UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF NORTH DAKOTA, Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	Case No. 15-1381 (and consolidated cases)

JOINT UNOPPOSED MOTION OF THE LIGNITE ENERGY COUNCIL AND THE GULF COAST LIGNITE COALITION FOR LEAVE TO INTERVENE ON BEHALF OF PETITIONERS

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ATTORNEYS FOR THE LIGNITE ENERGY COUNCIL AND THE GULF COAST LIGNITE COALITION

CERTIFICATE OF PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rules 15 and 27(a)(4), proposed Intervenors-Petitioners submit the following Certificate as to Parties and *Amici Curiae*.

Petitioners:

15-1381 – State of North Dakota

15-1396 – Murray Energy Corporation

15-1397 – Energy & Environment Legal Institute

15-1399 – States of West Virginia, Texas, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Michigan, Missouri, Montana, Nebraska, Ohio, Oklahoma, Ohio, South Carolina, Utah, Wisconsin, Wyoming, South Dakota, Commonwealth of Kentucky, Arizona Corporation Commission, State of Louisiana Department of Environmental Quality, State of North Carolina Department of Environmental Quality

Respondents:

15-1381 – United States Environmental Protection Agency

15-1396 – United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency

15-1397 – United States Environmental Protection Agency

15-1399 – United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency

Movant-Intervenors for Respondent (PENDING—NOT YET RULED ON):

15-1381 (and consolidated cases) – American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, Sierra Club

15-1381 (and consolidated cases) – States of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota,[1] New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, Commonwealth of Massachusetts, District of Columbia, City of New York

15-1381 (and consolidated cases) – Golden Spread Electric Cooperative, Inc.

Dated: November 23, 2015 /s/ Mark L. Walters

[1] On November 20, the State of Minnesota filed a motion seeking leave to join the motion to intervene previously filed by the other listed states.

RULE 26. 1 CORPORATE DISCLOSURE STATEMENTS OF THE GULF COAST LIGNITE COALITION AND THE LIGNITE ENERGY COUNCIL

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rules 26.1 and 28(a)(1), the Gulf Coast Lignite Coalition ("GCLC") and the Lignite Energy Council ("LEC") file the following statements:

GCLC is a non-profit corporation organized under the laws of the State of Texas and comprised of individual electric generating and mining companies. GCLC participates on behalf of its members collectively in proceedings brought under United States environmental regulations, and in litigation arising from those proceedings, which affect electric generators and mines. GCLC has no outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in GCLC.

The LEC 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-fueled 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 outstanding shares or debt securities in the hands of the public and has no parent company. No publicly held company has a 10% or greater ownership interest in LEC.

Dated: November 23, 2015 /s/ Mark L. Walters

JOINT UNOPPOSED MOTION OF THE LIGNITE ENERGY COUNCIL AND THE GULF COAST LIGNITE COALITION FOR LEAVE TO INTERVENE ON BEHALF OF PETITIONERS

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, the Lignite Energy Council ("LEC") and the Gulf Coast Lignite Coalition ("GCLC") respectfully move for leave to intervene on behalf of petitioners in *State of North Dakota v. United States Environmental Protection Agency*, No. 15-1381 and consolidated cases. The petitions for review in Case No. 15-1381 and the consolidated cases challenge a final action of the United States Environmental Protection Agency ("EPA") entitled, "Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Final Rule," 80 Fed. Reg. 64510 (Oct. 23, 2015) (the "Rule" or the "111(b) Rule").

The petition for review in Case No. 15-1381 was filed on October 23, 2015. Pursuant to Federal Rule of Appellate Procedure 15(d), this motion to intervene is being filed within 30 days after the filing of the petition.

Counsel for the Proposed Intervenors have conferred with counsel for Petitioners and Respondents. Respondents the United States Environmental Protection Agency, and its Administrator, Regina McCarthy, through their counsel the Department of Justice, have indicated that they take no position on this motion. Counsel for Petitioner in 15-1396 consents to the motion, and Counsel for

Petitioner in No. 15-1397 does not oppose the motion. Counsel for petitioners in 15-1381 and 15-1399 take no position on the motion.[2]

I. INTRODUCTION & BACKGROUND

LEC and GCLC exist to promote the interests of lignite owners, lignite users, and those who sell goods and services to the lignite industry, and to help maintain a viable lignite-coal industry.

Lignite is a type or "rank" of coal distinct from other ranks such as sub-bituminous, bituminous, and anthracite. Due to physical and other characteristics of lignite, its principle use is as fuel for power plants, a/k/a "Electric Generating Units" or "EGUs." Because of its high moisture content, lignite is not economical to transport long distances, so it is not traded on the world market like other grades of coal, and lignite-burning EGUs are, therefore, often mine-mouth operations—power plants that are associated with the mines that supply their coal. These mines often have no purpose other than to supply coal for the plant. North Dakota and Texas are among the largest producing lignite states in the United States (and Texas is the fourth largest coal-producing state and North Dakota the tenth largest), and Louisiana and Mississippi also have active lignite mines.

[2] There are pending motions to intervene in this action, but none have been granted at this time.

LEC is a regional, non-profit organization whose primary mission is to promote the continued development and use of lignite coal as an energy resource, especially in North Dakota and neighboring states in the upper Midwest, and to encourage the development of the region's abundant lignite coal resources for use in generating electricity, synthetic natural gas, and other valuable by-products. 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-fueled EGUs 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.

North Dakota has the second-largest known reserves of lignite in the world, and there are four lignite mines and seven lignite-fueled EGUs in North Dakota, and one lignite mine and one EGU in Eastern Montana. North Dakota relies on coal-based generation for almost 80% of its electricity, and electricity in North Dakota is less per KW hour than the national average.

North Dakota has enacted legislation declaring it to be an essential government function and public purpose for the state to assist with the development of lignite resources within the state. N.D. Cent. Code § 54-17.5-01; *see also id*. §§ 57-06-17.1 9 (property tax abatement for CO_2 pipelines related to lignite projects); 57-60-06 (property tax exemption for coal conversion facilities

defined to include lignite projects); & 57-39.2-04.11 (sales tax exemption for lignite gasification byproducts).

Pursuant to and consistent with these statutory directives, LEC works in partnership with the State of North Dakota through programs focused on enabling, developing, promoting, and enhancing both the present and the future use of lignite. These programs include the North Dakota Lignite Research, Development and Marketing Program and the Enhance Preserve and Protect Project. These programs provide grants and funding to promote the development of new lignite-fueled EGUs in the future and of cleaner ways to burn lignite in both new and existing EGUs, including reducing emissions of CO_2.

GCLC is comprised of individual electric generating and mining companies with operations in Louisiana, Mississippi, and Texas. All of GCLC's members own and/or operate lignite-fueled power plants and/or lignite mines. Collectively, GCLC's members own and operate approximately 12,500 megawatts (MW) of installed electric generation capacity in Texas and also supply lignite fuel for and/or operate more than 1,000 MW of generation capacity in Louisiana and Mississippi. They also own significant amounts of lignite reserves, and they have paid advance royalties on additional reserves that they do not own in order to secure the rights to mine these reserves in the future.

Much of the un-mined lignite in Texas exists within the region of the unique competitive Texas electric market that serves a majority of the state and which is managed by the Electric Reliability Council of Texas (ERCOT). Almost all of the electricity generated within the ERCOT market is consumed within that market. As noted above, many lignite-fueled EGUs are mine-mouth EGUs with nearby lignite mines that provide fuel for the EGUs.

Additionally, the states in which GCLC's members own and operate mines and power plants—Texas, Louisiana, and Mississippi—have enacted legislation to assist with the development of lignite resources within those states, including incentives designed to facilitate the development of carbon capture, utilization and storage ("CCUS") technology. Both Louisiana and Mississippi have passed legislation relating to CCUS. *See, e.g.*, La. Rev. Stat. §§ 30:22-23 (storage/withdrawal of carbon dioxide to/from underground reservoirs and salt domes); 30:148.2-148.8 (leasing state lands for the injection and storage of carbon dioxide); 30:209(4)(e) (carbon dioxide storage operating and revenue agreements); 30:1109-1110 (liability release provisions and establishing the "Carbon Dioxide Geologic Storage Trust Fund"); Miss. Code §§ 27-65-19 (CCUS enhanced oil recovery tax treatment); 77-3-1, *et. seq*. (rate recovery for CCUS projects). And Texas has a long list of CCUS legislation. *See, e.g.*, Tex. Tax Code §§ 11.31 (pollution control property tax exemption), 151.334 & .338 (sales tax exemption),

171.652 (franchise/margins tax credit), 181.022(c) (gross receipts tax exemption), 313.000 *et seq*. (local property tax abatements/value caps); Tex. Health & Safety Code §§ 382.003(1-a) (definition of "Advanced Clean Energy Project" making lignite projects eligible for various tax exemptions, abatements, and credits); 382.501-510 (establishing the "Texas Offshore Carbon Repository"); 386.051(b)(5), .052(b)(5), .057(b)(3), & 391.001-.304 (establishing and funding the "New Technology Implementation Program" to include lignite projects); and Tex. Nat. Res. Code § 120.001 (definition of "Clean Energy Project" making lignite projects eligible for certain tax credits). If CCUS can be developed to the point it can be commercially feasible, it could allow the construction of new lignite-fueled plants with CO_2 emissions below what is currently possible.

LEC, GCLC, and their members will be harmed by the 111(b) Rule if it is upheld. Accordingly, LEC and GCLC both participated at EPA while the 111(b) Rule was being developed, and both filed comments concerning EPA's proposed 111(b) Rule.[3] Among other things, LEC, GCLC, and members argued for a

[3] *See* EPA-HQ-OAR-2013-0495-10088 (LEC's comments on proposed 111(b) Rule for new sources); EPA-HQ-OAR-2013-0495-10556 (GCLC's comments on proposed 111(b) Rule for new sources); EPA-HQ-OAR-2013-0603-0249 (LEC's comments on proposed 111(b) Rule for modified and reconstructed sources); EPA-HQ-OAR-2013-0603-0289 (GCLC's comments on proposed 111(b) Rule for modified and reconstructed sources). To avoid burdening the Court with unnecessary filings, LEC and GCLC have not attached copies of their comments, which are already part of EPA's docket.

separate sub-category for lignite-fueled EGUs. In addition, GCLC and one of its members were, on information and belief, the only commentators to point out in the original 2012 comment period that the proposed 111(b) Rule was not consistent with the Energy Policy Act of 2005 (Pub. L. 109-58), 119 Stat. 594 ("EPACT").[4] Specifically, the incentives created by EPACT (and subsequent Relief Act tax credits) were accompanied by clear statutory language that technologies subsidized with these incentives could not be used for the basis of EPA's assertion that the Carbon Capture and Storage ("CCS") technology upon which EPA relied in the proposed rule could be deemed "achievable." While EPA softened the final 111(b) Rule to only include what it calls "partial CCS," it continues to rely upon subsidized projects in violation of EPACT.

Lignite-fueled power plants, including those owned and/or operated by GCLC's and LEC's members, are affordable and reliable sources of electric power. The existing EGUs owned and/or operated by GCLC's and LEC's members collectively make up a significant percentage of the installed capacity in Texas and North Dakota and also provide power to other states. There is also a substantial amount of un-mined lignite in Texas and North Dakota, and, but for the 111(b) Rule, newly-constructed lignite-fueled EGUs could be added to existing fleets, and

[4] *See* EPA-HQ-OAR-2011-0660-10049.

lignite could continue to serve as a source of affordable and reliable electric power for many years to come.

LEC and GCLC contend that EPA has failed to show that there is any technology or operational methods that will presently allow new, utility-scale coal-fueled EGUs, including lignite-fueled EGUs, to meet the 111(b) Rule's categorical standard emissions limitation of 1,400 lbs CO_2/ MWh for new coal-fueled EGUs or that will allow modified, existing coal-fueled EGUs to meet the Rule's standard of 1,800 lbs CO_2/MWh. The technology on which EPA says these standards are based—what EPA calls partial CCS—has yet to be proven cost effective nor has it been "adequately demonstrated" as the 111(b) Rule requires.[5] If allowed to stand, the 111(b) Rule will effectively ban the construction of new lignite-fueled EGUs.

Additionally, as discussed above, LEC, GCLC, and their members are involved and/or benefit from projects, programs and incentives, including some created by state statutes, that have as one of their goals the development of technologies to allow lignite to be burned in the future with fewer emissions, including fewer emissions of CO_2. The 111(b) Rule will likely effectively end them or significantly curtail their use, including much or all research into "clean

[5] Initially, EPA proposed an even lower standard for new sources of 1,100 lbs CO_2/MWh based on CCS. In its final Rule, however, EPA admits that CCS is not yet cost effective or adequately demonstrated.

coal" technologies, such as the CCS technology upon which EPA based its 111(b) standard. At the emissions limits proposed, electric power generators will likely opt for proven technologies like natural gas combined cycle over technologies that have not yet been commercially demonstrated for coal-fueled generation, like CCS.

In order for CCS and other "clean coal" technologies to overcome the technical obstacles necessary for them to succeed in the competitive market place, more time, more investment, and a reasonable regulatory environment are required. The inflexible and currently unattainable mandate of the 111(b) Rule will likely kill ongoing research, including those projects and incentives in which LEC, GCLC and/or their members are directly involved and/or from which they benefit—projects which could ultimately lead to affordable, reliable, lignite-generated electric power with reduced CO_2 emissions.

In addition, the members of GCLC and LEC own lignite mines and lignite reserves, as well as the rights to mine additional lignite reserves, that, but for the 111(b) Rule (and the 111(d) Rule) are worth many millions of dollars. Members have invested substantial amounts in the operation of lignite-fueled EGUs, lignite coal mines supplying these EGUs, including investments to secure lignite reserves, and businesses that provide goods and services to lignite owners and users.

The lignite-related investments of GCLC's and LEC's members were made pursuant to a long-standing United States policy, dating back at least to the Kennedy administration, to encourage the development of coal, including lignite, as a cheap and reliable fuel for EGUs and to reduce the dependence on foreign oil. Therefore, these lignite-related investments represent the investment-backed expectations, articulated as U.S. national energy policy over many years and multiple Presidential administrations, including the present one, that coal, including lignite, as a fuel for power plants is a fundamental anchor of the national commitment to provide affordable and reliable electric power.

While every member's circumstances are different, all LEC's and GCLC's members operate lignite-related businesses that will be rendered less valuable because of the Rule. Thus, all—together with LEC and GCLC themselves—will be forced to bear a disproportionate share of the Rule's cost (for little or no environmental benefit).

II. REASONS FOR GRANTING MOTION FOR LEAVE TO INTERVENE

The Court should grant LEC and GCLC's motion for leave to intervene as respondents because GCLC and LEC meet the standard for intervention in Federal Rule of Appellate Procedure 15(d). This motion is timely, and LEC, GCLC, and their members have direct and significant interests in the outcome of this case that will be harmed if the 111(b) Rule is upheld.

Additionally, LEC and GCLC meet the elements of the intervention-of-right test under Federal Rule of Civil Procedure 24(a)(2) and thus satisfy any standing test that arguably might apply to their intervention in this case. The requirements for intervention of right under Rule 24(a)(2) are: (1) the application is timely; (2) the applicant claims an interest relating to the subject of the action; (3) disposition of the action may, as a practical matter, impair or impede the applicant's ability to protect that interest; and (4) 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).

A. The Motion Is Timely.

In compliance with Federal Rule of Appellate Procedure 15(d), GCLC and LEC filed this motion within 30 days after the first petition for review was filed by the State of North Dakota and within the 60-day period for judicial review set forth in Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1). Further, this motion is being filed at an early stage of the proceedings. No motions have been filed, and no briefing schedule has been entered. Indeed, the parties have not even filed their proposed motions to govern briefing or any other preliminary motions. Therefore, granting this motion will not disrupt or delay any proceedings.

B. LEC, GCLC and their members have direct and significant interests that will be harmed if the 111(b) Rule is upheld.

LEC and GCLC are actively involved in promoting and developing the use of lignite, including devoting work and resources to advancing research and development of new technologies that will enable the continued and future use of lignite as a fuel for EGUs. These efforts include active state partnerships, in particular between LEC and North Dakota. Additionally, GCLC's and LEC's members own and operate lignite mines and EGUs, own lignite reserves and the right to mine additional lignite, and own businesses that provide goods and services to the lignite industry. As explained above, if the 111(b) Rule is upheld, the value of all these interests will be substantially lessened if not destroyed entirely.

Members of a regulated industry affected by a federal rule have significant, protectable interests that give them standing to challenge the rule and, therefore, a sufficiently concrete and direct interest to allow intervention. Likewise, persons and entities who will suffer a pecuniary loss because of a rule also have standing. For example, in *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 733-35 (D.C. Cir. 2003), this court held that the Department of the Ministry of Nature and Environment of Mongolia had standing to intervene in a challenge to a Fish and Wildlife Service rule based upon tourism revenues that Mongolia allegedly would lose if the rule were upheld.

Similarly, in *Military Toxins Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998), this court held that companies that produced military munitions and operated military firing ranges and that, as a result, were regulated under the rule, had standing to challenge it. And if a party has standing to sue, it necessarily has a sufficient interest to satisfy the second prong of the test for intervention of right under Rule 24(a)(2). *See Public Citizen v. Federal Election Comm'n*, 788 F.3d 312, 320 (D.C. Cir. 2015).

In this case, as explained above, LEC's and GCLC's members will be regulated by the 111(b) Rule, and the Rule will effectively prohibit the construction of new and reconstructed and modified lignite-fueled EGUs. It will render the existing lignite mines and lignite reserves of LEC's and GCLC's members—which could be used as fuel for new lignite fueled power plants or modified existing plants, but for the Rule—essentially valueless, and it will destroy or significantly curtail the lignite-related programs and incentives in which LEC, GCLC, and their members participate and/or from which they benefit. Therefore, LEC, GCLC, and their members will all suffer substantial economic harm if the Rule is upheld. This is a sufficient interest to allow intervention in this challenge to the Rule.

C. The interests of LEC, GCLC, and their members are not adequately represented by existing parties in this matter.

A proposed intervenor's burden to show that the petitioners do not adequately represent its interest is a low one. *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) (stating that the burden on an intervenor to show that its interests are not adequately represented is "not onerous"). It is sufficient to show that the representation of the proposed intervenor's interest "may be" inadequate. *See, e.g.*, *Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981).

Here, the petitioners are several states, Murray Energy, and a public interest group that supports "free market environmentalism."

With respect to the states, this court "has frequently look[ed] skeptically on government entities serving as adequate advocates for private parties," even when their interests coincide. *Public Citizen*, 788 F.3d at 321. The petitioner states represent and regulate on behalf of all their citizens. Their interests, therefore, are not identical to the narrow interests of GCLC and LEC, notwithstanding LEC's partnership with North Dakota, and the statutes Texas, North Dakota and other states have enacted favoring the development of "clean coal" technologies. While the states' interests are not necessarily adverse, they are all still much broader that the specific, lignite-related interests advocated by LEC and GCLC. This is sufficient to demonstrate that the interests of LEC, GCLC, and their members will

not, or may not, be adequately represented by the states. *See Fund for Animals*, 322 F.3d at 736-37; *Dimond*, 792 F.2d at 192-93.

According to its petition for review in this case, Murray Energy "is the largest underground coal mine operator in the United States, with combined operations that currently produce and ship about eighty-seven (87) million tons of bituminous coal annually." As noted above, GCLC's and LEC's primary purpose is to promote the development and use of lignite coal, which is a different grade and rank than bituminous coal, and which has unique properties that render it particularly susceptible to harm from the Rule. Moreover, Murray Energy does not have the same interest in the state government-lignite energy programs and incentives described above that LEC, GCLC and their members participate in and/or benefit from, nor does it necessarily have any interest in promoting a special subcategory for lignite, which GCLC has advocated as an alternative, if the 111(b) Rule is not set aside in its entirety.

The final petitioner, the Energy & Environment Legal Institute, is a public-interest organization that, according to its website, supports free-market solutions to environmental issues. While LEC, GCLC, and their members certainly agree with and support this approach as a general matter, the interests of the Energy & Environment Legal Institute are not identical to the property interests, research and

development programs, and government incentives at stake for LEC, GCLC, and their members.[6]

D. LEC and GCLC have standing to sue on behalf of their members.

LEC and GCLC believe that they have standing to litigate in their own right. But even if one or both do not, they both have standing to litigate on behalf of their members.

An association has standing to litigate on its members' behalf when:

> (a) its members would otherwise have standing to sue in their own right; (b) the interests 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 Adver. Comm'n, 432 U.S. 333, 343 (1977), *superceded by statute on other grounds as stated in United Food & Commercial Workers' Union Local 751 v. Brown Group*, 517 U.S. 544, 557 (1996) .

Article III standing requires (1) injury-in-fact; 92) causation, and (3) redressability. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). In *Sierra Club v. EPA*, 292 F.3d 895 (D.C. Cir. 2002), this court stated that

[6] Additionally, it goes without saying that disposition of this action will impair the ability of LEC, GCLC, and their members to protect their interests. If the Rule is not set aside in this proceeding, LEC, GCLC, and their members will all be subject to it, and the interests described above will be impaired.

> in many if not most cases, the petitioners standing to seek review is self-evident. In particular, if the complainant is "an object of the action . . . at issue" – as is usually the case in review of a rulemaking . . . there should be "little question that the action . . . caused him injury, and that a judgment preventing . . . the action will redress it.

Id. at 899-900 (quoting *Lujan*, 504 U.S. at 561-62).

In this case, lignite plants are one of the objects of the 111(b) Rule. If the Rule stands, the lignite-related programs, initiatives, and incentives that benefit LEC, GCLC and their members will likely cease to exist, for the reasons explained above, and the lignite-related interests of GCLC's and LEC's members will be devastated. Because both injuries can be redressed by setting the Rule aside, the former gives LEC and GCLC standing to litigate on their own behalf, and both give them standing to intervene on behalf of their members.

With respect to the other requirements of associational standing, the interests that GCLC and LEC seek to protect are germane to their purposes: to promote and facilitate the use of lignite, including as a fuel source for newly-constructed EGUs, and to promote and help protect the interests of those involved in the lignite industry.

Finally, the participation of individual GCLC and LEC members in this litigation is not required because "'individual participation' is not normally necessary when an association seeks prospective or injunctive relief for its members." *United Food & Commercial Workers' Union Local 751 v. Brown*

Group, Inc., 517 U.S. 544, 545 (1996) (quoting *Hunt*, 432 U.S. at 343). Here the relief sought is to have the 111(b) Rule set aside. This is the sort of relief that associations may seek on behalf of their members. *See*, *e.g.*, *Military Toxics Project*, 146 F.3d at 953-54.

CONCLUSION

For the foregoing reasons, GCLC and LEC respectfully request leave to intervene as respondents.

Respectfully submitted,

/s/ Mark Walters

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ATTORNEYS FOR THE LIGNITE ENERGY COUNCIL AND THE GULF COAST LIGNITE COALITION

Dated: November 23, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on this 23rd day of November, 2015, a copy of the foregoing Joint Motion of the Gulf Coast Lignite Coalition and Lignite Energy Council for Leave to Intervene as Respondents was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Mark Walters
Mark Walters