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Scheduled for Oral Argument on June 2, 2016

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IN THE

**United States Court of Appeals**

**FOR THE DISTRICT OF COLUMBIA CIRCUIT**

**No. 15-1363 (and consolidated cases)**

STATE OF WEST VIRGINIA, *et al.*,

*Petitioners,*

—v.—

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

*Respondents.*

ON PETITION FOR REVIEW OF FINAL AGENCY ACTION OF THE  
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY  
80 FED. REG. 64,662 (OCT. 23, 2015)

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**UNOPPOSED MOTION OF AMAZON.COM, INC., APPLE INC.,  
GOOGLE INC., AND MICROSOFT CORP. FOR LEAVE TO  
PARTICIPATE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS**

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April 1, 2016

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Pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b), Amazon.com, Inc. (“Amazon”), Apple Inc. (“Apple”), Google Inc. (“Google”), and Microsoft Corp. (“Microsoft”) (collectively “Tech Amici”) respectfully move the Court for leave to file the attached brief as amici curiae in support of Respondents.

### **INTRODUCTION**

Tech Amici are among the world’s leading technology companies and some of the country’s most significant consumers of electricity. Tech Amici are deeply committed to consuming power in an environmentally responsible way. They have committed to ensuring that an ever-increasing portion of their electricity consumption comes from renewable sources. Tech Amici thus have a vested interest in, and bring a unique perspective to, this Court’s review of the rule entitled *Carbon Pollution Emission Guidelines for Existing Stationary Sources; Electric Utility Generating Units*, or the “Clean Power Plan.” 80 Fed. Reg. 64,662 (Oct. 23, 2015). Tech Amici have learned from experience that renewable electricity generation can be affordable, reliable, and consistent with sound business practices. They seek leave to file the attached amicus brief to explain why the Clean Power Plan will advance those trends and help power consumers meet their environmental commitments without undermining their business interests.

## IDENTIFICATION OF PROPOSED AMICI

Tech Amici are among the most successful and innovative companies in the United States and leaders in the technology industry:

- **Amazon** opened its virtual doors on the World Wide Web in July 1995. It seeks to be Earth's most customer-centric company. It is guided by four principles: customer obsession rather than competitor focus, passion for invention, commitment to operational excellence, and long-term thinking. Amazon's primary customer sets consist of consumers, sellers, developers, enterprises, and content creators. Amazon has a long-term commitment to achieve 100% renewable energy usage for the global infrastructure footprint of Amazon Web Services (AWS), Amazon's global cloud computing service.
- **Apple** revolutionized personal technology with the introduction of the Macintosh in 1984. Today, Apple leads the world in innovation with iPhone, iPad, Mac, Apple Watch, and Apple TV. Apple's software platforms provide seamless experiences across all Apple devices and empower people with breakthrough services including the App Store, Apple Music, Apple Pay, and iCloud. Apple is committed to powering all of its facilities around the world with 100% renewable energy.
- **Google** is a leading Internet search engine and provides a wide range of other products and services—including email through its Gmail service, online video through YouTube, music and other entertainment through Google Play, cloud computing through Google Cloud Platform and various social-networking tools—that empower people around the world to create, find, organize, and share information. Google has a goal to power its operations with 100% renewable energy and to help achieve that, has committed to purchase over 2 gigawatts of renewable energy to date, making it the largest corporate purchaser of renewable energy in the world. Google has been carbon neutral since 2007.
- **Microsoft** is the leading platform and productivity company for the mobile-first, cloud-first world and its mission is to empower every person and every organization on the planet to achieve more. Microsoft operates, or has announced, cloud services from thirty regions across the world. Microsoft has been 100 percent carbon neutral since 2012 through efficiency, renewable energy, and carbon-offset community projects. Microsoft has a long-term goal of running all of its global operations with 100 percent renewable energy.

The commitments that Tech Amici have made to the long-term goal of using renewable energy to meet the majority of their power needs reflects their collective belief that delaying action on climate change will be costly in economic and human terms. It also reflects their firsthand experience with developing and using renewable electricity generation in an affordable and sustainable manner. Given their collective experience, Tech Amici have a significant interest in the success of the Clean Power Plan and its efficient implementation.

Tech Amici have consulted with the parties, none of whom have opposed the filing of this amicus brief.

### **ARGUMENT**

Under the Federal Rules of Appellate Procedure, an amicus brief is permitted where it is “desirable” and where “the matters asserted are relevant to the disposition of the case.” Fed. R. App. P. 29(b); *accord Ellsworth Assocs. v. United States*, 917 F. Supp. 841, 846 (D.D.C. 1996) (citations omitted) (“a court may grant leave to appear as an amicus if the information offered is ‘timely and useful’”). “Court[s] have permitted parties to file amicus briefs where ‘the brief will assist the judges by presenting ideas, arguments, theories, insights, facts, or data that are not to be found in the parties’ briefs.’” *In re Search of Info. Associated with @mac.com that is Stored at Premises Controlled by Apple, Inc.*, 13 F. Supp. 3d 157, 167 (D.D.C. 2014) (quoting *Voices for Choices v. Illinois Bell*

*Tel. Co.*, 339 F.3d 542, 545 (7th Cir. 2003)). Amicus briefs are particularly welcome “where ‘the amicus has unique information or perspective that can help the court beyond the help that the lawyers for the parties are able to provide.’” *Id.* (citation omitted).

These standards are satisfied here. Tech Amici are uniquely positioned to provide the Court with the perspective of major purchasers of electricity who have committed to ensuring that a significant portion of their electricity purchases are from renewable sources of generation. This perspective is not otherwise reflected in the submissions made to the Court in this case. Tech Amici’s proposed brief explains how major corporate purchasers of electricity employ a variety of straightforward strategies to acquire and consume renewable electricity—and how these strategies are available to owners of electricity generating facilities subject to regulation under the Clean Power Plan.

Tech Amici’s proposed brief also demonstrates the many ways that the Clean Power Plan is good for business and will reinforce current trends that are making renewable energy supplies more robust, more reliable, and more affordable. As just one example, the brief shows how the Clean Power Plan promotes the increased generation and consumption of electricity from sources not subject to fuel price volatility or future increases in electricity rates. In fact, in Tech Amici’s firsthand experience, renewable energy already is available in many

parts of the United States at prices comparable to or better than the current prices for other electricity options. The increased use of renewable sources also helps to attract a growing number of investors and customers who care deeply—as do Tech Amici—about protecting the environment and working with companies that do their best to help mitigate the effects of climate change.

In discussing the standards for amicus briefs, then-Judge Alito explained:

Even when a party is very well represented, an amicus may provide important assistance to the court. “Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group.”

*Neonatology Assocs., P.A. v. Comm’r*, 293 F.3d 128, 132 (3d Cir. 2002) (Alito, J.) (quoting Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J. App. Prac. & Process 279 (1999)). That is the situation here. Because they offer a unique perspective on the important issues before the Court, Tech Amici respectfully request leave to file the attached amicus brief.

Respectfully submitted,

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April 1, 2016

**CERTIFICATE AS TO PARTIES AND AMICI CURIAE**

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1)(A), counsel certifies as follows: Except for Amazon.com, Inc., Apple Inc., Google Inc., and Microsoft Corp., all parties, intervenors, and amici appearing in this Court are, to the best of my knowledge, listed in the Brief for the Respondents United States Environmental Protection Agency (EPA), which Administrator Regina A. McCarthy filed on March 28, 2016. EPA's brief references and supplements the list provided in the Brief for the Petitioners filed on February 19, 2016.

Dated: April 1, 2016

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## **RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rules 26.1 and 27(a)(4), the proposed Amici declare as follows:

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(c), amicus curiae Amazon.com, Inc. discloses the following:

Amazon.com, Inc. has no parent corporation, and no publicly held corporation owns 10% or more of the stock of Amazon.com, Inc.

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(c), amicus curiae Apple Inc. discloses the following:

Apple Inc. has no parent corporation, and no publicly held corporation owns 10% or more of the stock of Apple Inc.

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(c), amicus curiae Google Inc. discloses the following:

Google Inc. is a subsidiary of Alphabet Inc., and no publicly held corporation other than Alphabet Inc. owns 10% or more of the stock of Google Inc.

Pursuant to Federal Rule of Appellate Procedure 26.1 and 29(c), amicus curiae Microsoft Corporation discloses the following:

Microsoft Corporation has no parent corporation, and no publicly held corporation owns 10% or more of the stock of Microsoft Corporation.

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**CERTIFICATE OF SERVICE**

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

Dated: April 1, 2016

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