ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
DISTRICT OF COLUMBIA CIRCUIT

AMERICAN LUNG ASSOCIATION, *et al.*, *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents*.	No. 19-1140 and consolidated cases

JOINT PROPOSAL ON BRIEFING SCHEDULE AND FORMAT BY EPA AND OTHER PARTIES

Respondent United States Environmental Protection Agency ("EPA") respectfully submits this proposal for briefing schedule, format, and word limits. The schedule proposed below allows for the efficient resolution of this case, and facilitates oral argument in May of 2020. EPA's proposal that Petitioners be allotted 39,000 total words for their opening brief is consistent with this Court's practice in other complex environmental cases. In fact, it approaches the 42,000 word limit set in the Clean Power Plan litigation, which involved a far longer and far more complicated rulemaking. The likely counter-proposal joined by Petitioners who do not join EPA's proposal, as expressed during the meet-and-confer process, would result in an estimated 900 pages of briefing—and perhaps much more, once amicus briefs are

factored in. The Court should not authorize them to drown the Court and other parties in papers.

The following parties join in this request as to the schedule and overarching word limits: Petitioners North American Coal Corporation; Westmoreland Mining Holdings, LLC; Robinson Enterprises, LLC; Nuckles Oil Company, Inc.; Construction Industry Air Quality Coalition; Liberty Packing Company, LLC; Dalton Trucking, Inc.; Norman R. Brown; Joanne Brown; Competitive Enterprise Institute; and Texas Public Policy Foundation.

The following Respondent-Intervenors also join in this request as to the schedule and the majority of the proposed overarching word limits but, as noted below, request a slightly greater word limit than proposed by EPA and Petitioners for Respondent-Intervenors' briefs: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO; International Brotherhood of Electrical Workers, AFL-CIO; United Mine Workers of America, AFL-CIO; AEP Generating Company; AEP Generation Resources Inc.; America's Power; Appalachian Power Company; Chamber of Commerce of the United States of America; Indiana Michigan Power Company; Kentucky Power Company; Murray Energy Corporation; National Mining Association; National Rural Electric Cooperative Association; Public Service Company of Oklahoma; Southwestern Electric Power Company; Wheeling Power Company; Basin Electric Power Cooperative; Georgia Power Company; Indiana Energy Association; Indiana Utility

Group; Nevada Gold Mines LLC; Newmont Nevada Energy Investment, LLC; Powersouth Energy Cooperative; Phil Bryant, Governor of the State of Mississippi; Mississippi Public Service Commission; State of Alabama; State of Alaska; State of Arkansas; State of Georgia; State of Indiana; State of Kansas; State of Louisiana; State of Missouri; State of Montana; State of Nebraska; State of Ohio; State of Oklahoma; State of South Carolina; State of South Dakota; State of Texas; State of Utah; State of West Virginia; State of Wyoming; and the State of North Dakota.

Certain of these other parties propose specific divisions of the overarching word limits, as explained below.

I. BACKGROUND

This case involves a petition to review EPA's final action, "Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations" (the "ACE Rule"). Publication of the ACE Rule in the Federal Register occurred on July 8, 2019. 84 Fed. Reg. 32,520.

The ACE Rule finalized three separate and distinct rulemakings. First, EPA repealed the Clean Power Plan, in which EPA promulgated Clean Air Act ("CAA") section 111(d) emission guidelines for states to follow in developing plans to reduce greenhouse gas emissions from power plants. 80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Clean Power Plan"). Second, EPA finalized replacement emission guidelines for states to use when developing plans "that establish standards of performance for CO2

emissions from certain existing coal-fired EGUs" premised on an alternative regulatory approach to that set forth in the Clean Power Plan. 84 Fed. Reg. 32,520, 32,521 (July 8, 2019). Third, EPA finalized new regulations for EPA and state implementation of those guidelines and any future emissions guidelines issued under CAA section 111(d).

II. THE PARTIES' OVERARCHING PROPOSAL.

All of the parties named above agree to the following proposed briefing schedule and overall word limits, except that Respondent-Intervenors propose a slightly increased word count for Respondent-Intervenor Briefs:

Deadline	**Filing**
Jan. 31, 2020	Opening Briefs filed by Petitioners (39,000 words total)
Feb. 7, 2020 (7 days from Petitioners)	Amicus Briefs in Support of Petitioners
March 6, 2020 (35 days from Petitioners)	Response Brief filed by EPA (39,000 words)
March 13, 2020 (7 days from Respondent)	Respondent-Intervenor Briefs (27,300 words total)[1]
March 13, 2020 (7 days from Respondent)	Amicus Briefs in Support of Respondent
March 27, 2020 (21 days from Respondent)	Reply Briefs (19,500 words total)
April 1, 2020	Joint Appendix

[1] Respondent-Intervenors propose 31,800 words total.

(5 days from Replies)	
April 3, 2020 (2 days from Appendix)	Final Briefs

EPA takes no position on how Petitioners or Intervenors should divide the total words allotted amongst themselves, or in how many briefs they may do so. EPA notes, however, that an allocation of 26,000 total words allotted to the State, environmental/NGO, and utility petitioners opposing repeal of the Clean Power Plan and challenging the ACE Rule, and the Biogenic CO_2 Coalition, appears to be reasonable. Allotting 13,000 words to the remaining petitioners, who challenge EPA's authority to regulate greenhouse gas emissions from power plants under Section 111, would also appear to be reasonable.

A. The Joint Briefing Schedule Is Efficient and Appropriate to Resolve this Long-Running Dispute.

This schedule is efficient and is designed to complete briefing in time to have this Court hold oral argument by mid-May, 2020. Holding oral argument in May 2020 would facilitate resolution of this nationally important and long-running dispute over the appropriate form of the regulation of greenhouse gas emissions from power plants. This overarching dispute has been pending since at least EPA's publication of the now-repealed Clean Power Plan in 2015, 80 Fed. Reg. 64,662 (Oct. 23, 2015). Prompt resolution would provide certainty to the states, regulated utilities, electricity rate payers around the country, and other affected stakeholders as to the scope of

EPA's authority under the statute and the validity of the new regulations promulgated thereunder. Although they propose a longer schedule, prompt resolution of this matter would also appear to facilitate Petitioners' interests in quickly resolving the appropriate regulation of greenhouse gas emissions. *See, e.g.*, Response Opposing Requests for Further Abeyance, *West Virginia*, No. 15-1363, Doc. No. 1748706 (D.C. Cir. Sept. 4, 2018) (urging expeditious resolution).

The schedule above is not an "expedited" schedule under the Court's rules and procedures. It affords each of Petitioners and EPA more time than typically allotted by the Federal Rules of Appellate Procedure to submit their principal briefs. *See* Fed. Rule App. Proc. 31(a)(1). These intervals are also consistent with this Court's practice handbook. *See* D.C. Cir. Handbook at 36-37.

In fact, because this case was filed on July 8, 2019, and EPA filed the certified index of the record on August 23, 2019,[2] Petitioners have already had several months to review the record and draft their briefs, and have likely already been doing so. The proposed date for Petitioners' briefs (January 31, 2020) is more than five months after the filing of the certified index. To the extent the Petitioners claim they cannot start drafting their briefs until the Court decides on the number of words allotted to them, this argument is specious: there is no barrier to their beginning work on the

[2] EPA subsequently made minor corrections to the certified index, but Petitioners have been aware of the full contents of the record since—at the latest—October 11, 2019.

arguments they know they are going to advance, as parties often do. Moreover, EPA offered to coordinate with them on briefing length and format as early as September 16, 2019; they did not accept this invitation.

B. The Proposed Total Word Limits Are Sufficient to Present the Issues Likely to Arise in this Case.

The parties to this submission agree that the total word limits set forth above are appropriate, and that the Court should not grant a request for a greater total word limit. This proposal provides, in aggregate, for triple-length principal briefs. This is nearly the same length as the 42,000 words authorized in the Clean Power Plan litigation. The issues raised in this case are likely to be far less complex than those raised in the Clean Power Plan litigation in several respects.[3]

For instance, the first part of the ACE Rule—the repeal of the Clean Power Plan—involves only a pure legal issue of statutory construction. *See* ACE Rule at 32,521-32. Moreover, the Clean Power Plan's emission guidelines were orders of magnitude more complicated than the replacement guidelines EPA established in the ACE Rule. Specifically, the ACE Rule made a straightforward determination that the "best system of emission reduction" (upon which state standards of performance will

[3] Given the relative complexity of this case as compared to the Clean Power Plan, any claims by Petitioners seeking a significantly longer schedule that they cannot complete their briefs in this time are hollow. This schedule is comparable to—and in some respects more generous than—than the briefing schedule provided in the Clean Power Plan litigation. *See* Order, *West Virginia v. EPA*, 15-1363, Doc. No. 1594951 (D.C. Cir. Jan. 21, 2016).

be based) are "heat rate improvements" that increase a facilities' operating efficiency. *Id.* at 32,535. The ACE Rule identifies several discrete technologies, as well as improved operating and maintenance procedures, as the most impactful measures that may be used to improve heat rate, and identifies the expected range of their heat rate improvement potential. *Id.* at 32,537.

By contrast, the Clean Power Plain identified *three* separate "building blocks" constituting the "best system of emission reduction," just the *first* of which was improving heat rate. Clean Power Plan at 64,667. The second and third building blocks involved fundamentally restructuring the power industry in favor of generation from lower-emitting sources:

> 2. Substituting increased generation from lower-emitting existing natural gas combined cycle units for generation from higher emitting affected steam generating units.
>
> 3. Substituting increased generation from new zero-emitting renewable energy generating capacity for generation from affected fossil fuel-fired generating units.

Clean Power Plan at 64,667; *see also id.* at 64,709, 64,725, 64,795-811. Each of these building blocks were discussed in-depth in the Clean Power Plan, with EPA considering factors such as (as appropriate) cost, feasibility, market considerations, impact on the reliability of the power grid, and other factors. *See, e.g.*, *id.* at 64,787-795 (heat rate improvement analysis); *id.* at 64,795-803 (building block 2); *id.* at 64,803-11 (building block 3). EPA also set forth a complicated, seven-step analysis of "subcategory-specific CO_2 emission performance rates," provided extensive

requirements for states to develop their state plans, and also calculated state-specific rate- and mass-based emission performance goals. *Id.* at 64,811-26. And this is only scratching the surface. Notably, the 304-page Clean Power Plan, 80 Fed. Reg. 64,661, was more than four times as long as the 65-page ACE Rule, 84 Fed. Reg. 32,520. The certified index to the record in the Clean Power Plan litigation was likewise far longer than the index here. Certified Index of Record, *West Virginia*, 15-1363, Doc. No. 1589852 (D.C. Cir. Dec. 21, 2015).[4]

Judicial review of the ACE Rule is far less complicated than the Clean Power Plan litigation in nearly every respect and merits reduced briefing limits as compared to that case. However, not all of the Petitioners in this case are aligned. For instance, certain Petitioners are likely to argue that EPA's repeal of the Clean Power Plan was unlawful as an unduly narrow reading of the Agency's authority whereas others are likely to argue that EPA lacks even the authority it exercises in the ACE Rule. The proposal above takes account for these disparate interests by *tripling* the ordinary word limit for principal briefs in this Court, to 39,000 words.[5]

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[4] Certain Petitioners may argue that the ACE Rule reflects three separate rulemakings. This is not a meaningful measure of the complexity of this case for the reasons discussed herein.

[5] Comparison to other cases confirms that total word count of 39,000 words is adequate to brief the issues in this case. For instance, in *American Fuel & Petrochemical Manufacturers. v. EPA*, the Court afforded the petitioners a total of 26,000 words for their opening briefs, rejecting the petitioners' proposal of 31,000 words. *See AFPM* No. 17-1258, Dkt. 1740528; *id.*, Dkt. 1735330 at 3. In that case, three separate groups

Cont.

EPA expects that State, environmental/NGO, and utility petitioners opposing repeal of the Clean Power Plan and challenging the ACE Rule will offer a counter-proposal that stretches beyond excessive. Based on their representations in the meet-and-confer process, they are expected to propose that they *alone* be granted more-than-quadruple-length briefs (53,000 total words), on top of which the Court would need to add in additional briefing for the other Petitioners—under their proposal, 20,800 additional words. This would lead to aggregate briefing of nearly 220,000 words. EPA estimates that this will amount to more than 900 pages of briefing, not counting any amicus briefs. The Court should require Petitioners to be more judicious in their briefing.

There is little doubt that they are capable of doing so, given that when the shoe was on the other foot they advocated for even shorter briefing limits. As respondent-intervenors in the Clean Power Plan litigation, most of these entities joined EPA in requesting that the petitioners' briefs there be limited to just 35,000 words. Now, however, they effectively demand that they alone be granted four full briefs to express their position.

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of petitioners with entirely divergent interests (obligated parties and small retailers coalition; the biofuels industry; and environmental petitioners) challenged EPA's 2018 renewable fuel standards. 83 Fed. Reg. 63,704. In *Wisconsin v. EPA*—a set of complex consolidated cases in which diverse parties challenged EPA's CSAPR update—the Court rejected Petitioners' request for 45,000 words for their opening brief, and instead granted 30,000 words. *See Wisconsin*, No. 16-1406, Dkt. 1675267.

There is no reason to doubt that briefing here, addressing a shorter, less complicated rule with a smaller record, can be accomplished within the word limits and on the schedule set forth above. EPA thus respectfully requests that the Court enter the proposal set forth above. In the event that the Court does not enter the schedule and/or word limits proposed above, EPA respectfully requests that it be afforded parity with Petitioners as to both the time allotted to prepare opening briefs and overall word count.

III. PROPOSALS FOR ALLOCATING THE TOTAL WORD COUNT.

As noted *supra* p. 3-4, all of the parties to this proposal have agreed to a total allocation of words for Petitioners, Intervenors, and Respondent, with the exception that Respondent-Intervenors ask for a small increase in words as noted in footnote 1. However, because groups of parties within the Petitioners and Intervenors take divergent positions, it will be necessary to further allocate the word count among these groups. EPA does not take a formal position on these issues but sets forth the below proposals for the Court's consideration.

A. Petitioner Briefs.

The Coal Industry Petitioners[6] and Robinson Petitioners[7] submit the following proposed allocation of words within the Petitioner Briefs:

[6] The Coal Industry Petitioners are North American Coal Corporation and Westmoreland Mining Holdings, LLC.

Brief	Parties	Words
Opening Briefs (39,000 words total)	Environmental/Public Health/State and Municipal Petitioners and Biogenic CO_2 Coalition	26,000 (which can be divided into no more than three briefs)
	Coal Industry Petitioners	8,500
	Robinson Petitioners	4,500
Reply Briefs (19,500 words total)	Environmental/Public Health/State and Municipal Petitioners and Biogenic CO_2 Coalition	13,000 (which can be divided into no more than three briefs)
	Coal Industry Petitioners	4,250
	Robinson Petitioners	2,250

Separate allocation of words between these groups is appropriate because they take starkly different positions. The Environmental, Public Health, and State and Municipal Petitioners are expected to argue that the EPA should not have repealed the Clean Power Plan, whereas both the Coal Industry Petitioners and Robinson Petitioners take the position that the ACE Rule is invalid because it suffers from some of the *same defects* as the Clean Power Plan. These positions are diametrically opposed. Meanwhile, the Coal Industry Petitioners and Robinson Petitioners also take disparate positions: The Robinson Petitioners are arguing that emissions of CO_2 must be regulated (if at all) via National Ambient Air Quality (NAAQS) standards promulgated under Section 108. The Coal Industry Petitioners do not agree that CO_2 emissions must be regulated under the NAAQS program, and in fact one of the Coal

[7] The Robinson Petitioners are Robinson Enterprises, LLC; Nuckles Oil Company, Inc.; Construction Industry Air Quality Coalition; Liberty Packing Company, LLC; Dalton Trucking, Inc.; Norman R. Brown; Joanne Brown; Competitive Enterprise Institute; and Texas Public Policy Foundation.

Industry Petitioners (Westmoreland Mining Holdings LLC) has intervened in support of EPA and will join briefing opposing the Robinson Petitioners on this issue.

The Coal Industry Petitioners request 8,500 words for their brief raising two challenges to EPA's authority to promulgate the ACE Rule:

- The Coal Industry Petitioners will argue that EPA lacked authority to issue the ACE Rule because it never found that the regulated source category, in emitting CO_s, "causes, or contributes significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b). The issue presented here is, essentially, whether EPA is required to make a pollutant and source category specific endangerment finding before regulating under Section 111.

- In addition, the Coal Industry Petitioners will argue that EPA lacked authority to regulate emissions from coal power plants under Section 111(d) because they are already regulated under Section 112. *See* 42 U.S.C. § 7411(d)(1).

The Coal Industry Petitioners request is commensurate with the issues to be raised and the stakes of greenhouse gas regulation for the nation's coal companies. The word request is for substantially less words than a full length brief even though the brief represents an entire industry and raises two significant legal issues that have implications for all other major industries that emit greenhouse gas emissions.

The Robinson Petitioners request 4,500 words for their brief raising the challenge that EPA is required to regulate emissions of CO_2 (if at all) via NAAQS standards promulgated under Sections 108-110. *See* 42 U.S.C. §§ 7408-7410; *id.* § 7411(d)(1). This argument requires an analysis of the CAA's comprehensive regulatory scheme and the specific manner in which Congress directed EPA to

regulate emissions of air pollutants "the presence of which in the ambient air results from numerous or diverse mobile or stationary sources." 42 U.S.C. § 7408(a)(1)(B). Because carbon dioxide is a ubiquitous natural substance, the Robinson Petitioners will argue that if EPA is to regulate carbon dioxide emissions under the CAA it must do so in the first instance under Sections 108-110 and not under Section 111, upon which EPA relies as the sole authority for promulgating the ACE Rule. The argument requires not only an analysis of the complex structure and various functions of multiple provisions of the CAA but also a review of the Act's extensive amendment history leading to its current form. Accordingly, the Robinson Petitioners' modest request for a word count of 4,500 words is appropriate.

The proposed word counts are a reasonable allocation of the total word count. Under the proposal, the Coal Industry Petitioners and Robinson Petitioners would in total be allocated a total of 13,000 words for two opening briefs, which is the equivalent of a single opening brief under the default rules. Those 13,000 words will be split among three discrete issues, each of which is sufficiently complex that it could easily merit an entire brief on its own. Both issues to be raised by the Coal Industry Petitioners were also raised in the Clean Power Plan litigation, while the issue raised by the Robinson Petitioners were addressed in an amicus brief filed by several of them. And all three issues have broad implications for the scope of the EPA's authority under the CAA both in this case and in other cases. Meanwhile, the proposal leaves a total of 26,000 words to allocate among the remaining petitioners,

for whatever issues they intend to raise. These proposed allocations will allow the parties to fully brief these important issues without unnecessarily burdening the Court with duplicative or excessive briefing.

These proposed allocations are also consistent with prior cases. For instance, in the challenge to the New Source Performance Standards for CO_2 emissions from new electric generating units, where North Dakota's position diverged from that of other State Petitioners, the Court allocated 4,000 words to North Dakota and 9,000 to the other State Petitioners—similar to the proposed allocation between the Coal Industry Petitioners and Robinson Petitioners here. *See State of North Dakota v. EPA*, No. 15-1381, Doc. 1632712. The Court then allocated a further 18,000 words to the remaining petitioners, which is less than the 26,000 proposed here. *See id.* There is no reason why the allocation proposed here would be any less appropriate for this case.

While the Environmental, Public Health, and State and Municipal Petitioners have indicated that they view 26,000 words as insufficient for the remaining petitioners to present their arguments, that position is insupportable. That proposed allocation is *double* the amount allocated for a normal opening brief; is more than the 18,000 words allocated to the non-State petitioners in the New-Source Rulemaking challenge; and is more than comparable to the amounts allocated in other similar cases. *See, e.g., State of Wisconsin v. EPA*, No. 16-1406, Doc. 1675267 (allocating 12,000 words to one group of petitioners and 18,000 to another); *American Fuel & Petrochemical Manuf. v. EPA*, No. 17-1258, Doc. 1740528 (allocating 13,000 words to

one group of petitioners, 6,500 to a second group, and 6,500 to a third group). With appropriate consolidation of briefing, 26,000 words should be more than adequate for the remaining petitioners, and, indeed, both the Coal Industry Petitioners and the Robinson Petitioners are willing to make do with far less.

B. Intervenor Briefs.

The Respondent-Intervenors joining in this filing,[8] which are the Industry and State Respondent-Intervenors supporting EPA's repeal of the Clean Power Plan, submit the following proposed allocation of words within the Respondent-Intervenor Briefs:

[8] International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO; International Brotherhood of Electrical Workers, AFL-CIO; United Mine Workers of America, AFL-CIO; AEP Generating Company; AEP Generation Resources Inc.; America's Power; Appalachian Power Company; Chamber of Commerce of the United States of America; Indiana Michigan Power Company; Kentucky Power Company; Murray Energy Corporation; National Mining Association; National Rural Electric Cooperative Association; Public Service Company of Oklahoma; Southwestern Electric Power Company; Wheeling Power Company; Basin Electric Power Cooperative; Georgia Power Company; Indiana Energy Association; Indiana Utility Group; Nevada Gold Mines LLC; Newmont Nevada Energy Investment, LLC; Powersouth Energy Cooperative; Westmoreland Mining Holdings LLC; Phil Bryant, Governor of the State of Mississippi; Mississippi Public Service Commission; State of Alabama; State of Alaska; State of Arkansas; State of Georgia; State of Indiana; State of Kansas; State of Louisiana; State of Missouri; State of Montana; State of Nebraska; State of Ohio; State of Oklahoma; State of South Carolina; State of South Dakota; State of Texas; State of Utah; State of West Virginia; State of Wyoming; and the State of North Dakota.

Brief	Parties	Words
Respondent-Intervenor Briefs (31,800 words total)	Industry and State Coalition (West Virginia, et al.) Respondent-Intervenors Supporting EPA's Repeal of the Clean Power Plan	18,200 (which can be divided into no more than two briefs)
	Environmental/Public Health/State and Municipal Respondent-Intervenors Supporting EPA's Authority to Issue the ACE Rule	9,100 (which can be divided into no more than two briefs)
	Respondent-Intervenors State of North Dakota Supporting a Specific Aspect of the Implementation Rule	4,500

Separate allocation of words between these groups is appropriate because they take different positions. The Industry and State Respondent-Intervenors will be responding to the arguments made by the Environmental, Public Health, and State and Municipal Petitioners, as well as the Robinson Petitioners. The Environmental, Public Health, and State and Municipal Respondent-Intervenors will be responding to the arguments made by the Coal Industry Petitioners (and possibly also the Robinson Petitioners). The Industry and State Respondent-Intervenors will be responding to a total of 30,500 words (26,000 for the Environmental, Public Health, and State and Municipal Petitioners and 4,500 for the Robinson Petitioners), while the Environmental, Public Health, and State and Municipal Respondent-Intervenors will be responding to at most a total of 13,000 words (8,500 for the Coal Industry Petitioners and possibly 4,500 for the Robinson Petitioners). As a result, it is equitable to provide the Industry and State Respondent-Intervenors with 18,200 words (two-

thirds of the total words) with the remaining 9,100 words (one-third of the total words) being allocated to the Environmental, Public Health, and State and Municipal Respondent-Intervenors.

In addition, Respondent-Intervenor State of North Dakota has a specific issue related to the implementation of the ACE Rule that it wants to present in a separate brief of no more than 4,500 words. North Dakota and the state coalition led by West Virginia intervened separately in these consolidated cases. Under Circuit Rule 28(d)(4), North Dakota and the West Virginia coalition would each be entitled to file briefs separate from all intervenors. In a normal case, that would equate to 18,200 words for these two state briefs, notwithstanding the fact that three separate rules are at issue in these cases. North Dakota's brief would address one specific legal issue related to the implementation plan rule and would not be duplicative of other briefs, and its request for 4,500 words is a substantial reduction from what it would ordinarily be entitled to file under this Court's rules.

These proposed allocations will allow Respondent-Intervenors to fully brief these important issues without unnecessarily burdening the Court with duplicative or excessive briefing.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure 27(d), I hereby certify that the foregoing complies with the type-volume limitation because it contains 4,420 words, according to the count of Microsoft Word.

CERTIFICATE OF SERVICE

I hereby certify, pursuant to Fed. R. App. P. 25(c), that the foregoing was electronically filed with the Clerk of the Court using the CM/ECF system, which will send a notification to the attorneys of record in this matter, who are registered with the Court's CM/ECF system.

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