families of the workers who are let go. Mount Pleasant's retail outlets, restaurants, and small businesses will all suffer as so many residents and their families lose purchasing power. As a result of two Monticello units closing, retail sales would decrease 7-10%. Businesses selling directly to the Monticello units would face an even greater burden as they attempt to replace this lost business.

10. Furthermore, in the absence of another employer to fill the gap left by Monticello—and it has been over forty years since an employer of Monticello's size

moved to Mount Pleasant—many workers and their families will have no choice but to move away from the community in search of work elsewhere. Real estate prices will fall as supply outstrips demand. In addition to the effects of dislocation experienced by families who are forced to move, community ties will fray as people active in civic organizations and community life move away.

11. It is my belief that in order to avoid the detrimental and irreparable effects described above, the Court should stay the Rule. That will relieve uncertainty for Mt. Pleasant and other similarly affected communities while the Court can consider the legal challenges to the rule.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed this 21st day of October, 2015.