ORAL ARGUMENT NOT YET SCHEDULED

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

Case No. 15-1363 and Consolidated Cases

STATE OF WEST VIRGINIA, *et al.*,

Petitioners,

v.

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

Respondents.

On Petitions for Review of Final Action of the
United States Environmental Protection Agency

ENVIRONMENTAL AND PUBLIC HEALTH RESPONDENT-INTERVENORS' OPPOSITION TO MOTIONS FOR STAY

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GLOSSARY OF ABBREVIATIONS

CO_2	Carbon Dioxide
EPA	Environmental Protection Agency
FERC	Federal Energy Regulatory Commission
IPM	Integrated Planning Model
RIA	Regulatory Impact Analysis
UARG	Utility Air Regulatory Group

Power plants are the country's largest sources of the carbon dioxide pollution that is destabilizing the Earth's climate and imperiling human health and welfare, exceeding even the "enormous quantity" emitted by the transportation sector, *see Massachusetts v. EPA*, 549 U.S. 497, 524-25 (2007). To reduce this harmful pollution, EPA has adopted the Clean Power Plan ("Rule") under Section 111(d) of the Clean Air Act, which "'speaks directly'" to carbon dioxide emissions from existing power plants. *Am. Elec. Power Co. v. Connecticut*, 131 S. Ct. 2527, 2537 (2011) (*AEP*).

This Court should reject Movants' attempt to delay the Rule's vital climate and public health protections. All four factors, *see Nken v. Holder*, 556 U.S. 418, 433-34 (2009), strongly disfavor a stay.

I. MOVANTS ARE UNLIKELY TO SUCCEED ON THE MERITS

The caricatures in the stay motions bear no similarity to the actual Rule. In fact, the Rule builds on well-established measures that have already resulted in substantial carbon emission reductions from fossil-fueled power plants. It establishes readily achievable targets to realize further reductions that – consistent with industry comments – are phased in gradually between 2022 and 2030. It allows states that choose to develop plans up to three years to do so, affording broad discretion as to plan design and the timing of emission reductions. Accommodating industry's preference – expressed in this and other Clean Air Act rulemakings – for flexible, cost-effective means of reducing emissions, the Rule enables emissions averaging and trading. The Rule is projected to lower consumer electric bills by 2025, and it provides robust safeguards to guarantee electric system reliability.

Contrary to Movants' contentions, ample Clean Air Act precedent supports EPA's common-sense approach. Many air pollution control programs under section 111 and other provisions of the Act, particularly programs addressing the power sector, have relied upon shifts in generation and have employed techniques such as emissions averaging and trading to reduce emissions efficiently.[1] Shifting generation among facilities is a routine part of the power industry's daily operations, and a familiar component of companies' longer-term emission reduction strategies. 80 Fed. Reg. at 64,795, 64,782 n.604; Tierney ¶ 28. Many industry commenters urged EPA to allow them to *comply* with the standards by these means, reflecting recognition that such measures are a well-demonstrated "system of emission reduction." *See*, *e.g.*, Legal Memo 14-18.[2]

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[1] *See* R. Revesz et al., Inst. for Policy Integrity, *Familiar Territory: A Survey of Legal Precedents for the Clean Power Plan* 1, 3 (Dec. 4, 2015), *available at* http://policyintegrity.org/files/publications/FamiliarTerritory.pdf (summarizing "a wide variety of regulations from the Clean Air Act's forty-five-year history that provide substantial precedent for the flexible design of the Clean Power Plan" and noting that EPA "has previously promulgated several rules—under both Section 111 and other provisions of the Clean Air Act—that incorporate beyond-the-fenceline strategies for reducing emissions."); *see also*, *e.g.*, 80 Fed. Reg. at 64,678; Legal Memorandum Accompanying Clean Power Plan for Certain Issues (Legal Memo), Docket No. EPA-HQ-OAR-2013-0602-36872 at 7-8, 104-17; *see also Small Refiner Lead Phase-Down Task Force v. EPA*, 705 F.2d 506, 534-36 (D.C. Cir. 1983) (upholding gasoline lead standards that aimed for aggregate, category-wide pollution reductions and were premised on the projection that refineries would engage in emission credit trading).

[2] Likewise, industry (including several Movants) urged EPA to interpret the term "installation of controls" under section 112 to encompass construction of new generation and transmission – an interpretation EPA adopted in the Mercury and Air Toxics Standards. Legal Memo at 115-16.

Movants identify no credible statutory basis for restricting EPA, when identifying the "best system of emission reduction," to measures that every source can implement on its premises alone. Indeed, the rigid strictures Movants advocate for would force reliance on *more* expensive measures (such as conversion to natural gas or retrofitting carbon capture technology) or achieve *less* emissions reductions. *See EPA v. EME Homer City Generation,* 134 S. Ct. 1584, 1606-07 (2014) (affirming the Agency's "sensibl[e]" choice to adopt the "easier, *i.e.*, less costly," means of achieving the necessary pollution reduction as "nothing in the text of the [statute] precludes that choice.").[3] Movants can point to no statutory terms that require EPA to limit the "best" system of emission reduction to "heat rate" improvements that EPA found would achieve only minimal reductions – or perversely even increase pollution, *see* 80 Fed. Reg. at 64,745. Congress plainly intended more – that the "best" system would accomplish as many emissions reductions as are achievable at reasonable cost. *See Sierra Club v. EPA*, 657 F.2d 298, 326 (D.C. Cir. 1981) ("no sensible interpretation" of provision would ignore quantity of emission reductions).

Movants' favored "on-site" restriction also conflicts with the reality that sources would seek to use off-site generation-shifting and related measures for compliance even if the stringency of the standards were constrained as they now insist. *See* 80 Fed. Reg. 64,761 (noting that sources would use the generation-shifting

[3] In *EME Homer City*, the Court upheld EPA's Cross-State Air Pollution Rule – a power sector-specific rule that relies upon "increased dispatch of lower-emitting generation and fuel-switching," 76 Fed. Reg. 48,208, 48,252, 48,279-80 (Aug. 8, 2011) – as "permissible, workable, and equitable," 134 S. Ct. at 1610. *See also NRDC v. Thomas*, 805 F.2d 410, 425 (D.C. Cir. 1986) (upholding emissions averaging for vehicle fleet owners as sensible and not prohibited by statute).

measures of building blocks 2 and 3 (as well as energy efficiency) to "comply with *whatever emission standards* are set as a result of this rule") (emphasis added). *See also id.* at 64,769 (industry comments favoring off-site measures for compliance); Legal Memo at 14-18 (same). Like other Clean Air Act provisions built on federal targets and state implementation,[4] section 111(d) comfortably accommodates the types of flexible implementation mechanisms EPA has adopted here. EPA found the characteristics of both carbon pollution and the electric industry (including the "unique interconnectedness" of the grid, 80 Fed. Reg. at 64,734) favor regulatory approaches that reduce emissions at lower cost through flexibility and emissions averaging and trading. *E.g., id.* at 64,703, 64,717, 64,725.[5]

Movants' repeated allegations that the Rule impermissibly intrudes upon the jurisdiction of federal or state energy regulatory agencies are misguided. The Rule does not disturb the existing roles of energy regulators, system operators, or generators, all of whom have extensive experience incorporating federal air pollution requirements into the power system's planning and daily operations. *See*, *e.g.*, Legal Memo at 26; Wellinghoff ¶¶ 35-36 (former FERC chair's refutation of these claims);

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[4] *See* 42 U.S.C. § 7410(a)(2) (listing "marketable permits" among measures that may be included in state plans); *id.* § 7602(y) (same for federal plans). Congress linked section 111(d) to the flexible section 110 regime, directing that EPA's regulations "establish a procedure similar to that provided by" section 110. *Id.* § 7411(d)(1).

[5] Such determinations merit "special deference." *Nat'l Ass'n for Surface Finishing v. EPA*, 795 F.3d 1, 7 (D.C. Cir. 2015) (scientific determinations); *Earthlink v. FCC*, 462 F.3d 1, 9 (D.C. Cir. 2006) (applications of technical expertise); *id.* at 11-12 (predictive judgments); *see also NRDC*, 805 F.2d at 425 (decision whether emissions averaging best served statutory objectives was "peculiarly within the expertise of the agency").

Kelliher ¶ 6-12 (same); Tierney ¶¶ 28-29; Roberts ¶ 19; Fox ¶¶ 27-30. The Rule gives states the option to regulate power plant emissions or leave it to EPA. And if EPA issues a federal plan, a state can still opt to promulgate a state plan later. McCabe ¶ 34; Soward ¶ 12; Tierney ¶ 24.

The Rule implements a provision that "'speaks directly'" to carbon pollution from existing power plants.[6] *AEP*, 131 S. Ct. at 2537. Regulating *any* form of power plant air pollution necessarily has economic consequences for electricity generators, but those consequences do not immunize power plants from Clean Air Act regulation. Rather, as the Court noted in *AEP*, section 111(d) requires balancing the "environmental benefit" with "our Nation's energy needs and the possibility of economic disruption," and the Act "entrusts such complex balancing to EPA in the first instance." *Id.* at 2539; *see also Sierra Club*, 657 F.2d at 406 (section 111(b) standards for new coal-burning power plants "demand a careful weighing of cost, environmental, and energy considerations"). EPA carefully weighed these considerations here and explained why its interpretation fits within statutory bounds. Movants cannot succeed on the merits.

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[6] As EPA shows, Opp. 37-42, there is no merit to contentions (W. Va. Mot. 11-15) that the Rule is precluded by EPA's regulation of mercury and other air toxics from power plants under the section 112 "hazardous air pollutant" program. EPA reasonably reads section 111(d) to preclude coverage only of pollutants actually regulated under section 112. Movants' theory would open a gap contrary to the Clean Air Act's explicit design and to Congress' explicit intent, in strengthening the hazardous air pollutant program in the 1990 Amendments, not to weaken any section 111 requirements. *See* 42 U.S.C. § 7412(d)(7) ("No emission standard or other requirement promulgated under this section [112] shall be interpreted, construed or applied to diminish or replace the requirements of a more stringent emission limitation or other applicable requirement established pursuant to section [111].").

II. MOVANTS CANNOT SHOW IRREPARABLE HARM

Movants have the burden to show that irreparable harm is "certain" to befall them "in the near future" as a "direct[] result" of the Rule. *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985). They have failed to meet that burden. First, in response to comments raising the same issues that Movants raise here, EPA made substantial changes in the final rule (*e.g.*, deferring the first compliance obligation to 2022 and softening the subsequent emission reduction "glide path") and explained in detail why those changes met commenters' concerns about implementation time, reliability, and other issues. 80 Fed. Reg. at 64,855-59, 64,826-29, 64,874-81. These factual findings, which rest on judgments squarely within the agency's statutorily delegated domain, are entitled to deference. *EarthLink*, 462 F.3d at 9.

Second, the expert declarations of EPA and Respondent-Intervenors refute each of Movants' main factual claims. These submissions include, among many others, declarations from energy policy expert Susan Tierney on many of the central claims; former Secretary of State Madeleine Albright on foreign policy implications; former FERC Chairs Jon Wellinghoff and Joseph Kelliher on electric system reliability and energy regulation; economists Dallas Burtraw and Joshua Linn on modeling; and many current and former state energy and environmental officials (including former commissioner of the Texas Commission on Environmental Quality Larry R. Soward, and former head of the National Association of Regulatory Utility Commissioners Diane Munns) on state planning. These rebuttals show that Movants' contentions are unfounded. Given Movants' burden to show that harm "is certain to occur in the near future," *Wis. Gas*, 758 F.2d at 674, their motions cannot succeed.

Movants can cite no case in which this Court (or any other) has stayed agency action when the required compliance was so remote in time,[7] or when sources' actual obligations remained to be determined. The Rule does not require *any* emission limitations until 2022. Once in effect, emission reductions will phase in gradually through 2030, allowing each state to determine an optimal "glide path" for compliance. McCabe ¶¶ 6-9 (EPA). For states that choose to submit plans, the Rule allows three years to develop them – longer than provided under numerous past Clean Air Act programs for the power sector. McCabe ¶¶ 10-31; Fox ¶¶ 14-15; Soward ¶¶ 18-19; Tierney ¶ 19. Individual sources' obligations will depend upon the design of state plans to be adopted years from now, and the Rule enables states to provide for flexible compliance options when emission limits begin to phase in. Granting a stay here would, in short, require discarding the traditional, demanding standard for finding irreparable harm. *Wis. Gas*, 758 F.2d at 674.

Movants' declarations allege harms that are speculative, would occur (if at all) long past the litigation period, and rest on rank mischaracterizations of the Rule's structure and modeling analysis. They ignore the ongoing impacts of dramatic, long-term economic trends that have steadily shifted generation away from aging, high-cost, high-emitting coal plants, unpersuasively assigning blame to CO_2 emissions

[7] Stays of two prior Clean Air Act rules (both of which were later dissolved) provide no support for a stay here (*cf.* Peabody Mot. 5). This Court stayed the NO_x SIP Call four months, and the Cross-State Air Pollution Rule two days, before the relevant compliance deadlines. *See Michigan v. EPA*, No. 98-1497 (D.C. Cir. May 25, 1999) (order granting in part motion for partial stay); *EME Homer City*, No. 11–1302 (D.C. Cir. Dec. 30, 2011) (order granting motion to stay case).

limitations not yet even established in state (or federal) plans, and that will not go into effect for years. Past and recently announced coal plant retirement decisions are in fact primarily due to a host of market forces – including low natural gas prices, falling costs of renewable energy, rising costs of coal production, the high costs of maintaining very old coal-fired plants – that have driven a dramatic shift away from coal-fired power generation, and show no sign of abating irrespective of the Rule. Sanzillo ¶¶ 7-31; Tierney ¶¶ 67-73; Burtraw ¶¶ 8-15; Schlissel ¶¶ 10-63; Rábago ¶¶ 10-12, 15; Culligan ¶¶ 6-24.

A. The Rule Does Not Require Immediate Coal-Plant Retirements or Other Substantial Action by Industry Movants

Contrary to Movants' claims, nothing in the Rule, EPA's modeling, or the state planning process compels power generators to make expensive retirement or investment decisions during this litigation. The Rule's first emission limits take effect in 2022, and power plant owners are not required to demonstrate compliance until the end of the first interim period in 2025 – almost a decade from now. This lead time far exceeds the time allowed in prior power-sector regulations – rules that required substantial capital investments and operational changes and were implemented successfully. Wellinghoff ¶¶ 26-29; Meyer ¶¶ 6-10; Watson ¶¶ 6-7. Even after emissions limits take effect, the Rule's flexible compliance framework enables individual plants to operate above applicable emissions limits by averaging with other plants or by acquiring emissions credits. Tierney ¶¶ 25-27; 80 Fed. Reg. at 64,709-10. For all these reasons, any decision to retire an existing plant *now* because of the

possible impact of the Rule seven or more years from now would be a voluntary choice – not one flowing from regulatory mandates.

Contrary to the claims of National Mining Association's declarant Seth Schwartz, EPA's modeling results do not compel plant owners to make immediate retirement and investment decisions. The Integrated Planning Model (IPM) is a powerful tool for illustrating potential responses across the power system to emission constraints and other factors, but modeling results create no obligations. *See* Burtraw ¶¶ 17-18. Further, as declarants Burtraw and Linn explain, the IPM model cannot credibly be employed to predict near-term, plant-specific behavior as Movants try to do. Burtraw ¶¶ 16-24; *see also* Harvey ¶¶ 33-40. Until a state or federal plan is finalized, no individual plant's obligations for 2022 and beyond are known. Burtraw ¶ 20; Tierney ¶ 41. Absent any requirement to act immediately, a plant owner can readily defer major retirement or investment decisions until state plans are completed or other uncertainties reduced. Burtraw ¶ 25; Tierney ¶ 43.

Movants imply that new generating capacity might have to be built before 2022 to assure compliance, and claim that lead-time requirements for building such capacity mandate immediate decisions. McLennan ¶¶ 19-25; Greene ¶ 6; K. Johnson ¶ 13. Neither is correct. Declarant Munns shows that as many as 21 of the Movant States can meet the Rule's emissions targets through 2024 – and as many as 18 can meet the targets through 2030 – with generation projects already proposed, permitted, or under construction, coupled with existing state requirements for renewables and energy

efficiency. Munns ¶ 9.[8] Should it be needed, a large amount of new cleaner generating capacity is already in advanced stages of planning or under construction. Tierney ¶¶ 48-54.

Some Movants also claim that they are forced to act now because costs otherwise will rise prohibitively. Ledger ¶ 29 (UARG). Analysis of a delayed compliance scenario using the IPM model squarely contradicts this claim, finding that the Rule's compliance costs would be nearly the same even if firms defer their investment decisions until 2018 – after state plans are completed and specific compliance obligations are defined. Burtraw ¶¶ 36-40. Thus, claims that major investment or retirement decisions must be made immediately are unfounded.

Movants offer no substantial analytical support for other claims that the Rule will cause near-term harm. Their declarations cite highly flawed studies that exaggerate compliance costs, all but one of which analyze the *proposed* rather than *final* Rule. Burtraw ¶¶ 43-46; Tierney ¶ 46. Because there is no basis for Movants' primary claims that the Rule compels plant owners to make immediate compliance decisions, there is also no basis for their derivative claims of immediate jobs, mining, or business or tax revenue losses. Burtraw ¶ 46; Price ¶ 2.

Some companies claim they are harmed because they must decide whether to make near-term investments *for other reasons* such as upgrading an old facility to remain

[8] The same analysis shows that the remaining Movant States can comply through modest incremental measures. Munns finds that North Dakota, for example, a coal-intensive state that has alleged economic harms, N.D. Mot. at 14, could fully comply with the Rule merely by maintaining recent modest rates of wind power development. Munns ¶ 12. *See also* Hall ¶¶ 44-45 (showing that Texas will come close to full compliance with the Rule under "business as usual" conditions).

competitive.[9] But a stay would not, as Movants imply, allow them to ignore carbon risk considerations when making such near-term decisions. Tierney ¶ 58; Burtraw ¶ 25; Sanzillo ¶¶ 42-44. Thus, a stay would not be a reliable basis for a company to alter its near-term investment decisions. Indeed, a stay could *increase* regulatory uncertainty for the power sector and related industries. Sanzillo ¶ 45.

B. State Planning Under the Rule Does Not Work Irreparable Harm

EPA and State Respondent-Intervenors have fully refuted claims that state planning efforts impose substantial, let alone irreparable harms. *See also* Meyer ¶¶ 8-10; Watson ¶¶ 8-14. For states that choose to develop their own plans, their near-term obligations are very modest. McCabe ¶¶ 11-17; Tierney ¶¶ 19-22; Hall ¶¶ 52, 56. The Rule allows two more years to any state that undertakes a few undemanding tasks by September 2016, McCabe ¶¶ 11-17, although states may choose to submit a full plan by that date, *see* Tierney ¶ 19 (discussing Pennsylvania official's intent to submit final plan in September 2016). The three-year period for submitting a full state plan compares favorably with other programs under the Act and does not impose unusual burdens over the litigation period. Tierney ¶¶ 19-22; McCabe ¶ 11; Soward ¶¶ 9-26; Fox ¶¶ 14-15. Contrary to claims that states will need to adopt sweeping new legislation, virtually every state already has existing state law authority to limit air pollutants regulated under the Act, including CO_2. Tierney ¶ 30; *see also* Fox ¶¶ 9-11. The Rule allows states to adopt emission standards for CO_2-emitting power plants patterned on traditional, cost-effective programs that states already employ. *See*

[9] *See*, *e.g.*, Jura ¶ 30 (UARG); McInnes ¶ 21 (UARG); Johnson ¶ 28 (UARG).

McCabe ¶¶ 18-21; Tierney ¶ 37 n.40 (citing Revesz, *Familiar Territory*); Wellinghoff ¶ 38; *see also* Roberts ¶¶ 6-7, 9-10. For example, Movant States have successfully demonstrated emission trading programs in both vertically-integrated and restructured electricity markets.[10]

C. Movants' Other Claims of Post-2022 Harm Are Unfounded

Charges that the Rule will increase electric bills disregard EPA's analysis and judgment – entitled to deference – that the Rule will *lower* electric bills by 2025, Regulatory Impact Analysis for the Clean Power Plan Final Rule, Docket No. EPA-HQ-OAR-2013-0602-36791 ("RIA") 3-40, and ignore (1) cost-saving compliance strategies such as energy efficiency, which *reduce* electric bills, and (2) flexible tools like emissions trading that minimize costs. *See* Kolata ¶¶ 8, 15; Bingham ¶¶ 5-6; Busby ¶ 6; Tierney ¶¶ 75-80.

Movants' allegations regarding reliability are similarly mistaken. Power plants have complied for decades with Clean Air Act regulations often more prescriptive and with shorter compliance timelines – without jeopardizing reliability. Wellinghoff ¶ 29; Tierney ¶¶ 60-65; Fox ¶ 28. Similarly, many states with diverse characteristics – including some Movants – have already reduced emissions in recent years at rates that exceed what is required under the Rule. Hibbard ¶ 21; *see also* Worley ¶ 4. The Rule includes multiple reliability safeguards, *see* 80 Fed. Reg. at 64,876–79; Svenson ¶¶ 23-29, and does not disturb any reliability policies or mechanisms implemented by

[10] Of Movant States, 22 have adopted emissions trading programs in state plans under the Good Neighbor or Regional Haze programs. Tierney ¶ 32.

FERC, regional grid operators, state regulators, and other entities. Wellinghoff ¶ 6; Kelliher ¶¶ 6-9; Fox ¶¶ 31-32.

III. A STAY WOULD BE CONTRARY TO THE PUBLIC INTEREST

Movants have made clear that their objective is to delay the Rule's deadlines both for state planning and for power plant compliance. *See, e.g.*, Basin Mot. 19. Any such delays would be decidedly contrary to the public interest. First, postponing deadlines for industry compliance would further delay vital reductions in the largest source of the carbon pollution driving current and future climate change impacts that gravely endanger public health and welfare. *See* MacCracken ¶¶ 30, 56; Field ¶¶ 9-16. Because CO_2 is long-lived in the atmosphere, the increase in pollution allowed by any such delay would damage our climate far beyond the period of the stay. Contrary to Movants' attempts to belittle the Rule's benefits, EPA's record and leading climate scientists' declarations show that the Rule's CO_2 emission reductions will help mitigate highly dangerous future climate impacts, ranging from extreme weather events to rapid sea level rise. MacCracken ¶¶ 20, 25-28; Field ¶ 21. These reductions will provide quantifiable climate protection benefits to society worth tens of billions of dollars over the lifetime of the Rule. *See* RIA 4-9. Even delaying the Rule's CO_2 reductions by one year would sacrifice climate protection benefits worth $11 billion. MacCracken ¶¶ 43-44. Staying compliance deadlines would also further delay reductions in dangerous pollutants emitted together with CO_2 that cause serious illness and hundreds of premature deaths each year. *See* 80 Fed. Reg. at 64,914; Levy ¶¶ 20-28; Losada ¶¶ 3-8. These impacts fall hardest on vulnerable communities. Henry ¶¶ 5-7; Bingham ¶ 3; Busby ¶¶ 7-10.

Second, a stay would muddle a carefully crafted policy-making framework. EPA structured the interim and final planning schedule to allow states adequate time for technical work and regulatory procedures and to enable the robust participation of all interests and communities with a stake in state plan design. Truncating state planning would harm many stakeholders, including those most vulnerable to power plant pollution. Magaña ¶ 28; Bullard ¶ 18; Ray ¶ 13. A stay would also delay implementation of the Clean Energy Incentive Program, which is intended, among other things, to encourage early investment in energy efficiency projects in low income communities. Magaña ¶ 29.

Third, staying the Rule would undermine the critical U.S. foreign policy objective of galvanizing global efforts to curb climate-changing carbon pollution. As former Secretary of State Madeleine Albright explains, the Rule is the central element of U.S. domestic action, and was critical to achieving serious action commitments from China a year ago and from more than 170 other nations since then, leading into the Paris Climate Conference. Albright ¶¶ 2, 4-5. Albright states that "[t]he leadership role of the United States will remain critical" going forward, and "if our country were to falter or renege on its commitments, we will undermine others' performance," setting back global cooperation on curbing climate pollution for years. *Id.* ¶ 8; *see also* MacCracken ¶¶ 50-51. For these reasons, Albright concludes that a stay would have "serious adverse foreign policy consequences" and be "sharply contrary to the public interest." Albright ¶ 12.

CONCLUSION

The motions to stay the Rule should be denied.

Respectfully submitted,

/s/ Benjamin Longstreth

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Dated: December 8, 2015

CERTIFICATE OF COMPLIANCE

I hereby certify that the foregoing brief is printed in 14-point, proportionally spaced typeface.

I hereby certify that the foregoing Response in Opposition of Environmental and Public Health Respondent-Intervenors to Motions to Stay complies with the type-volume limitations of Rule 32(a)(5) of the Federal Rules of Appellate Procedure and the Rules of this Court. I further certify that this brief is 14 pages long and that it, combined with those separately filed by the other respondent-intervenors, does not exceed the 50-page combined limit set in this Court's order of November 17, 2015 (Doc.1583948).

/s/ Benjamin Longstreth

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the Environmental and Public Health Intervenors state as follows:

All parties, rulings and related cases are correctly set forth in the Certificate appended to the Response of Power Companies in Opposition to Motions for Stay filed on December 8, 2015 (Doc. #1587423).

/s/ Benjamin Longstreth

CERTIFICATE OF SERVICE

I certify that on December 8, 2015, the foregoing Environmental and Public Health Movant-Intervenors' Opposition to Motions for a Stay, was served upon all registered counsel via the Court's ECF system.

/s/ Benjamin Longstreth

Dated: December 8, 2015