

**ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016**

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

State of West Virginia, *et al.*

Petitioners,

v.

United States Environmental Protection  
Agency, Regina McCarthy,  
Administrator, United States  
Environmental Protection Agency,

Respondents.

Case No. 15-1363 (and  
consolidated cases)

**UNOPPOSED MOTION OF DOMINION RESOURCES, INC. FOR LEAVE  
TO PARTICIPATE AS *AMICUS CURIAE***

Dominion Resources, Inc. (“Dominion”) respectfully moves, pursuant to Fed. R. App. P. 29(b) and D.C. Cir. R. 29(b), for leave to participate as *amicus curiae* in support of Respondents, in the above-captioned action for review of the final rule promulgated by the U.S. Environmental Protection Agency (“EPA”) entitled Carbon Pollution Emission Guidelines for Existing Stationary Sources; Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) (“the Rule”).

Dominion is one of the nation's largest producers and transporters of energy, and, as the owner and operator of Dominion Virginia Power, a fully integrated electric utility, is committed to providing safe, affordable, reliable, and increasingly clean electricity to approximately 2.4 million residential and business customers in Virginia and more than 100,000 customers in North Carolina. Dominion owns and operates approximately 24,300 megawatts of generating capacity, including several coal-fired and natural gas-fired power plants that would be subject to the Rule; approximately 6,500 miles of electric transmission lines; 57,300 miles of electric distribution lines; 12,200 miles of natural gas transmission, gathering and storage pipelines; and 22,000 miles of gas distribution pipelines, exclusive of service lines. In total, Dominion serves over five million utility and retail energy customers in 14 states.

Because Dominion is a significant owner of energy infrastructure—and, in particular, because it owns and operates coal-fired and natural gas-fired power plants—Dominion will be significantly affected by the Rule and the Court's resolution of the numerous petitions for review of it. Dominion wishes to aid the Court in resolving this litigation by providing the perspective of an investor-owned utility company with significant investments in coal-fired and natural gas-fired power plants that nonetheless views compliance with the Rule as achievable if given adequate flexibility and time.

Proposed *amicus curiae* has consulted with the parties. As of the filing of this brief, the EPA, Calpine Corporation, the City of Austin d/b/a Austin Energy, the City of Los Angeles, by and through its Department of Water and Power, the City of Seattle, by and through its City Light Department, National Grid Generation, LLC, New York Power Authority, Pacific Gas and Electric Company, Sacramento Municipal Utility District and Southern California Edison Company have consented to the filing of this brief.

The remaining parties either informed Dominion that they take no position as to Dominion's filing, or failed to respond to the undersigned counsel's email which stated that if no response was received by 5:00 p.m. March 31, 2016, Dominion would represent that they took no position. Consequently, Dominion states that the following parties take no position as to Dominion's filing: the Utility Air Regulatory Group, National Rural Electric Cooperative Association, Arizona Electric Power Cooperative, Inc., Associated Electric Cooperative, Inc., Big Rivers Electric Corporation, Brazos Electric Power Cooperative, Inc., Buckeye Power, Inc., Central Montana Electric Power Cooperative, Central Power Electric Cooperative, Inc., Corn Belt Power Cooperative, Dairyland Power Cooperative, Deseret Generation & Transmission Co-operative, Inc., East Kentucky Power Cooperative, Inc., East River Electric Power Cooperative, Inc., East Texas Electric

Cooperative, Inc., Georgia Transmission Corporation, Golden Spread Electric Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., Minnkota Power Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Northwest Iowa Power Cooperative, Oglethorpe Power Corporation, Powersouth Energy Cooperative, Prairie Power, Inc., Rushmore Electric Power Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, South Texas Electric Cooperative, Inc., Southern Illinois Power Cooperative, Sunflower Electric Power Corporation, Tex-La Electric Cooperative of Texas, Inc., Upper Missouri G. & T. Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Western Farmers Electric Cooperative and Wolverine Power Supply Cooperative, Inc. take no position on Dominion's request to participate as amicus. The Utility Air Regulatory Group may oppose the filing of this brief but, to date, has not taken a definite opinion.

Under D.C. Cir. Rule 29, a motion for leave to file as amicus curiae must be filed no later than seven days after the filing of the principal brief of the party being supported is filed, with such motions encouraged as promptly as practicable. D.C. Cir. R. 29(b). This motion is timely because it is filed within days after filing of EPA's principal brief and as promptly as practicable.

## **I. Legal Standard**

Under the rules of this Court, “[a]ny individual or non-governmental entity intending to participate as *amicus curiae* must file either a written representation that all parties consent to such participation, or, in the absence of such consent, a motion for leave to participate as *amicus curiae*.” D.C. Cir. R. 29(b). A motion for leave to participate must state “(1) the movant’s interest; and (2) the reason why an *amicus* brief is desirable and why the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b).

## **II. Dominion Has a Significant Interest in This Litigation**

Dominion is one of the nation’s largest producers and transporters of energy, and is committed to providing safe, affordable, reliable, and increasingly clean energy to our customers in 14 states. Dominion owns several coal-fired and natural gas-fired power plants that will face compliance obligations under the Rule.

As a utility with significant investment in power plants; electric transmission lines; natural gas transmission, gathering, and storage; and other assets subject to environmental regulation, Dominion has a strong interest in ensuring that any environmental regulation appropriately takes into account compliance flexibilities that are necessary for us to continue to meet our customers’ need for reliable service at stable, competitive prices while ensuring robust environmental performance. Dominion is also committed to maintaining a diverse fuel mix,

including nuclear, coal, natural gas, hydroelectric, and other renewable resources. The resolution of a number of legal questions raised by Petitioners challenging the Rule could have unintended adverse consequences for EPA's authority to permit flexible compliance mechanisms in this and other rules—an outcome that Dominion would strongly oppose.

Dominion's interest in the Rule has been well demonstrated through the rulemaking process. Dominion provided extensive comments to EPA on its initial proposal,<sup>1</sup> and has engaged actively on design and implementation issues with EPA, the Virginia Department of Environmental Quality, the West Virginia Department of Environmental Protection, the North Carolina Department of Environment and Natural Resources, the Virginia State Corporation Commission, and the North Carolina Utilities Commission.

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<sup>1</sup> Letter from Pamela F. Faggert, Chief Environmental Officer and Vice President-Corporate Compliance, Dominion Resources Services, Inc. to EPA, Docket ID: EPA-HQ-OAR-2013-0602 (Nov. 25, 2014), *available at* <http://www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-22566>.

### **III. An *Amicus Curiae* Brief from Dominion Will Provide the Court an Important and Unique Perspective in Considering the Merits of the Petitions for Review of the Rule**

Dominion is uniquely positioned to provide the Court with the perspective of an electric utility that will face significant compliance obligations but that nonetheless views the Rule as achievable, assuming the Rule's compliance flexibilities are upheld and states reasonably implement the Rule's requirements.

Unlike those electric utilities and power plant owners that have intervened in support of Respondent EPA,<sup>2</sup> Dominion owns and operates a significant fleet of both coal-fired and natural gas-fired power plants.<sup>3</sup>

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<sup>2</sup> Such utilities and power plant owners include Calpine Corporation; the City of Austin d/b/a Austin Energy; the City of Seattle, by and through its City Light Department; National Grid Generation, LLC; Pacific Gas and Electric Company; NextEra Energy, Inc.; City of Los Angeles Department of Water and Power; New York Power Authority; Sacramento Municipal Utility District; Southern California Edison Company (collectively "Clean Utilities").

<sup>3</sup> Dominion owns eight coal-fired power plants. *See* Dominion, Electric Generation, <https://www.dom.com/corporate/what-we-do/electricity/generation>. By contrast, Dominion is only aware of four coal-fired power plants owned by the Clean Utilities in total. NextEra Energy, Inc. owns generation resources at two coal-fired power plants. *See* FPL, Ten Year Power Plant Site Plan: 2015-2024 at 17, Table I.A.1 (April 2015), *available at* <https://www.fpl.com/company/pdf/10-year-site-plan.pdf>. Austin Energy owns a share of the Fayette Power Project. *See* Austin Energy, Company Profile, *available at* <http://goo.gl/mGm1Ly>. The Los Angeles Department of Water and Power ("LADWP") owns a stake in the coal-fired Intermountain Power Plant, but has made a public commitment to convert Intermountain to natural gas. *See* Press Release, LADWP, LADWP Takes Historic Action Toward Clean Energy Future for Los Angeles (Mar. 19, 2013), <http://www.ladwpnews.com/go/doc/1475/1727379/LADWP-Takes-Historic-Action-Toward-Clean-Energy-Future-for-Los-Angeles>.

However, unlike those electric utilities and owners of generation units with similarly situated generation fleets, Dominion's *amicus curiae* brief is supportive of Respondents. To the extent that the compliance and timing flexibilities remain in the Rule, state implementations plans are reasonably implemented, and new required electric transmission and natural gas pipeline promptly receive required federal and state regulatory and permitting approvals, Dominion believes the Rule will result in challenging but feasible requirements to limit carbon dioxide emissions from the electric power sector.

#### **IV. Conclusion**

An *amicus curiae* brief from Dominion would provide the Court an important and unique perspective in considering the merits of the petitions for review of the Clean Power Plan. Dominion, therefore, respectfully requests leave to file a brief in support of Respondents as *amicus curiae*.



Dated: April 1, 2016

Respectfully submitted,

/s/ Robert R. Vieth

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**CERTIFICATE OF COMPLIANCE**

This motion complies with Fed. R. App. P. 27(d)(1) & (2) and 29(b) and D.C. Cir. R. 27(c) because it meets the prescribed format requirements, does not exceed 20 pages, and is being filed as promptly as practicable after the case was docketed in this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: April 1, 2016

/s/ Robert R. Vieth

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**CERTIFICATE AS TO PARTIES AND AMICI CURIAE**

Pursuant to D.C. Cir. R. 27(a)(4) and 28(a)(1)(A), counsel certifies as follows: Except for the *amicus curiae* Dominion Resources, Inc. (“Dominion”); Former State Officials; Union of Concerned Scientists; and Grid Experts Benjamin F. Hobbs, Brendan Kirby, Kenneth J. Lutz, James D. Mccalley, and Brian Parsons, all parties and *amici*, rulings under review, and related cases are, to the best of my knowledge, set forth in the Brief for Respondents Environmental Protection Agency, ECF 1605911.

Dated: April 1, 2016

/s/ Robert R. Vieth

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**RULE 26.1 DISCLOSURE STATEMENT**

In accordance with Fed. R. App. P. 26.1 and D.C. Cir. R. 26.1 and 27(a)(4), Dominion Resources, Inc. (“Dominion”) states that it is a publicly-held company incorporated in Virginia whose shares are listed on the New York Stock Exchange under the symbol “D.” Dominion has no parent company and no publicly-held company has 10% or greater ownership in Dominion. Dominion is one of the nation’s largest producers and transporters of energy, and is committed to providing safe, affordable, reliable, and increasingly clean electricity to its residential and business customers in Virginia and North Carolina.

Dated: April 1, 2016

/s/ Robert R. Vieth

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**CERTIFICATE OF SERVICE**

I hereby certify that on April 1, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system. The participants in this case are registered CM/ECF users and services will be accomplished by the appellate CM/ECF system.

Dated: April 1, 2016

/s/ Robert R. Vieth

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