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Oral Argument Scheduled for October 8, 2020

October 26, 2020

VIA ELECTRONIC FILING

The Hon. Mark J. Langer
Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
Room 5523
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: American Lung Association, et al. v. EPA, et al.: No. 19-1140 (and consolidated cases); EPA Response to Robinson Enterprises October 16, 2020 Rule 28(j) Letter

Dear Mr. Langer:

Respondents United States Environmental Protection Agency, et al. (EPA) hereby address the Robinson Enterprises Petitioners' October 16, 2020 Rule 28(j) Letter, ECF No. 1866787. That letter discusses the D.C. Circuit's decision in *Competitive Enterprise Institute v. Federal Communications Commission*, 970 F.3d 372 (D.C. Cir. 2020).

Petitioners argue that this case supports Petitioner Competitive Enterprise Institute's standing to challenge the Affordable Clean Energy (ACE) Rule based on the possibility of increased electricity costs in the future. It does not. *Competitive Enterprise Institute* involved challenges to the conditions that the Federal Communications Commission had imposed on a merger. *Id.* The Court held that several of the petitioners there had standing because they put forth unrefuted

evidence that “their cable bills increased after the merger” thereby causing an injury in fact. *Id.* at 383. The Court reasoned that these petitioners’ standing was supported by a “simple causal chain” because the conditions the agency imposed on the merger directly reduced the cable companies’ revenue and increased consumers’ costs. *Id.*

By contrast, here, the Robinson Enterprises Petitioners have put forth no evidence of actual or imminent increased electricity costs as a result of the ACE Rule—only speculation that costs may increase at some point in the future. *See* EPA Br. at 190-92. And, the alleged causal chain between the ACE Rule and any future increased costs is much more attenuated than in *Competitive Enterprise Institute*. Whether an entity’s electricity costs will increase depends on the actions of numerous third parties, including state regulators, coal-fired power plants, and others. EPA Br. at 191. The speculative nature of Petitioners’ purported injury is confirmed by the Regulatory Impact Analysis that Petitioners point to as support in their letter, which projects that national average electricity costs may not increase at all and expressly states that it is subject to numerous limitations and uncertainties. *Id.* For these reasons, *Competitive Enterprise Institute* provides no support for Petitioners here.

Sincerely,

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD

cc: Counsel of record, via CM/ECF

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Federal Rule of Appellate Procedure 28(j) because it contains approximately 347 words according to the count of Microsoft Word and therefore is within the word limit of 350 words.

Dated: October 26, 2020

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD

CERTIFICATE OF SERVICE

I hereby certify that on October 26, 2020, I electronically filed the foregoing Rule 28(j) response letter with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD