ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NORTH DAKOTA, Petitioner, v. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 17-1014 (and consolidated cases)

MOTION FOR LEAVE TO INTERVENE ON BEHALF OF PETITIONERS

Pursuant to Rules 15(d) and 27 of the Federal Rules of Appellate Procedure and Rules 15(d) and 27 of this Court, 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 (collectively, "Movants"), by and through undersigned counsel,

respectfully move to intervene in support of Petitioners in Case No. 17-1014 (and consolidated cases).

BACKGROUND

This proceeding involves challenges to the United States Environmental Protection Agency's ("EPA's) "Denial of Reconsideration and Administrative Stay of the Emission Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units." 82 Fed. Reg. 4,864 (Jan. 17, 2017). Those petitions for reconsideration[1] challenged aspects of EPA's Clean Power Plan, *see* Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) ("the Rule"), which is currently under review by the *en banc* Court. Relying on Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), the Rule imposes an obligation on States and fossil fuel-fired power plants to significantly reduce emissions of carbon dioxide ("CO_2") from the electricity generating sector. The Rule establishes emission rate targets that cannot be achieved through the installation of CO_2 emission controls at the regulated sources, relying principally on shifting electricity generation away from fossil fuel-fired power plants to lower-emitting sources of electricity. Movants are among the more than 100 petitioners that sought judicial review of the Rule. *See State of West Virginia v. EPA*, D.C. Cir. Case No. 15-1363 (and consolidated cases). Argument in those

[1] EPA deferred a decision with respect to the portions of the administrative petitions for reconsideration submitted by the State of Kentucky and Oglethorpe Power Corporation that addressed biomass. *See* 82 Fed. Reg. at 4,865.

consolidated cases was recently held before the *en banc* Court. Movants were also among the petitioners that successfully obtained a judicial stay of the Rule from the Supreme Court. *West Virginia v. EPA*, 136 S. Ct. 1000 (2016) (order in pending case).

The administrative petitions for reconsideration at issue in this case addressed a number of procedural and substantive defects in the final Rule and overlap significantly with the issues raised in the petitions for review of the Rule already before the Court. For example, the reconsideration petitions challenged, among other things, the process by which EPA established CO_2 emissions rate goals for coal and natural gas-fired power plants, EPA's reliance on generation shifting to achieve CO_2 emissions reductions, the achievability of the CO_2 emission reduction goals, EPA's reliance on establishing trading programs to achieve the CO_2 emissions reduction goals, EPA's inclusion of new provisions and programs that were not part of the proposed Rule, and EPA's projected costs for achieving the CO_2 emissions reductions.

Movants represent the nation's leading energy and manufacturing sectors that form the backbone of the nation's industrial ability to grow the economy and provide jobs in an environmentally sustainable and energy-efficient manner. Movants' members include the utility companies that own existing coal-fired and natural gas-fired power plants regulated by the Rule, coal mining companies that provide energy to those power plants, and thousands of members who use electricity—frequently in large amounts to support industrial processes—all of which will be directly affected

by changes in the electricity sector that shift production away from fossil fuel-fired power plants and increase electricity costs. Had EPA granted these administrative petitions for reconsideration and provided the petitioners with the relief they requested, it could have provided much, if not all, of the relief sought by Movants and their members in their petition for review of the Rule. Thus, Movants' members have a direct, protectable interest in the outcome of this litigation, and for the reasons discussed below, Movants meet the requirements for intervention.

ARGUMENT

Movants satisfy the elements for intervention in support of Petitioners. The interests of Movants' members relate directly to the subject of this litigation, would be impaired if EPA prevails, and are not adequately represented by existing parties. Movants' members also have Article III standing to intervene in this case.

I. Movants' Members Satisfy the Standards for Intervention in this Case.

This Court, like other courts of appeals, has recognized that the standard for intervention under Federal Rule of Civil Procedure 24, while not binding, informs "the grounds for intervention" required by Federal Rule of Appellate Procedure 15(d). *Amalgamated Transit Union Int'l v. Donovan*, 771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985); *see also Int'l Union v. Scofield*, 382 U.S. 205, 217 n.10 (1965); *Sierra Club, Inc. v. EPA*, 358 F.3d 516, 517-18 (7th Cir. 2004). For an applicant to intervene as of right under Federal Rule of Civil Procedure 24(a)(2), it must: (1) file a timely application; (2) claim an interest relating to the subject of the action; (3) show that disposition of the action

may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) demonstrate that existing parties may not adequately represent the applicant's interest. *See, e.g.*, *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003). Each of these requirements is satisfied here.

A. The Motion to Intervene is Timely.

Petitioners in Case No. 17-1014 filed their petition for review on January 17, 2017. This motion is timely because it is being filed within 30 days after the filing of that petition. Fed. R. App. P. 15(d). Moreover, allowing Movants to intervene will not, as a practical matter, disrupt the proceedings because they are seeking to join this case at the earliest possible stage, before this Court has established a schedule and format for briefing.

B. Movants Have Interests Relating to the Subject of This Proceeding that May Be Impaired.

The interests of Movants and their members will be impaired if EPA prevails in this case. Movants' members include utility companies whose existing coal and natural gas-fired power plants are regulated by the Rule and who would have obtained relief from the Rule's requirements if EPA had granted the petitions for administrative reconsideration. As associations representing companies who are directly regulated by the underlying rule at issue in this case, Movants fall within the class of parties who are routinely allowed to intervene in cases reviewing agency action. *See, e.g.*, *Fund for Animals*, 322 F.3d at 735; *Military Toxics Project v. EPA*, 146

F.3d 948, 954 (D.C. Cir. 1998) (allowing an association whose member companies produced military munitions and operated military firing ranges to intervene in a challenge to EPA's Military Munitions Rule); *Conservation Law Found. of New England v. Moscacher*, 966 F.2d 39, 41-44 (1st Cir. 1992) (holding that commercial fishing groups who were subject to a regulatory plan to address overfishing had a cognizable interest in litigation over the plan's implementation); *NRDC v. EPA*, 99 F.R.D. 607, 609 (D.D.C. 1983) (holding that pesticide manufacturers subject to challenged regulation and industry representatives had a legally protected interest supporting intervention).

In addition, Movants represent members who are indirectly affected by the Rule, but who nevertheless have significant interests that are impaired by EPA's denial of the petitions for reconsideration. Movants' members include several coal mining companies who are reliant on existing coal-fired power plants for a substantial portion of their sales. These companies will suffer severe financial loss if the market for coal diminishes as a result of the reduction in coal-fired electricity generation required for compliance with the Rule. Likewise, virtually all of Movants' members are dependent upon electricity for their daily operations. In the case of heavy manufacturing and other energy-intensive industries, electricity costs are among the most significant expenses to produce their products. Regulations such as the Rule that increase electricity costs and potentially reduce the reliability of the electricity grid will directly harm those members and reduce their competitiveness in the global marketplace.

Had the petitions for reconsideration been granted, these indirect adverse impacts of the Rule could have been avoided.

In sum, Movants' members have an interest in this case that will be concretely and adversely affected if EPA prevails in its final action denying the administrative petitions for reconsideration of the Rule.

C. Existing Parties Cannot Adequately Represent Movants' Interests.

The interests of Movants will not be adequately represented by the existing parties in this case. The burden of showing that an intervenor's interests will not be adequately represented by the parties is "minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). "The applicant need only show that representation of his interests 'may be' inadequate, not that representation will in fact be inadequate." *Dimond v. Dist. of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). Further, this Court has recognized the "inadequacy of governmental representation" when the government has no financial stake in the outcome of the suit but the private intervenor does. *See, e.g.*, *id.*; *Fund for Animals*, 322 F.3d at 736; *NRDC v. Costle*, 561 F.2d 904, 912 n.41 (D.C. Cir. 1977). Mere agreement between a private party and a government agency is not sufficient to establish adequate representation. *See Fund for Animals*, 322 F.3d at 736.

Petitioners here are States, fossil fuel-fired power plants, coal mining companies, and the National Association of Home Builders. The States cannot adequately represent Movants' interests in this case. While they may share some

interests with Movants, the States have a more expansive obligation that is focused on a broad "representation of the general public interest," not the "narrower interest" of certain businesses. *Dimond*, 792 F.2d at 192-93. Thus, Movants' members have interests distinct from the States' more general mandate, namely, helping to ensure that the companies they represent are able to operate the nation's manufacturing and energy facilities, preserve and create jobs, and provide products critical to the nations' infrastructure, all in an environmentally sound manner. The difference between Movants' private interests and the government's public interests is sufficient to justify intervention. *Fund for Animals*, 322 F.3d at 736; *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994).

Likewise, the fossil fuel-fired power plant owner, coal mining company, and building trade association petitioners cannot adequately represent Movants because their interests are not as broad as those of Movants. While Movants' members include some fossil fuel-fired power plants, their members also include thousands of electricity customers who have an interest in reliable, low-cost electricity and whose interests may diverge from the generating units that supply them with electricity. Likewise, the interests of individual companies and business associations are particularly focused on specific business sectors and do not represent the full spectrum of Movants' members across the economy whose interests are impaired by the Rule and EPA's denial of the petitions for reconsideration.

Finally, EPA cannot adequately represent the interests of Movants because EPA's issued the underlying regulations that Movants are challenging.

II. Movants Have Standing to Intervene in This Case.

Movants have Article III standing to intervene in support of Petitioners because they represent companies that are directly regulated or indirectly affected by the Rule and EPA's denial of petitions for reconsideration of that Rule. An association has standing to sue on behalf of its members when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interest it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.

Hunt v. Wash. State Apple Advert. Comm'n, 432 U.S. 333, 343 (1977).

First, "at least some of the members" of Movants "would have standing to [intervene] in their own right." *Fed'n for Am. Immigration Reform, Inc. v. Reno*, 93 F.3d 897, 899 (D.C. Cir. 1996). As an initial mater, the member companies have standing for the same reasons they fulfill the grounds for intervention. *See Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003) (noting that "any person who satisfies Rule 24(a) will also meet Article III's standing requirement").

In any event, a putative intervenor's standing depends on how that party would be affected by the agency's action and the relief sought by the Petitioner. *See Fund for Animals*, 322 F.3d at 733. Here, Petitioners challenge EPA's denial of their administrative petitions for reconsideration of the Rule. As discussed above, the relief

sought by Petitioners would significantly reduce the regulatory compliance burden on some of Movants' members and the indirect adverse effects of those regulations on other members. Conversely, if EPA prevails, Movants' members' interests will be harmed through direct compliance costs, indirect increases in electricity costs, and reduced grid reliability. There is "little question" that a party who "is himself an object of [governmental] action (or foregone action) at issue" has standing. *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561-62 (1992); *cf. Grocery Mfrs. Ass'n v. EPA*, 693 F.3d 169, 175 (D.C. Cir. 2012) (distinguishing parties on whom agency action imposes "regulatory restrictions, costs, or other burdens," for whom standing is easily established from others, for whom it is "more difficult"). Likewise, there is little question that a putative intervenor has standing when there is a clear causal chain between the regulation at issue and that economic harm the intervenor will suffer.

Second, the interests that Movants seek to protect are germane to their organizational purposes of promoting the well-being of their member companies, industries, and the business community more broadly and of representing those interests in, *inter alia*, federal agency rulemaking. Imposing burdensome and costly CO_2 emissions reduction targets on fossil fuel-fired power plants would squarely conflict with those purposes. Thus, the substantive issues that are raised in this case are germane to Movants' organizational purposes.

Finally, the participation of individual member companies—while permissible—is not mandatory. Petitioners are seeking judicial review of regulations

that impose CO_2 emissions reduction requirements on all existing fossil fuel-fired power plants, and therefore this action is not directed at, and does not depend on the circumstances of, any specific facility.

Movants unquestionably have a sufficient stake in this case to support Article III standing.

CONCLUSION

For the foregoing reasons, Movants respectfully seek leave to intervene in support of Petitioners in Case No. 17-1014 (and consolidated cases).

Dated: February 16, 2017

Respectfully submitted,

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UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NORTH DAKOTA, Petitioner, v. ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 17-1014 (and consolidated cases)

RULE 26.1 STATEMENT

Pursuant to Fed. R. App. P. 26.1 and L.R. 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 more than 12 million men and women, contributes $2.17 trillion to the U.S. economy annually, has the largest economic impact of any major sector, and accounts for more than three-quarters of private-sector research and development in the nation. 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.

Dated: February 16, 2017

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UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rules 15(c)(3) and 28(a)(1), Movants submit this certificate as to parties, rulings, and related cases.

A. **Parties and *Amici*.** Because this case involves direct review of a final agency action, the requirement to furnish a list of parties, intervenors, and *amici* that appeared below is inapplicable. This case involves the following parties:

(i) Petitioners

The Petitioners in these consolidated cases are as follows:

- Case No. 17-1014: State of North Dakota
- Case No. 17-1015: Murray Energy Corporation
- Case No 17-1018: Utility Air Regulatory Group and American Public Power Association

- Case No 17-1019: LG&E and KU Energy LLC
- Case No 17-1020: National Rural Electric Cooperative Association
- Case No 17-1022: State of West Virginia, State of Texas, State of Alabama, State of Arizona Corporation Commission, State of Arkansas, State of Georgia, State of Indiana, State of Kansas, State of Louisiana, State of Mississippi Department of Environmental Quality, State of Mississippi Public Service Commission, State of Montana, State of Nebraska, State of New Jersey, State of Ohio, State of South Dakota, State of Utah, State of Wisconsin, State of Wyoming, and State of South Carolina
- Case No 17-1023: National Association of Home Builders
- Case No. 17-1031: Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company
- Case No. 17-1035: Peabody Energy Corporation
- Case No. 17-1037: Entergy Corporation

(ii) Respondents

Respondents in these consolidated cases are as follows:

- United State Environmental Protection Agency (all consolidated cases)
- Regina McCarthy, in her official capacity as Administrator of the United States Environmental Protection Agency (Case No. 17-1015)

- Catherine McCabe, in her official capacity as Acting Administrator of the United States Environmental Protection Agency (Case Nos. 17-17-1022 and 17-1031)

(iii) Intervenors and *Amici*

There are no *amici* at this time.

The Movant-Intervenors for Petitioners are 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

Additional Movant-Intervenors for Respondents are the State of California, the State of Connecticut, the State of Delaware, the State of Hawaii, the State of Illinois, the State of Iowa, the State of Maine, the State of Maryland, the Commonwealth of Massachusetts, the State of Minnesota, the State of New Mexico, the State of Oregon, the Commonwealth of Virginia, the State of Rhode Island, the State of Vermont, the District of Columbia, the State of Washington, the City of New York, the City of Philadelphia, the City of Boulder, the City of Chicago, Broward County, Florida, the

City of South Miami, the American Lung Association, the Environmental Defense Fund, the Natural Resources Defense Council, the Clean Air Council, Clean Wisconsin, the Conservation Law Foundation, the Ohio Environmental Council, the Center for Biological Diversity, Sierra Club, West Virginia Highlands Conservancy, Ohio Valley Environmental Coalition, Coal River Mountain Watch, Kanawha Forest Coalition, Mon Valley Clean Air Coalition, Keeper of the Mountain Foundation, and the State of New York.

B. **Ruling Under Review**. The final agency action under review is the EPA final action entitled "Denial of Reconsideration and Administrative Stay of the Emissions Guidelines for Greenhouse Gas Emissions and Compliance Times for Electric Utility Generating Units." 82 Fed. Reg. 4,864 (Jan. 17, 2017).

C. **Related Cases**. This case has not previously been before this Court or any other court. To the knowledge of the undersigned counsel, there is one other ongoing case that is related to this case, *State of West Virginia v. EPA*, D.C. Cir. Case No. 15-1363 (and consolidated cases).

Dated: February 16, 2017

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of February 2017, I caused to be served one copy of the foregoing Motion for Leave to Intervene on Behalf of Petitioners, along with associated Corporate Disclosure Statement and Certificate as to Parties, Rulings, and Related Cases, upon the following:

/s/ Peter D. Keisler
Peter D. Keisler