

ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WEST VIRGINIA,	)	Case No. 15-1363
STATE OF TEXAS, et al.	)	(consolidated with Nos.
	)	15-1364, 15-1365, 15-1366,
Petitioners,	)	15-1367, 15-1368, 15-1370,
	)	15-1371, 15-1372, 15-1373,
	)	15-1374, 15-1375, 15-1376,
v.	)	15-1377, 15-1378, 15-1379,
	)	15-1380, 15-1382, 15-1383,
	)	15-1386, 15-1393, 15-1398,
	)	15-1409, 15-1410, 15-1413,
	)	15-1418, 15-1422, 15-1432,
UNITED STATES ENVIRONMENTAL	)	15-1442, 15-1451, 15-1459,
PROTECTION AGENCY, and REGINA A.	)	15-1464, 15-1470, 15-1472,
MCCARTHY, Administrator,	)	15-1474, 15-1475, 15-1477,
Respondents.	)	15-1483, 15-1488)

**UNOPPOSED MOTION BY THE UNION OF CONCERNED SCIENTISTS
FOR LEAVE TO PARTICIPATE AS *AMICUS CURIAE***

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Dated: March 28, 2016

Pursuant to Fed. R. App. P. 29(b) and D.C. Cir. Rule 29(b), the Union of Concerned Scientists (“UCS”) respectfully moves for leave to participate as *amicus curiae* in support of the Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator, in the above-captioned matters.

Counsel for petitioners in cases nos. 15-1363, 15-1364, 15-1365, 15-1370, 15-1373, 15-1374, 15-1375, 15-1376, 15-1409, 15-1410, 15-1418, and 15-1422, and Intervenor-Petitioner Gulf Coast Lignite Council have stated that they take no position on the question of whether this motion should be granted. Counsel for petitioners in cases nos. 15-1366, 15-1442, 15-1475, and 15-1488; Counsel for respondents; State and Municipal Intervenor-Respondents; Environmental Non-Governmental Organization Intervenor-Respondents; Respondent-Intervenor Advanced Energy Economy; and Respondent-Intervenors 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 either consent to or do not oppose UCS’s participation as *amicus*.

No other counsel for any of the additional parties in these consolidated cases responded to notice sent to designated or liaison counsel, as applicable, asking whether they consented, objected, or took no position on UCS's proposed participation. That notice was sent to designated or liaison counsel, as applicable, on Friday, March 18, 2015, and provided that if no response was received by Friday, March 25, 2016, counsel for UCS would indicate that those parties took no position on this motion.

In support of this Motion, UCS states as follows:

1. Founded in 1969 by Massachusetts Institute of Technology scientists, including Nobel prize-winning physicist Henry Kendall, UCS's core mission is to use scientific research and analysis to solve pressing environmental and social problems. For nearly half a century, UCS has used rigorous scientific analysis toward building a healthy planet and a safer world. UCS now has nearly 500,000 members and supporters.

2. UCS has been warning of the grave dangers of climate change since the early 1990s and has prepared in-depth scientific assessments of the likely impacts of climate change on California, the Northeastern States, the Great Lakes region, and the Gulf Coast States. UCS has developed and led campaigns to pass cost-effective policies to cut heat trapping gases, such as: renewable energy standards by which utilities purchase a designated portion of their supply from

renewable sources; cap and trade programs that use market forces to lower greenhouse gas emissions; increased vehicle efficiency standards to drive down emissions from cars and trucks; and energy efficiency programs to lower our use of energy. UCS joined with others to petition the Environmental Protection Agency (“EPA”) to regulate greenhouse gases under the Clean Air Act, a petition that was upheld by the Supreme Court in *Massachusetts v. EPA*, 549 U.S. 497 (2007).

3. UCS has participated in the international climate negotiations process since it started in 1990. UCS staff members have advised ministers and delegates from the United States and foreign governments on key issues, such as forestry and land use, mechanisms to increase ambition, and reporting and transparency requirements. UCS has also served as a formal or informal adviser to several presidencies of the Conference of the Parties to the United Nations Framework Convention on Climate Change (“UNFCCC”), including most recently, those of Peru and France. UCS has also been a leader in the Climate Action Network, the leading coalition of over 900 organizations around the world pressing for aggressive action on climate change.

4. On October 23, 2015, EPA published the final version of the Clean Power Plan, which regulates carbon dioxide emissions from existing power plants under section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d). 80 Fed. Reg. 64,661 (Oct 23, 2015). Recognizing the critical need for strong regulations to cut

carbon dioxide emissions from the nation's power plants (the largest source of emissions in the United States), UCS advocated for, and commented at length upon, the draft version of the Clean Power Plan. Currently, UCS is engaged in a "Power Ahead" campaign to assist states in preparing state implementation plans that maximize proven and cost effective carbon-cutting technologies such as wind and solar energy and energy efficiency.

5. Carbon emissions from power plants are approximately 30% of total emissions in the United States, and offer the easiest and most cost-effective means of lowering our greenhouse gas emissions. As a result, the Clean Power Plan is an important component of the United States' pledge under the recently-concluded Paris Agreement from COP-21 of the UNFCCC to cut its emissions by 26-28% below 2005 levels by 2025, and a powerful signal to the world of the United States' seriousness in addressing climate change.

6. UCS seeks leave to participate as *amicus curiae* to apply its expertise in scientific research and analysis and long-time engagement in the domestic policy discussion and international negotiations related to greenhouse gas emissions. UCS will explain the threats that climate change poses for the United States, the ways that the Clean Power Plan helps reduce those threats, and the importance of the Clean Power Plan to the United States' commitments under the Paris Agreement.

7. D.C. Cir. Rule 29 permits the filing of a motion for leave to participate as *amicus curiae* up to seven days after the filing of the principle brief of the party being supported, but encourages the filing of a notice of intent as soon as practicable. UCS is filing this motion as soon as practicable and before the supported party has filed briefs addressing the merits of the case. If permitted to file an *amicus* brief, UCS would file a document within the briefing schedule established by this Court for all briefs, including those filed by *amicus curiae* and within any proscribed word limitations.

WHEREFORE, UCS respectfully requests leave to file a brief of *amicus curiae* pursuant to the schedule and any other direction, including word limitations, established by the Court.

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Dated: March 28, 2016

CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rules of Appellate Procedure 27(d)(1) & (2) and 29(b) and D.C. Circuit Rule 29(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.

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Dated: March 28, 2016

CERTIFICATE AS TO PARTIES AND AMICI CURIAE

Pursuant to D.C. Circuit Rule 28(a)(1)(A), counsel certifies as follows:
except for UCS and the following, all parties, intervenors, and amici appearing in
this Court are, to the best of my knowledge, listed in the Opening Brief of
Petitioners on Core Legal Issues [1599889]:

(1) Members of Congress, Sen. Mitch McConnell, Sen. James M.
Inhofe, Sen. Lamar Alexander, Sen. John Barrasso, Sen. Roy Blunt,
Sen. John Boozman, Sen. Shelly Moore Capito, Sen. Bill Cassidy,
Sen. Dan Coats, Sen. John Cornyn, Sen. Michael D. Crapo, Sen. Ted
Cruz, Sen. Steve Daines, Sen. Michael B. Enzi, Sen. Deb Fischer,
Sen. Orrin G. Hatch, Sen. John Hoeven, Sen. Ron Johnson, Sen.
James Lankford, Sen. Joe Manchin, Sen. John McCain, Sen. Lisa
Murkowski, Sen. Rand Paul, Sen. James E. Risch, Sen. Pat Roberts,
Sen. M. Michael Rounds, Sen. Marco Rubio, Sen. Tim Scott, Sen.
Richard C. Shelby, Sen. Dan Sullivan, Sen. John Thune, Sen. Patrick
J. Toomey, Sen. David Vitter, Sen. Roger Wicker, Speaker Paul
Ryan, Majority Leader Kevin McCarthy, Majority Whip Steve
Scalise, Rep. Cathy McMorris Rodgers, Rep. Brian Babin, Rep. Lou
Barletta, Rep. Andy Barr, Rep. Joe Barton, Rep. Gus Bilirakis, Rep.
Mike Bishop, Rep. Rob Bishop, Rep. Diane Black, Rep. Marsha

Blackburn, Rep. Mike Bost, Rep. Charles W. Boustany, Jr., Rep. Kevin Brady, Rep. Jim Bridenstine, Rep. Mo Brooks, Rep. Susan W. Brooks, Rep. Ken Buck, Rep. Larry Bucshon, Rep. Michael C. Burgess, Rep. Bradley Byrne, Rep. Ken Calvert, Rep. Earl L. Carter, Rep. John R. Carter, Rep. Steve Chabot, Rep. Jason Chaffetz, Rep. Mike Coffman, Rep. Tom Cole, Rep. Chris Collins, Rep. Doug Collins, Rep. K. Michael Conaway, Rep. Kevin Cramer, Rep. Ander Crenshaw, Rep. John Abney Culberson, Rep. Rodney Davis, Rep. Jeff Denham, Rep. Ron DeSantis, Rep. Scott DesJarlais, Rep. Sean P. Duffy, Rep. Jeff Duncan, Rep. John J. Duncan, Jr., Rep. Renee Ellmers, Rep. Blake Farenthold, Rep. Chuck Fleischmann, Rep. John Fleming, Rep. Bill Flores, Rep. J. Randy Forbes, Rep. Virginia Foxx, Rep. Trent Franks, Rep. Scott Garrett, Rep. Bob Gibbs, Rep. Louie Gohmert, Rep. Bob Goodlatte, Rep. Paul A. Gosar, Rep. Kay Granger, Rep. Garret Graves, Rep. Sam Graves, Rep. Tom Graves, Rep. H. Morgan Griffith, Rep. Glenn Grothman, Rep. Frank C. Guinta, Rep. Brett Guthrie, Rep. Gregg Harper, Rep. Vicky Hartzler, Rep. Jeb Hensarling, Rep. Jody B. Hice, Rep. J. French, Rep. Richard Hudson, Rep. Tim Huelskamp, Rep. Bill Huizenga, Rep. Will Hurd, Rep. Robert Hurt, Rep. Evan H. Jenkins, Rep. Lynn Jenkins, Rep.

Bill Johnson, Rep. Sam Johnson, Rep. Walter B. Jones, Rep. Jim Jordan, Rep. Mike Kelly, Rep. Trent Kelly, Rep. Steve King, Rep. Adam Kinzinger, Rep. John Kline, Rep. Doug LaMalfa, Rep. Doug Lamborn, Rep. Robert E. Latta, Rep. Billy Long, Rep. Barry Loudermilk, Rep. Frank D. Lucas, Rep. Blaine Luetkemeyer, Rep. Cynthia M. Lummis, Rep. Kenny Marchant, Rep. Tom Marino, Rep. Thomas Massie, Rep. Michael T. McCaul, Rep. Tom McClintock, Rep. David B. McKinley, Rep. Martha McSally, Rep. Mark Meadows, Rep. Luke Messer, Rep. John L. Mica, Rep. Jeff Miller, Rep. John Moolenaar, Rep. Alex X. Mooney, Rep. Markwayne Mullin, Rep. Tim Murphy, Rep. Randy Neugebauer, Rep. Dan Newhouse, Rep. Richard B. Nugent, Rep. Devin Nunes, Rep. Pete Olson, Rep. Steven M. Palazzo, Rep. Stevan Pearce, Rep. Scott Perry, Rep. Robert Pittenger, Rep. Joseph R. Pitts, Rep. Ted Poe, Rep. Mike Pompeo, Rep. John Ratcliffe, Rep. Jim Renacci, Rep. Reid Ribble, Rep. Scott Rigell, Rep. David P. Roe, Rep. Harold Rogers, Rep. Mike Rogers, Rep. Dana Rohrabacher, Rep. Todd Rokita, Rep. Peter J. Roskam, Rep. Keith J. Rothfus, Rep. David Rouzer, Rep. Steve Russell, Rep. Pete Sessions, Rep. John Shimkus, Rep. Bill Shuster, Rep. Michael K. Simpson, Rep. Adrian Smith,

Rep. Jason Smith, Rep. Lamar Smith, Rep. Chris Stewart, Rep. Steve Stivers, Rep. Marlin A. Stutzman, Rep. Glenn Thompson, Rep. Mac Thornberry, Rep. Patrick J. Tiberi, Rep. Scott R. Tipton, Rep. David A. Trott, Rep. Michael R. Turner, Rep. Fred Upton, Rep. Ann Wagner, Rep. Tim Walberg, Rep. Greg Walden, Rep. Jackie Walorski, Rep. Mimi Walters, Rep. Randy K. Weber, Rep. Daniel Webster, Rep. Brad R. Wenstrup, Rep. Bruce Westerman, Rep. Lynn A. Westmoreland, , Rep. Ed Whitfield, Rep. Roger Williams, Rep. Joe Wilson, Rep. Robert J. Wittman, Rep. Steve Womack, Rep. Rob Woodall, Rep. Kevin Yoder, Rep. Ted S. Yoho, Rep. Don Young, Rep. Todd C. Young, and Rep. Ryan Zinke are *amici curiae* in support of Petitioners;

(2) State and Local Business Associations, Texas Association of Business, Pennsylvania Chamber of Business and Industry, Ohio Chamber of Commerce, Alaska Chamber of Commerce, Arizona Chamber of Commerce and Industry, Arkansas State Chamber of Commerce/Associated Industries of Arkansas, Associated Industries of Missouri, Association of Commerce and Industry, Bakersfield Chamber of Commerce, Beaver Dam Chamber of Commerce, Billings Chamber of Commerce, Birmingham Business Alliance,

Bismarck Mandan Chamber of Commerce, Blair County Chamber of Commerce, Bowling Green Area Chamber of Commerce, Bullitt County Chamber of Commerce, Business Council of Alabama, Campbell County Chamber of Commerce, Canton Regional Chamber of Commerce, Carbon County Chamber of Commerce, Carroll County Chamber of Commerce, Catawba Chamber of Commerce, Central Chamber of Commerce, Central Louisiana Chamber of Commerce, Chamber Southwest Louisiana, Chamber630, Chandler Chamber of Commerce, Colorado Association of Commerce and Industry, Colorado Business Roundtable, Columbus Area Chamber of Commerce, Dallas Regional Chamber, Davis Chamber of Commerce, Detroit Regional Chamber of Commerce, Eau Claire Area Chamber of Commerce, Erie Regional Chamber & Growth Partnership, Fall River Area Chamber of Commerce & Industry, Fremont Area Chamber of Commerce, Georgia Association of Manufacturers, Georgia Chamber of Commerce, Gibson County Chamber of Commerce, Gilbert Chamber of Commerce, Grand Junction Area Chamber, Grand Rapids Area Chamber of Commerce, Great Lakes Metro Chambers Coalition, Greater Flagstaff Chamber of Commerce, Greater Green Bay Chamber of Commerce, Greater

Irving-Las Colinas Chamber of Commerce, Greater Lehigh Valley Chamber of Commerce, Greater Muhlenberg Chamber of Commerce, Greater North Dakota Chamber of Commerce, Greater Orange Area Chamber of Commerce, Greater Phoenix Chamber of Commerce, Greater Shreveport Chamber of Commerce, Greater Summerville/Dorchester County Chamber of Commerce, Greater Tulsa Hispanic Chamber of Commerce, Greater WestPlains Area Chamber of Commerce, Hartford Area Chamber of Commerce, Hastings Area Chamber of Commerce, Hazard Perry County Chamber of Commerce, Illinois Manufacturers Association, Indiana Chamber of Commerce, Indiana County Chamber of Commerce, Iowa Association of Business and Industry, Jackson County Chamber, Jax Chamber of Commerce, Jeff Davis Chamber of Commerce, Johnson City Chamber of Commerce, Joplin Area Chamber of Commerce, Kalispell Chamber of Commerce, Kansas Chamber of Commerce, Kentucky Association of Manufacturers, Kentucky Chamber of Commerce, Kingsport Chamber of Commerce, Kyndle, Kentucky Network for Development, Leadership and Engagement, Latino Coalition, Lima - Allen County Chamber of Commerce, Lincoln Chamber of Commerce, Longview Chamber of

Commerce, Loudoun Chamber of Commerce, Lubbock Chamber of Commerce, Madisonville-Hopkins County Chamber of Commerce, Maine State Chamber of Commerce, Manhattan Chamber of Commerce, McLean County Chamber of Commerce, Mercer Chamber of Commerce, Mesa Chamber of Commerce, Metro Atlanta Chamber of Commerce, Metropolitan Milwaukee Association of Commerce, Michigan Chamber of Commerce, Michigan Manufacturers Association, Midland Chamber of Commerce, Milbank Area Chamber of Commerce, Minot Area Chamber of Commerce, Mississippi Economic Council The State Chamber of Commerce, Mississippi Manufacturers Association, Missouri Chamber of Commerce, Mobile Area Chamber of Commerce, Montana Chamber of Commerce, Montgomery Area Chamber of Commerce, Morganfield Chamber of Commerce, Mount Pleasant/Titus County Chamber of Commerce, Myrtle Beach Chamber of Commerce, Naperville Area Chamber of Commerce, Nashville Area Chamber of Commerce, National Black Chamber of Commerce, Nebraska Chamber of Commerce and Industry, Nevada Manufacturers Association, New Jersey Business & Industry Association, New Jersey State Chamber of Commerce, New Mexico

Business Coalition, Newcastle Area Chamber of Commerce, North Carolina Chamber of Commerce, North Country Chamber of Commerce, Northern Kentucky Chamber of Commerce, Ohio Manufacturers Association, Orrville Area Chamber of Commerce, Oshkosh Chamber of Commerce, Paducah Area Chamber of Commerce, Paintsville/Johnson County Chamber of Commerce, Pennsylvania Manufacturers Association, Port Aransas Chamber of Commerce/Tourist Bureau, Powell Valley Chamber of Commerce, Putnam Chamber of Commerce, Rapid City Area Chamber of Commerce, Rapid City Economic Development Partnership, Redondo Beach Chamber of Commerce, Roanoke Valley Chamber of Commerce, Rock Springs Chamber of Commerce, Salt Lake Chamber of Commerce, San Diego East County Chamber of Commerce, San Gabriel Valley Economic Partnership, Savannah Area Chamber of Commerce, Schuylkill Chamber of Commerce, Shoals Chamber of Commerce, Silver City Grant County Chamber of Commerce, Somerset County Chamber of Commerce, South Bay Association of Chambers of Commerce, South Carolina Chamber of Commerce, South Dakota Chamber of Commerce, Southeast Kentucky Chamber of Commerce, Southwest Indiana Chamber,

Springerville-Eagar Chamber of Commerce, Springfield Area Chamber of Commerce, St. Louis Regional Chamber, State Chamber of Oklahoma, Superior Arizona Chamber of Commerce, Tempe Chamber of Commerce, Tennessee Chamber of Commerce and Industry, Tucson Metro Chamber of Commerce, Tulsa Chamber of Commerce, Tyler Area Chamber of Commerce, Upper Sandusky Area Chamber of Commerce, Utah Valley Chamber, Victoria Chamber of Commerce, Virginia Chamber of Commerce, Wabash County Chamber of Commerce, West Virginia Chamber of Commerce, West Virginia Manufacturers Association, Westmoreland County Chamber of Commerce, White Pine Chamber of Commerce, Wichita Metro Chamber of Commerce, Williamsport/Lycoming Chamber of Commerce, Wisconsin Manufacturers & Commerce, Wyoming Business Alliance, Wyoming State Chamber of Commerce, and Youngstown Warren Regional Chamber are *amici curiae* in support of Petitioners;

(3) Former State Public Utility Commissioners, Congressman Kevin Cramer, David Armstrong, Randall Bynum, Charles Davidson, Jeff Davis, Mark David Goss, Robert Hix, Terry Jarrett, Larry Landis, Jon McKinney, Carl Miller, Polly Page, Anthony Rachal III, Dr.

Edward Salmon, Joan Smith, Jim Sullivan, David Wright, and Tom Wright are *amici curiae* in support of Petitioners;

(4) 60Plus Association, Southeastern Legal Foundation, Inc., Joseph S. D'Aleo, State of Nevada, and Consumers' Research, Landmark Legal Foundation are *amici curiae* in support of Petitioners;

(5) Hispanic Leadership Fund, National Black Chamber of Commerce, Harold H. Doiron, Don J. Easterbrook, Theodore R. Eck, Gordon J. Fulks, William M. Gray, Craig D. Idso, Richard A. Keen, Anthony P. Lupo, Thomas P. Sheahen, S. Fred Singer, James P. Wallace, III, and George T. Wolff are movant- *amici curiae* in support of Petitioners;

(6) American Sustainable Business Council and South Carolina Small Business Chamber of Commerce are movant-*amici curiae* in support of Respondents.

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Dated: March 28, 2016

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

The Union of Concerned Scientists (“UCS”) is a non-profit organization that puts rigorous, independent science to work to solve our planet’s most pressing problems. UCS does not have any parent companies and no publicly-held company has a 10% or greater ownership interest in UCS.

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CERTIFICATE OF SERVICE

I hereby certify that on March 28, 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 using the appellate CM/ECF system for service on all registered counsel in these consolidated cases.

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