ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF WEST VIRGINIA,
STATE OF TEXAS, *et al.*

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and REGINA A. MCCARTHY, Administrator,

Respondents.

Case No. 15-1363
(consolidated with Case Nos. 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 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)

UNOPPOSED MOTION BY DIXON BROS., INC., NELSON BROTHERS, INC., WESCO INTERNATIONAL, INC., NORFOLK SOUTHERN CORP., JOY GLOBAL INC., AND GULF COAST LIGNITE COALITION FOR LEAVE TO INTERVENE IN SUPPORT OF PETITIONERS

TRISTAN L. DUNCAN
THOMAS J. GREVER
JUSTIN D. SMITH
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, MO 64108
Tel: (816) 474-6550
tlduncan@shb.com
tgrever@shb.com
jxsmith@shb.com

LAURENCE H. TRIBE
420 Hauser Hall
1575 Massachusetts Ave.
Cambridge, MA 02138
Tel: (617) 495-1767
tribe@law.harvard.edu

JONATHAN S. MASSEY
MASSEY & GAIL, LLP
1325 G Street, N.W., Suite 500
Washington, D.C. 20005
Tel: (202) 652-4511
jmassey@masseygail.com

*Additional counsel for the Gulf Coast Lignite Coalition only on next page.

MARK WALTERS
MICHAEL NASI
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, TX 78701
Tel: (512) 236-2000
mwalters@jw.com
mnasi@jw.com

DOUGLAS BRYAN HUGHES
LAW OFFICES OF D. BRYAN HUGHES
701 N. Pacific Street
Mineola, Texas 75773
Tel: (903) 569-8880
bryan@hughesfirm.com

Attorneys for the Gulf Coast Lignite Coalition only

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties, Intervenors, and *Amici*

Pursuant to D.C. Circuit Rules 15, 27(a)(4), and 28(a)(1), counsel certifies that the Petitioners in the above-captioned cases are:

15-1363 – States of West Virginia, Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, the Arizona Corporation Commission, the State of Louisiana Department of Environmental Quality, the State of North Carolina Department of Environmental Quality, and Attorney General Bill Schuette on behalf of the People of Michigan

15-1364 – State of Oklahoma, ex rel. E. Scott Pruitt, in his official capacity as Attorney General of Oklahoma, and the Oklahoma Department of Environmental Quality

15-1365 – International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO

15-1366 – Murray Energy Corporation

15-1367 – National Mining Association

15-1368 – American Coalition for Clean Coal Electricity

15-1370 – Utility Air Regulatory Group and the American Public Power Association

15-1371 – Alabama Power Company, Georgia Power Company, Gulf Power Company, and the Mississippi Power Company

15-1372 – CO_2 Task Force of the Florida Electric Power Coordinating Group, Inc.

15-1373 – Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

15-1374 – Tri-State Generation and Transmission Association, Inc.

15-1375 – United Mine Workers of America

15-1376 – 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.

15-1377 – Westar Energy, Inc.

15-1378 – NorthWestern Corporation, doing business as NorthWestern Energy

15-1379 – National Association of Home Builders

15-1380 – State of North Dakota

15-1382 – Chamber of Commerce of the United States of America, National Association of Manufacturers, American Fuel & Petrochemical Manufacturers, National Federation of Independent Business, American Chemistry Council, American Coke and Coal Chemicals Institute, American Foundry Society, American Forest & Paper Association, American Iron and Steel Institute,

American Wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and the Portland Cement Association

15-1383 – Association of American Railroads

15-1386 – Luminant Generation Company, LLC, Oak Grove Management Company, LLC, Big Brown Power Company, LLC, Sandow Power Company, LLC, Big Brown Lignite Company, LLC, Luminant Mining Company, LLC, and Luminant Big Brown Mining Company, LLC

15-1393 – Basin Electric Power Cooperative

15-1398 – Energy & Environment Legal Institute

15-1409 – Mississippi Department of Environmental Quality

15-1410 – International Brotherhood of Electrical Workers, AFL-CIO

15-1413 – Entergy Corporation

15-1418 – LG&E and KU Energy LLC

15-1422 – West Virginia Coal Association

Respondents are Regina A. McCarthy, Administrator, United States Environmental Protection Agency and the United States Environmental Protection Agency.

Movant-intervenors 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, American Wind Energy Association, Advanced Energy Economy, 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, Peabody Energy Corporation, Solar Energy Industries Association, the States of New York, California (by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Kamala D. Harris), Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota (by and through the Minnesota Pollution Control Agency), New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Virginia, the District of Columbia, the Cities of Boulder, Chicago, New York, Philadelphia, and South Miami, Broward County, Florida, and NextEra Energy, Inc.

Movant-*Amicus Curiae* is Philip Zoebisch.

B. Ruling under Review

The motion relates to EPA's Final Rule styled *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric* Utility *Generating Units*, issued Aug. 3, 2015 (published at 80 Fed. Reg. 64,662 (Oct. 23, 2015) and codified at 40 C.F.R. pt. 60).

C. Related Cases

This Court has previously issued opinions and orders in the following related cases:

In re Murray Energy Corp., 788 F.3d 330 (D.C. Cir. June 9, 2015);

West Virginia v. EPA, Nos. 14-1112, 14-1146, 14-1151 (D.C. Cir. June 9, 2015);

In re West Virginia, No. 15-1277 (D.C. Cir. Sept. 9. 2015) (*per curiam*); and

In re Peabody Energy Corp., No. 15-1284 (D.C. Cir. Sept. 9. 2015) (*per curiam*).

Dated: November 20, 2015 /s/ Tristan L. Duncan

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, the Proposed Intervenors provide the following disclosures:

Dixon Bros., Inc. ("Dixon Bros.") is a trucking company based in Newcastle, Wyoming that operates in the Upper Midwest and Mountain West (in Wyoming, South Dakota, Montana, North Dakota, Minnesota, and Nebraska). Dixon Bros. is privately owned, has no parent corporation, and no publicly held corporation owns more than 10% of Dixon Bros.'s outstanding shares.

Nelson Brothers, Inc. ("Nelson Brothers") is a blasting-products company that operates in West Virginia, Kentucky, Virginia, Alabama, Indiana, and Wyoming. Nelson Brothers is privately owned, has no parent corporation, and no publicly held corporation owns more than 10% of Nelson Brothers's outstanding shares.

Western Explosive Systems Company ("WESCO") is an explosives distributor and service provider for the mining, quarrying, and construction industries based in Salt Lake City, Utah and serving Arizona, California, Colorado, Idaho, Nevada, New Mexico, Utah, and Wyoming. WESCO is privately held company. WESCO has no parent corporation and no publicly held corporation owns more than 10% of WESCO's outstanding shares.

Norfolk Southern Corporation ("Norfolk Southern") is one of the nation's premier transportation companies. Its Norfolk Southern Railway Company subsidiary operates approximately 20,000 route miles in 22 states and the District of Columbia, serves every major container port in the eastern United States, and provides efficient connections to other rail carriers. Norfolk Southern operates the most extensive intermodal network in the East and is a major transporter of coal, automotive, and industrial products. Norfolk Southern is a publicly-traded company on the New York Stock Exchange ("NYSE") under the symbol "NSC." Norfolk Southern has no parent corporation and no publicly held corporation owns more than 10% of Norfolk Southern's outstanding shares.

Joy Global Inc. ("Joy Global") manufactures and markets original equipment and aftermarket parts and services for both the above-ground and underground mining industries and certain industrial applications. Joy Global's products and related services are used extensively for the mining of coal, copper, iron ore, oil sands, gold, and other mineral resources. Joy Global is a publicly-traded company on the NYSE under the symbol "JOY." Artisan Partners, L.P. holds roughly 14% in JOY shares. The limited partnership is a subsidiary of Artisan Partners Asset Management Inc., which is a publicly traded company on the NYSE under the symbol "APAM."

Gulf Coast Lignite Coalition ("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.

Dated: November 20, 2015 /s/ Tristan L. Duncan

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I. Introduction and Interests of the Proposed Intervenors

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(d), Dixon Bros., Inc. ("Dixon Bros."), Nelson Brothers, Inc. ("Nelson Brothers"), Western Explosive Systems Company ("WESCO"), Norfolk Southern Corp. ("Norfolk Southern"), Joy Global Inc. ("Joy Global"), and the Gulf Coast Lignite Coalition ("GCLC" and, with Dixon Bros., Nelson Brothers, WESCO, Norfolk Southern, and Joy Global, the "Proposed Intervenors") respectfully move for leave to intervene in support of Petitioners State of West Virginia and State of Texas, *et al*. Pursuant to D.C. Circuit Rule 15(b), this motion constitutes a motion to intervene in all petitions for review of the agency action.

Counsel for the Proposed Intervenors have conferred with counsel for Petitioners, Respondents, and Movant-Intervenors. None of the parties or movants opposes this motion. Respondent the United States Environmental Protection Agency, through its counsel the Department of Justice, has indicated that it takes no position on this motion. Counsel for all Petitioners in Nos. 15-1366, 15-1368, 15-1370, 15-1372, 15-1373, 15-1374, 15-1375, 15-1410, and 15-1418 consent to this motion. Counsel for all Petitioners in Nos. 15-1363, 15-1364, 15-1367, 15-1371, 15-1377, 15-1378, 15-1379, 15-1382, 15-1386, 15-1409, 15-1413, and 15-1422 do not oppose this motion. Counsel for all Petitioners in Nos. 15-1380, 15-1383, 15-1393, and 15-1398 take no position on this motion. Counsel for the

International Brotherhood of Electrical Workers, Petitioner in No. 15-1365, consents to this motion. Counsel for all other Petitioners in No. 15-1365 do not oppose this motion. Counsel for Northeast Texas Electric Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., Tex-La Electric Cooperative of Texas, Inc., and Associated Electric Cooperative, Inc., Petitioners in No. 15-1376, consent to this motion. Counsel for Wolverine Power Supply Cooperative, Inc., Petitioner in No. 15-1376 takes no position on this motion. Counsel for all other Petitioners in No. 15-1376 do not oppose this motion. Counsel for Movant-Intervenor Peabody Energy Corporation consents to this motion. Counsel for Movant-Intervenors Calpine Corporation, City of Austin d/b/a Austin Energy, City of Seattle by and through its City Light Department, National Grid Generation, LLC, and Pacific Gas and Electric Company do not oppose this motion. Counsel for all other Movant-Intervenors take no position on this motion.

This case relates to EPA's Final Rule, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," published at 80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Rule"). Despite the importance of coal as an affordable and reliable source of energy, the Rule seeks to compel a substantial reduction in its use. It does so by requiring fossil fuel-fired electric generating units ("EGUs") to meet a national performance rate that forces the reduction of CO_2 emissions by as much as 40 percent, or forces States to meet

equivalent state-wide CO_2 emission "goals." The Rule will harm each of the Proposed Intervenors' businesses in meaningful ways.

Dixon Bros.'s interests are set out in the Declaration of Allen J.H. Dixon and Suzette M. Miller (the "Dixon and Miller Decl."), which is attached hereto as Exhibit A. Dixon Bros. is a family-owned-and-operated business based in Newcastle, Wyoming, which provides for-hire transport trucking of products such as gas, diesel, propane, cement, asphalt, chemicals, among others. Dixon and Miller Decl., at ¶¶ 1-2. Dixon Bros. employs approximately 165 employees. *Id.*, at ¶ 2. Dixon Bros. has for many years worked with the various coal mines in the Powder River Basin, hauling various commodities such as diesel fuel and chemicals for their industrial needs. *Id.*, at ¶ 3. In fact, in 2014 Peabody Energy was Dixon Bros.'s top customer, and through this relationship Dixon Bros. generated 18.41% of its revenue. *Id.*, at ¶ 3. The Rule would devastate Dixon Bros.'s business by depleting the revenue it generates from its relationship with coal mining companies; to wit, Dixon Bros. generates revenue in excess of $4,000,000 in coal-related work and the Rule would negatively impact Dixon Bros.'s revenue, forcing Dixon Bros. to lay off 20-25 employees. *Id.*, at ¶¶ 4-6.

Nelson Brothers's interests are set out in the Declaration of Charles A. Nelson (the "Nelson Decl."), which is attached hereto as Exhibit B. Nelson Brothers is an almost 60 year old family-owned-and-operated business that

employs approximately 400 people and supplies ammonium nitrate-based blasting products to the Alabama surface coal industry. Nelson Decl., at ¶ 1. Coal is the foundation of Nelson Brothers's business—75% of its total sales revenue is directly related to coal. *Id.*, at ¶ 2. Nelson Brothers provides product supply and related services to coal company operations, plants, maintenance shops, rail off-loading facilities, and offices in West Virginia, Kentucky, Virginia, Alabama, Indiana, and Wyoming. *Id.*, at ¶ 2. Nelson Brothers's coal mining-related business in 2002 supplied 33 different customers providing services and product to more than 133 different mine site locations. *Id.*, at ¶ 3. Between 2002 and 2014, Nelson Brothers's coal customer base shrank to just 14 and the mine site locations to 60; product volumes also dropped by 38%. *Id.*, at ¶ 3. EPA regulations have been the primary driver of this decline in Nelson Brothers's business. *Id.*, at ¶ 3. The Rule would further burden Nelson Brothers and deplete its business. *Id.*, at ¶ 3. In addition to the significant negative impacts to the country as a whole, the Rule will specifically impact Nelson Brothers by decreasing sales revenue by between 15 and 20 percent and forcing the company to lay off 35-40 percent of its employees. *Id.*, at ¶ 4.

WESCO's interests are set out in the Declaration of Thomas C. Fredrick, Jr. (the "Fredrick Decl."), which is attached hereto as Exhibit C. WESCO is a provider of blasting materials as well as services to the mining, quarry, and

construction industries. WESCO operates in Arizona, New Mexico, Utah, Nevada, Idaho, and Wyoming. Fredrick Decl., at ¶ 1. WESCO is family founded and operated and has over 200 employees. *Id.*, at ¶¶ 2-3. Much of WESCO's business is with coal companies, and the Rule will significantly impact WESCO because it will negatively impact the business of its coal-company partners. *Id.*, at ¶¶ 4-5. Should WESCO's coal customers be pushed to shut down or mine lower volumes of coal, less of WESCO's products and services will be needed. *Id.*, at ¶ 5. Specifically, should the Rule be implemented, WESCO anticipates laying off 40-50 employees and reducing capital expenditures by $3,000,000 per year. *Id.*, at ¶ 4. And WESCO predicts the Rule would cause its annual sales to decrease by over $13,000,000. *Id.*

Norfolk Southern's interests are set out in the Declaration of David T. Lawson (the "Lawson Decl."), which is attached hereto as Exhibit D. Norfolk Southern is one of the nation's premier transportation companies, employing almost 30,000 people and transporting raw materials, intermediate products, and finished goods mainly in the Southeast, East, and Midwest and, via interchange with rail carriers, to and from the rest of the United States and via overseas freight through several Atlantic and Gulf Coast ports, providing comprehensive logistics services, and offering the most extensive intermodal network in the eastern half of the United States. Lawson Decl., at ¶ 3. Norfolk Southern's subsidiary is one of

seven Class I freight railroads in the United States and operates approximately 20,000 route miles in 22 states and the District of Columbia. *Id.*, at ¶ 4. 21% of Norfolk Southern's 2014 railway operating revenues was from coal transportation. *Id.*, at ¶¶ 5, 10. Serving approximately 84 coal generation plants in at least twenty states (Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin), out of the 141 million tons of coal Norfolk Southern transported in 2014, over 93 million tons was utility coal. *Id.*, at ¶ 6.

The Rule would harm Norfolk Southern's business. *Id.*, at ¶¶ 8-11. EPA's modeling shows that the agency expects that the Rule will force the full or partial closure of many coal-fueled EGUs as early as 2016 and will reduce coal production 21-22% by 2030. *Id.*, at ¶¶ 8-10. The Rule will also directly and negatively impact Norfolk Southern's returns from its PLC subsidiary. *Id.*, at ¶ 13. Norfolk Southern's coal franchise is supported by significant investments in track and infrastructure. *Id.*, at ¶ 14. Such investments are largely fixed, meaning they cannot be repurposed for other parts of Norfolk Southern's business. *Id.* Significant changes in coal volumes will strand Norfolk Southern's investments made in reliance on the current regulatory environment well before the end of their useful lives. *Id.* This will force Norfolk Southern to reduce its workforce. *Id.*, at ¶ 15.

Even now, the Rule disincentivizes Norfolk Southern's investment in its coal franchise. *Id.*, at ¶ 16. And, finally, the Rule will disincentivize Norfolk Southern from continuing to invest in its infrastructure as a whole, which will negatively impact all industries that access and use Norfolk Southern's systems. *Id.*, at ¶ 17.

Joy Global's interests are set out in the Declaration of Sean D. Major (the "Major Decl."), which is attached hereto as Exhibit E. Joy Global is a leading manufacturer and servicer of high productivity mining equipment for the extraction of metals and minerals and has manufacturing facilities in Alabama, Pennsylvania, Texas and Wisconsin, as well as in Australia, Canada, China, South Africa, the United Kingdom, and France. Major Decl., at ¶ 3. As of October 31, 2014, Joy Global employed approximately 15,400 employees worldwide, with approximately 5,500 of those in the United States. *Id.* The Rule would negatively impact Joy Global's business by forcing a reduction in coal production and the full or partial closure of EGUs. *Id.*, at ¶¶ 4-5. As of October 31, 2014, approximately 61 % of Joy Global's revenues came from thermal and metallurgical coal-mining customers, so diminished demand for coal as a fuel for electricity generation in the United States will discourage Joy Global's customers from expanding existing coal mines or developing new coal mines and may also cause some customers to limit or even discontinue their coal mining operations, all of which will lead to reduced

capital expenditures which will, in tum, reduce demand for Joy Global's mining equipment and services. *Id.*, at ¶ 6.

GCLC's interests are set out in the Declaration of Michael Nasi (the "Nasi Decl."), which is attached hereto as Exhibit F. GCLC's members own and operate approximately 12,500 megawatts of installed electric generation capacity in Texas from coal-fired EGUs, including lignite-fired EGUs, that will be regulated by the Rule if it is upheld. Nasi Declr., at ¶ 5. Some also provide additional power to other states. They also own lignite mines and lignite reserves that supply coal as a fuel for EGUs. In addition, 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. *Id.*, at ¶ 6.

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, lignite burning EGUs are typically mine-mouth operations—power plants that are associated with the mines that supply their coal. *Id.*, at ¶ 5. Usually these mines have no purpose other than to supply coal for the plant because lignite is uneconomical to transport to other locations. *Id.*, at ¶ 16.

Because no coal-fired EGUs, including lignite-fired EGUs, can meet the Rule's categorical standard emissions limitation of 1,305 pounds CO_2 per megawatt hour for coal-fired EGUs, GCLC's members will, if the Rule is upheld,

have to close their EGUs or curtail production and/or purchase emission credits or allowances under a CO_2 emissions trading program that does not yet exist. *Id.*, at ¶ 10. But for the 111(d) Rule, the lignite-fired EGUs owned by GCLC's members have market values of several million dollars, in some cases over $100 million. If these EGUs are forced to close because of the Rule, these once-valuable assets will thereafter likely have little value beyond scrap metal. *Id.*, at ¶ 12.

The lignite-fired EGUs and the lignite coal mines owned by GCLC's members are valuable property worth many millions of dollars, but for the Rule. The power plants were built, and the mines were developed, pursuant to a long-standing United States policy to encourage the development of coal, including lignite, as a cheap and reliable fuel for electric power plants. *Id.*, at ¶¶ 12-15. These assets are the investment-back expectations of GCLC's members, articulated as U.S. national energy policy over many years and multiple Presidential administrations, that coal as a fuel for power plants is a fundamental anchor of the national commitment to provide affordable and reliable electric power. *Id.* If the Rule is upheld, at best, the value of these assets will be substantially reduced; at worst they will be rendered valueless. Even in the best case scenario, GCLC's members will be forced to disproportionately bear the cost of the Rule—a Rule that EPA's own figures demonstrate will have virtually no effect on climate change.

Id., at ¶ 15. The Rule disproportionately burdens coal-fired EGUs, and, because of the unique characteristics of lignite, it burdens lignite-fired EGUs most of all.

Similarly, if the Rule is upheld, the lignite mines and reserves owned by GCLC's members will be substantially reduced in value if not rendered completely valueless because lignite has little or no value except as a fuel for power plants. *Id.*, at ¶ 16. Because of its composition, lignite is uneconomical to transport to other markets, so when mine-mouth lignite-fired coal plants close, the lignite mines close with them. *Id.* Additionally, the Rule is already incentivizes the otherwise uneconomical construction or expansion of generation from renewable energy sources and lower- CO_2 emitting natural gas sources. These sources have high initial costs and would not otherwise be developed without the effects of the Rule to impact market choices. *Id.*, at ¶ 11. But for the Rule, their construction would not be economical, and so there is no reason to believe they would be built. Once developed, these renewable energy sources and lower-CO_2 emitting natural gas sources will operate at a lower cost than GCLC's member's coal-fired plants. Therefore, these renewable and natural gas sources can displace GCLC's members lignite-fired plants in the marketplace, and, once built, they will likely continue to operate, even if the Rule is struck down. *Id.* At the same time, the Rule disincentives investment in existing lignite-fired power plants and in opening new

mining areas. This will result in higher fuel costs because it is more costly to mine from existing areas. *Id.*, at ¶ 18.

The Rule will impact coal companies, coal-fired EGUS (including lignite-fired EGUs), lignite mines and other coal mines, and companies that work with one or more of them in significant negative ways. The Proposed Intervenors have important interests in this proceeding and therefore their motion to intervene should be granted.

II. Grounds for Intervention

"Intervention in this court is governed by FED. R. APP. P. 15(d)." *Process Gas Consumers Group v. FERC*, 912 F.2d 511, 515 (D.C. Cir. 1990). "Rule 15(d) simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Financial Corp. v. Board of Governors of Federal Reserve System*, 952 F.2d 426, 433 (D.C. Cir. 1991). This Court has set out the legal standard for intervention:

> In deciding whether a party may intervene as of right, we employ a four-factor test requiring: 1) timeliness of the application to intervene; 2) a legally protected interest; 3) that the action, as a practical matter, impairs or impedes that interest; and 4) that no party to the action can adequately represent the potential intervenor's interest.

Crossroads Grassroots Policy Strategies v. FEC, 782 F.3d 312, 320 (D.C. Cir. 2015). The Proposed Intervenors meet this standard and should be allowed to intervene.

A. The Intervention Motion is Timely

Under Rule 15(d), a motion to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." FED. R. APP. P. 15(d). This Court assesses the timeliness of a motion to intervene by examining the circumstances of the case, including the amount of time elapsed since the inception of the action, the probability of prejudice to existing parties, the purpose for which intervention is sought, and the need for intervention as a means for preserving the putative intervenor's rights. *Karsner v. Lothian*, 532 F.3d 876, 885-86 (D.C. Cir. 2008); *United States v. British Am. Tobacco Australian Servs.*, 437 F.3d 1235, 1238 (D.C. Cir. 2006) (quoting *United States v. Am. Tel. & Tel. Co*., 642 F.2d 1285, 1295 (D.C. Cir. 1980)). The Proposed Intervenors' motion is timely and has been filed within 30 days after the petition for review was filed on October 23.

B. The Proposed Intervenors Have a Legally Protectable Interest, which the Case Will Impair or Impede

Next, an intervenor must identify a "legally protected" interest, which the action may impair or impede. *Karsner*, 532 F.3d at 885. "The inquiry is not a rigid one: consistent with the Rule's reference to dispositions that may 'as a practical matter' impair the putative intervenor's interest, FED. R. CIV. P. 24(a)(2), courts look to the 'practical consequences' of denying intervention." *WildEarth Guardians v. Salazar*, 272 F.R.D. 4, 13 (D.D.C. 2010) (quoting *Fund for Animals,*

Inc. v. Norton, 322 F.3d 728, 735 (D.C. Cir. 2003)). Thus, in environmental litigation, this Court has held that proposed intervenors need only an interest in the litigation—not a cause of action or permission to sue, and "the lack of a cause of action does not, in and of itself, bar a party from intervening." *Jones v. Prince George's County*, 348 F.3d 1014, 1018 (D.C. Cir. 2003).

The Proposed Intervenors satisfy this standard. The Proposed Intervenors have massive interests in the litigation and would be dramatically impacted by the Rule. The Rule seeks to decrease coal production and consumption, reducing the use of coal for electricity generation. The Proposed Intervenors include businesses that rely on the coal industry, in whole or in significant part, as well as the owners of lignite-fired EGUs and lignite mines. The Rule will impair the businesses of each of the Proposed Intervenors, causing layoffs and significant decreases in revenue, and in some cases substantially harming or rendering valueless otherwise valuable commercial property. *See* Dixon and Miller Decl., at ¶¶ 4-6; Nelson Decl., at ¶¶ 3-4; Fredrick Decl., at ¶ 4; Lawson Decl., at ¶¶ 12-15; Major Decl., at ¶¶ 4-6; Nasi Decl., at ¶¶ 10-15. Indeed, EPA's own modeling shows that under the Rule there will be closure of dozens of coal-fueled EGUs beginning in 2016, including customers of some of the Proposed Intervenors. *See* Lawson Decl., at ¶¶ 8-9; Major Decl., at ¶ 5. The Proposed Intervenors thus have direct and practical interests in this litigation.

In *Fund for Animals*, this Court permitted the Department of the Ministry of Nature and Environment of Mongolia ("NRD") to intervene as a defendant in a suit challenging action by the Fish and Wildlife Service ("FWS"). NRD established a protectable interest by alleging that, if a certain kind of sheep were declared an endangered species, Mongolia would lose tourist dollars associated with sheep hunting and a consequent reduction in funding for its conservation program. 322 F.3d at 733. This Court found NRD's "threatened loss of tourist dollars" and the "consequent reduction in funding for Mongolia's conservation program" constituted a "concrete and imminent injury," *id.*, and opined that "loss of revenues during any interim period" supported intervention, *id.* at 735.

Similarly, in *Military Toxics Project v. EPA*, 146 F.3d 948, 954 (D.C. Cir. 1998), this Court permitted intervention based on potential revenue losses from reduced sale of military munitions. This Court described the loss of business as "concrete injury" and opined that it conferred standing for intervention. *Id.*

As in *Military Toxics* and *Fund for Animals*, the Proposed Intervenors' interests justify intervention. The Rule will directly impair the Proposed Intervenors' interests; under established law of this Circuit intervention is warranted.

C. The Proposed Intervenors' Meet the "Minimal Burden" of Showing that Petitioners Do Not Adequate Represent their Interests

To show that Petitioners do not adequately represent the interest of a proposed intervenor, Petitioners must show "that representation of [their] interest 'may be' inadequate; and the burden of making that showing should be treated as minimal." *Trbovich v. United Mine Workers*, 404 U.S. 528, 538 n.10 (1972). Hence, the burden on putative intervenors to show inadequacy of representation "is not onerous," *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir.1986), and the interests they assert "need not be wholly 'adverse' before there is a basis for concluding that existing representation of a 'different' interest may be inadequate." *Nuesse v. Camp*, 385 F.2d 694, 703 (D.C. Cir. 1967); *see also Foster v. Gueory*, 655 F.2d 1319, 1325 (D.C. Cir. 1981) ("This burden is minimal and is met if appellants show that representation of their interests 'may' be inadequate."); *United States v. Am. Tel. & Telegraph Co*., 642 F.2d 1285, 1293 (D.C. Cir. 1980) (stating that a petitioner "ordinarily should be allowed to intervene unless it is clear that the party will provide adequate representation for the absentee").

The Proposed Intervenors meet this standard. The Proposed Intervenors include businesses that rely upon the coal industry in some way or another. Some are privately held, some are publicly traded, but all serve coal companies and the related industry. The Proposed Intervenors also include the owners of lignite-fired

EGUs and lignite mines and reserves. As explained above, because of certain unique properties of lignite, they will suffer injuries in addition to those suffered by the owners of EGUs powered by other ranks of coal. Petitioner States are governmental entities whose interests arise from their obligation to regulate utilities and provide reliable and affordable energy, but they lack the precise interests of the Proposed Intervenors. This Court has instructed that one of the purposes of Rule 15 is to "dispos[e] of lawsuits by involving as many apparently concerned persons as is compatible with efficiency and due process. *Foster*, 655 F.2d at 1324 (quoting *Nuesse*, 385 F.2d at 700). The Proposed Intervenors have distinct interests and should be heard.

*   *   *   *   *

III. Conclusion

For the reasons set forth above, the Court should grant the Motion for Leave to Intervene.

Dated: November 20, 2015

Respectfully submitted.

/S/TRISTAN L. DUNCAN
TRISTAN L. DUNCAN
THOMAS GREVER
JUSTIN D. SMITH
SHOOK, HARDY & BACON L.L.P.
2555 Grand Blvd.
Kansas City, Mo 64108
Tel: (816) 474-6550
tlduncan@shb.com
tgrever@shb.com
jxsmith@shb.com

LAURENCE H. TRIBE
420 Hauser Hall
1575 Massachusetts Ave.
Cambridge, Ma 02138
Tel: (617) 495-1767
tribe@law.harvard.edu

JONATHAN S. MASSEY
MASSEY & GAIL, LLP
1325 G Street, N.W., Suite 500
Washington, D.C. 20005
Tel: (202) 652-4511
jmassey@masseygail.com

*Additional counsel for the Gulf Coast Lignite Coalition only on next page.

MARK WALTERS
MICHAEL NASI
JACKSON WALKER L.L.P.
100 Congress Avenue, Suite 1100
Austin, TX 78701
Tel: (512) 236-2000
mwalters@jw.com
mnasi@jw.com

DOUGLAS BRYAN HUGHES
LAW OFFICES OF D. BRYAN HUGHES
701 N. Pacific Street
Mineola, Texas 75773
Tel: (903) 569-8880
bryan@hughesfirm.com

Attorneys for the Gulf Coast Lignite Coalition only

CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rule of Appellate Procedure 21(d) because it does not exceed 20 pages, excluding the parts of the motion exempted by Rule 21(d). 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)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times Roman.

/s/ Tristan L. Duncan

CERTIFICATE OF SERVICE

I hereby certify that on this day, November 20, 2015, I filed the above document using the ECF system, which will automatically generate and send service to all registered attorneys participating in this case.

/s/Tristan L. Duncan

EXHIBIT A

Declaration of Allen JH Dixon and Suzette Miller

We, Allen JH Dixon and Suzette M. Miller, declare that the following statements made by us are true and accurate to the best of our knowledge, Information and belief:

1. We are the Vice President/CEO and President/COO respectively of Dixon Bros., Inc. Dixon Bros., Inc. is a family owned business based in Newcastle, Wyoming. It was started by our father, James H. Dixon in 1960, thus being in business for 55 years. We have both worked in our family business for 35+ years. Our Dad started the business, we are the second generation working for the family business. There are 3 third generation grandchildren also working for the business.

2. Dixon Bros., Inc. is a for hire transport trucking company. Our corporate headquarters is in Newcastle, WY. We have 10 outlying terminals in Casper, Cheyenne, Gillette, Wyoming; Rapid City, SD; Great Falls and Billings, MT; Mandan and Fargo, ND; Mentor, MN and Sidney, NE. We haul various products such as petroleum products: gas, diesel, propane; cement, asphalt, chemicals and various other products. We have been in business since 1960. We employ around 165 employees. Those jobs include truck drivers, mechanics, administration and clerical positions. We have been trying to grow our business every year by hiring more employees, purchasing new trucks and trailers and acquiring more business.

3. Dixon Bros, has had an ongoing relationship with the various coal mines in the Powder River Basin for many years. Dixon hauls various commodities to the mines such as diesel fuel for their haul trucks and chemicals used in their blasting. In 2014 Peabody Energy was our top customer generating 18.41% of our revenue.

4. The CPP plan would have a huge impact on our operations. The amount of revenue created from this account would greatly diminish if this is put in place. We have seen a decline in revenue from the coal mines that we haul to over the past years because of government regulations. The CPP

plan will have a huge impact on the coal mines we transport to, thus having a snow ball effect that would greatly hurt our company if we lose this business. We have been purchasing new equipment to expand our fleet and hiring more drivers. We would suffer greatly not only hurting our company but laying off employees who do the transporting for the coal mines, laying off clerical/administration since we wouldn't be that busy in the offices also. We pride ourselves with opportunities that we can provide for individuals seeking employment. We are able to offer many benefits to our employees. The CPP plan would hurt our company in too many ways. The coal business provides our company with revenue in excess of $4,000,000.00

5. It is our belief the Clean Power Plan would have devastating effects across the United States and specifically to Dixon Bros., Inc. This new regulation would force utility companies to use less coal by eliminating coal-fired power plants. The coal industry would cease to provide coal to the United States. In our company we would lose anywhere between 20 -25 jobs. This includes a reduction in truck drivers, clerical and management. We feel the negative cost of the Clean Power Plan will far exceed the gain from this new rule.

6. With the loss of 18% of our gross revenues, there would be a great financial harm done to our company which would force us to sell off assets as well as layoffs.

We make this Declaration under penalty of perjury pursuant to 28 U.S.C § 1746, and we state that the facts set forth herein are true.

Allen JH Dixon

Suzette M. Miller

Dated: November 18, 2015

EXHIBIT B

DECLARATION OF CHARLES A. NELSON

I, Charles A. Nelson, declare that the following information and statements made by me are true and correct to the best of my knowledge and belief:

1. I am the Chief Executive Officer of Nelson Brothers, Inc. My father, Dugan, and his brother, Olen, founded our company in 1956 as a supplier of ammonium nitrate-based blasting products into the Alabama surface coal industry. Today my brother, Bill, and I are second- generation owners of Nelson Brothers, Inc. We both began our careers more than 40 years ago working and learning the company business under my dad. We remain today a privately held company providing employment and benefits for approximately 400 people and their families. Next year (2016) will mark 60 years that Nelson Brothers, Inc. has been in business.

2. Nelson Brothers, Inc. is the Managing Member of Nelson Brothers, LLC and Nelson Brothers Mining Services, LLC. These three entities are collectively referred to herein as Nelson Brothers. Surface coal mining is the sole industry we serve in our direct blasting services operations. Coal is the foundation of our business allowing us the opportunity to provide jobs for our employees and their families. Seventy five percent of our total sales revenue is directly related to coal with 86 percent of this specific to thermal coal production. Today we operate our company infrastructure to provide product supply and related services to our coal customer base (operations, plants, maintenance shops, rail off-loading facilities and offices) in West Virginia, Kentucky, Virginia, Alabama, Indiana and Wyoming. Nelson Brothers is both a manufacturer and supplier of industrial-grade blasting products and direct blasting services. Our customer base consists of surface coal producers operating in the major U.S. coal basins. As a service provider, we always, and continue to, invest heavily in what we believe is the most valuable part of our business, our people. Our employment includes a wide-range of specially trained personnel in management and operation of our product manufacturing facilities, equipment maintenance facilities, both long and short haul over-the-road

trained and HAZMAT-certified product delivery truck drivers, on-bench foremen, lead blasters, blaster helpers and field technical support representatives. We work closely with our coal mining customer base in the provision of certified down-hole loading and blasting services in coordination with technical support in order to offer and promote safe and cost effective best practices blasting applications for our customers' mining and coal recovery process.

3. Our coal mining-related business reached its peak in 2002. At that time, we supplied 33 different customers providing services and product to more than 133 different mine site locations. By last year (2014), our coal customer base had shrunk to just 14 and the mine site locations to which we provided products and services dropped to only 60. In addition, our product volumes dropped by 38 percent over that period. Lower natural gas prices have played a small part in the downturn in coal production and usage. By far; however, the biggest impact has been EPA's continued anti-coal regulatory overreach under the direction of both Lisa Jackson and Gina McCarthy in, what I believe, their making every effort to destroy the coal industry. According to the Kentucky Coal Association (KCA), East Kentucky (probably the hardest hit coal mining region to date by EPA's regulations) has recorded a total of more than 30,000 job losses over the past three years. That has equated to a drop of state economic revenue from the coal mining sector of more than 33 percent or approximately $3.3 billion annually. The American Action Forum (AAF) determined that every $1 billion in regulatory cost results in a loss of 8,100 jobs. AFF Director of Regulatory Policy, Sam Batkins, states that this Administration's EPA has heaped more than $10 billion in regulatory burden on the coal industry since 2011 with a promise of adding at least $10 billion more for the immediate future. Thus, according to AFF, that equates to an overall loss of some 162,000 jobs! As a result of such onerous EPA regulations already implemented as of this date, we are basically watching this administration destroy an industry that is so critically vital to and the very backbone of this country's energy security. The coal industry

powers our industrial growth and success and provides every American the quality of life we are so accustomed to today. Yet on August 3, 2015, this administration released its final draft of the 1,600 page Clean Power Plan (CPP) establishing even more stringent "emission standard" guideline mandates to the states. It is my belief the CPP will only serve to bring further devastation and harm to our business, employees and their families. It will harm businesses and their employees across the entire United States. The rule will serve absolutely no benefit of return regarding a reduction of emissions or global temperatures. In a recent study by the Institute for Energy Research (IER), it was found that the Clean Power Plan will do nothing more than result in further restriction of coal-fired power plant operation and construction critically impacting this country's energy base-load. It is projected by IER that this will ultimately lead to significant rolling brown-outs and complete power generation black-outs across the nation. Further, the IER study estimates that the cumulative economic costs over the proposed plan's 2020 to 2030 compliance term totals $1.23 trillion (yes TRILLION). The plan in effect is designed to promote President Obama's "green agenda" by increasing 'renewable' energy sources from today's five percent to 28 percent by the year 2030. A *Wall Street Journal* Op-ed piece in August suggests this will result in an increase of the average consumer's cost per megawatt-hour of electricity by 2.8 times. The EPA seeks to accelerate wind and solar as primary sources for power generation under the CPP rule. In a recent article in *The Washington Post* on July 31, 2015 titled *"Mapping how the United States generates its electricity, "* coal remains the fuel of choice ensuring low-cost, reliable power over the first half of this year (January - June) accounting for 35 percent of this nation's electricity generation. The so-called renewables of wind and solar continue to run a distant last over the same period remaining at only six percent in share. It is difficult to fathom how renewables will account for more than 28 percent of this nation's power generation demand within 15 years (by 2030) as the CPP rule mandates.

4. According to National Economic Research Associates (NERA) Economic Consulting's analysis, the true impact of the CPP rule will be as follows:

- Result in double digit electricity rate increases for 43 states
- Result in overall compliance costs totaling $366 billion to $479 billion over the period 2017-2030. Annual compliance cost impact is estimated to average $41 billion to $73 billion.
- Result in U.S. consumers being mandated under the rule to expend $560 billion to cut electricity use.
- Result in increase of an additional 45,000 MW coal-fired electricity power generation retirement. To date, driven exclusively by EPA regulatory overreach, retirement of more than 70,000 MW of coal-fired capacity electrical generation has already been announced. The cumulative result will be a loss of more than one-third of this nation's coal-fired electric generating fleet by 2020 or within the next four years (keep in mind this is reliable, low-cost, base load electric power generation)!

A recent study by the U.S. Chamber of Commerce forecasts that this plan will cost the U.S. $51 billion in GDP, prevent the creation of more than 224,000 new jobs and hit disposable household income by more than $550 billion: all on an annual basis! The new carbon (CPP) rule will have absolutely no impact on carbon change. ABSOLUTELY NONE WHATSOEVER!! As President Obama hails this plan as "historic," his EPA, using their own model, projects it will only reduce total U.S. Carbon dioxide emissions by six percent at best. The rule will; however, inflict severe harm on our business, employees and their families as it will to ALL American families. Specific to Nelson Brothers, LLC, given current information available, we project implementation of the CPP rule to equate to a loss of sales revenue estimated between 15-20 percent and being forced to reduce our workforce by laying off an additional 35-40 percent of our current employment.

This would include reduction of employment in all aspects of our business including management positions, administrative staff, plant operators, certified maintenance personnel, trained and HAZMAT-certified truck drivers, blasting services and technical support personnel.

5. **The world is not following!!** As the EPA does everything it can to cripple this country's energy position, the overwhelming climate story internationally is one of global coal renaissance. In data supplied by *Mining Technology Market & Customer Insight,* 80 percent of all proven coal reserves are located in just 10 countries. Of that, as confirmed by this administration's own Energy Information Administration (EIA), the United States sits on one quarter of the world's total proven coal reserves boasting proven recoverable reserves of more than 237 billion tonnes. The United States is the world's second largest consumer of coal. China ranks third in proven worldwide coal reserves, yet for the past three years has remained as the world's largest producer and consumer. According to the IER study, China today consumes more than four billion tons of coal each year. This in comparison to less than one billion annual tons consumed in the U.S and an estimated 600 million tons in the European Union. Third world and emerging nations are building their economies on fossil fuel. They are scrambling to take advantage of the abundance of the world's coal reserves as a means of affordable, reliable, clean and secure energy option. They recognize the advantages and critical need that coal provides as they make every effort to emerge from mediocrity and poverty. According to the World Resources Institute, there are some 1,200 coal- fired electricity generation plants slated for construction across 59 countries, with 75 percent of those to be constructed in China and India. The Financial Times concludes that in Germany, an industrialized nation, coal is today, and will remain, the nation's largest fuel source for power generation for perhaps well past the next decade. According to *BP Review of World Energy 2015,* coal use around the world has grown **four times** faster than all renewables combined! The IER study found that China added 39 gigawatts of coal-fired capacity in 2014. Today, China

is expected to add the equivalent of a new 600-megawatt plant every 10 days for the next 10 years using more efficient and cleaner coal-fired generation technologies now available. The IER study goes on to state that Japan plans to construct 43 coal-fired power projects to replace its shuttered nuclear units. Japan is also financing $1 billion in loans to Indonesia and $630 million in loans to India and Bangladesh for construction of coal-fired plants. An IEA report released in December 2014 stated that coal remains the fastest growing international fuel source. It accounted for 30 percent of the global primary energy consumption. *Bloomberg Business* comments that while this administration does everything in its power to destroy coal-fired power generation at an unprecedented rate in this country, the international community is adding coal-fired generation faster.

6. The CPP is really nothing more than President Obama's second attempt at his 'cap-and- trade" carbon trading plan. Five years ago Congress sent a very clear and overwhelming message to the President and his EPA in rejecting his initial cap-and-trade proposal. President Obama's initial cap-and-trade program was so unpopular then that it cost many supportive Democrats their seats in Congress. At that time his carbon-trading program was considered an enormous big federal government intrusion into the free market system. This time, disguised as an EPA regulatory power with his 'Clean Power' initiative, President Obama is attempting an end-run around Congress and the American populous. He is using a regulatory power grab by his EPA in the proposal of the CPP rule to establish a de facto cap-and-trade plan without actually establishing a federal cap-and- trade program. By doing so, he is able to sidestep any Congressional involvement. If allowed to be enacted, the CPP rule will result in irreparable damage to this nation's small businesses everywhere, destroy our economy and literally make a complete and costly shambles out of our energy power sector. As commented earlier, this is nothing more than another attempt in the first failed effort of 'Cap and Trade.' The CPP is a very dangerous, reckless and careless attempt by this administration to

force-feed America a failed, environmental-lobby backed energy agenda.

Date: November 18, 2105

Charles A. Nelson

EXHIBIT C

Declaration of Thomas C. Fredrick Jr

President, Western Explosive Systems Company-WESCO

I am the President of Western Explosives Systems Company-WESCO a joint venture partner with Dyno Nobel. WESCO is a provider of blasting materials, and services to the mining, quarry, and construction industries. We operate in Arizona, New Mexico, Utah, Nevada, Idaho, and Wyoming. Our large customers include Peabody Energy, Western Fuels, BHPbilliton, Newmont, Kinross, Coeur, and Rio Tinto . We are located in Salt Lake City, Utah. My father who has worked in the explosive industry since 1967 founded WESCO in 1991. I have been employed by WESCO since 1993 and became President in 2005. I received an Economics and Spanish degrees from the University of Utah and later received an MBA.

When I began in 1993 WESCO had 25 employees and today we have grown to over 200 employees. Much of WESCO's business is with coal producers. We also sell to metal miners, quarries, and construction projects. WESCO provides blasting materials including ammonium nitrate, emulsions, and initiations systems to rubblize the different materials so they can be handled by mechanized equipment. WESCO also provides many of its customers with blasting services. We provide our customers with the manpower, equipment, and expertise to use the blasting materials we provide.

The Clean Power Plan will negatively impact our business and our coal producing customers. Some of our customers have shutdown because of the Clean Power Plan

and previous regulations. Many of our coal customers are mining lower volumes of coal, which in turn means less of our products and services required. We have decreased the number of our employees by 22 and if the Clean Power Plan is accepted we could see additional cuts of 40-50 people. This would mean a loss of approximately $4,800,000 in wages and benefits to those people losing jobs. We will also reduce capital expenditures by $3,000,000 per year. Our annual sales would decrease by over $13,000,000.

WESCO has a business relationship with Peabody that is over 25 years old. WESCO's business has succeeded and grown because of its growth with Peabody. In its early years Peabody represented over 50% of its annual sales, today it is 20%. Part of the decline in sales to Peabody is due in part to the additional regulations proposed to be imposed upon coal burning power plants, which have affected Peabody and our other coal-mining customers.

The Clean Power Plan will cause significant harm to our customers, our business, and the communities that we live in. The effects wills ripple to the financial markets and investors. Energy costs will increase in America and all manufacturing in this country will be less competitive with foreign manufacturer who receive electricity from coal fired power plants.

EPA and other federal agencies have acknowledged the Clean Power Plan will cause negative impacts of higher compliance costs, negative impacts to U.S. manufacturing,

loss of thousands of U.S. jobs, higher energy costs for consumers, and eliminate many companies, coal fired power plants and harm our company: WESCO. The negative costs will far exceed the gain from this new rule. For these reasons, WESCO supports a stay of the Clean Power Plan.

Thomas C Fredrick Jr.

EXHIBIT D

DECLARATION OF DAVID T. LAWSON

NORFOLK SOUTHERN CORPORATION

I, David T. Lawson, declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My job title is Vice President Coal for Norfolk Southern Corporation ("Norfolk Southern"). I am responsible for the marketing strategies for Norfolk Southern's coal transportation services and oversee Norfolk Southern's Pocahontas Land Corporation subsidiary. This includes the sales responsibilities as well as the forecasting of our resources relative to market demand, including the utility market; export market; domestic metallurgical market and the industrial coal market.

2. I provide this declaration in support of the accompanying Joint Intervenor Motion filed in support of challenges to the Rule issued by the United States Environmental Protection Agency ("EPA"), "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Rule"). This declaration is based on my personal knowledge of facts and analysis conducted by my staff and me.

Norfolk Southern's Business

3. Norfolk Southern is one of the nation's premier transportation companies. We are primarily engaged in the rail transportation of raw materials, intermediate products, and finished goods mainly in the Southeast, East, and Midwest and, via interchange with rail carriers, to and from the rest of the United States. We also transport overseas freight through several Atlantic and Gulf Coast ports. We provide comprehensive logistics services and offer the most extensive intermodal network in the eastern half of the United States. In 2014, Norfolk Southern employed almost 30,000 employees in providing these services.

4. Our Norfolk Southern Railway Company subsidiary is one of seven Class I freight railroads in the United States and operates approximately 20,000 route miles in 22 states and the District of Columbia. Our system reaches many individual industries, electric generating facilities, mines (in western Virginia, eastern Kentucky, southern and northern West Virginia, western Pennsylvania, and southern Illinois and Indiana), distribution centers, transload facilities, and other businesses located in our service area.

5. Norfolk Southern's coal franchise supports the electric generation market as well as the export, metallurgical, and industrial

markets, primarily through direct rail and river, lake, and coastal facilities, including various terminals on the Ohio River, Lambert's Point in Norfolk, Virginia, the Port of Baltimore, and Lake Erie. Most of our carloads in 2014 originated on our lines from major eastern coal basins, with the balance from major western coal basins received via the Memphis and Chicago gateways. Overall, 21% of our 2014 total railway operating revenues was generated by coal transportation.

6. Of the four major markets within our coal franchise (utility, export, domestic metallurgical, and industrial), utility coal is by far our largest. In 2014, out of the 141 million tons of coal Norfolk Southern transported, over 93 million tons was utility coal. We serve approximately 84 coal generation plants in at least twenty states: Alabama, Delaware, Florida, Georgia, Illinois, Indiana, Kentucky, Maryland, Michigan, Mississippi, North Carolina, New Hampshire, New Jersey, New York, Ohio, Pennsylvania, South Carolina, Tennessee, Virginia, and Wisconsin.

7. Norfolk Southern also owns Pocahontas Land Corporation ("PLC"). Headquartered in Bluefield, West Virginia, PLC controls 1,031,497 acres of coal properties in 5 states (West Virginia, Kentucky, Virginia, Illinois and Alabama) with a total reserve base of 1.65 billion tons. Those reserves are approximately 70% steam coal, used for electricity

generation, and 30% metallurgical coal. PLC leases the reserves to coal producers that pay a royalty on each ton produced.

Summary of Harms from the Rule

8. The Rule is aimed at reducing coal use in the United States. EPA's Regulatory Impact Assessment accompanying the Rule predicts that the Rule will reduce coal production for power sector use by 5-7% by 2020, 14-17% by 2025, and 24-25% by 2030. Table ES-11, p. ES-24. EPA predicts that the Rule will reduce coal-fueled electric generation by 5-6% by 2020, 12-15% by 2025, and 22-23% by 2030. Table 3-11, p. 3-26.

9. In fact, EPA's modeling reveals that the agency expects that the Rule will force the full or partial closure of many coal-fueled Electric Generating Units ("EGUs") ***as early as 2016***. In particular, EPA's own modeling based on the Rule shows the shutdown of 11 gigawatts of coal-fueled generation ***in 2016***.

10. EPA further estimates that the Rule will reduce coal production 21 to 22% by 2030, depending on the method of compliance. Table 3A-2, p. 3A-7. Breaking the numbers down by major coal basins, EPA projects that Appalachia will lose 23 to 25% of its coal production for the electric power sector even earlier, by 2025, as a result of the Rule. Table 3-15, p. 3-33.

11. These impacts will adversely affect Norfolk Southern. Although Norfolk Southern has a strong and diverse network, coal remains one of Norfolk Southern's core business groups, accounting for 21% of total railway operating revenues in 2014.

12. It is almost axiomatic that any regulation that will dramatically reduce both domestic coal consumption and production will harm Norfolk Southern's coal transportation business. EPA's projected retirements of coal-fueled generation under the Rule, including more than 11 gigawatts in 2016, includes many retirements within Norfolk Southern's operating territory. The loss of such a substantial amount of coal-fired capacity would in turn substantially reduce Norfolk Southern's utility coal shipments and corresponding revenue.

13. The Rule will also directly and negatively impact Norfolk Southern's returns from its PLC subsidiary. Current production from PLC mining operations is 60% steam coal. As referenced above, EPA has projected that the Appalachian Basin will lose 23 to 25% of its steam production by 2025. Norfolk Southern expects those reductions will be even greater in the Central Appalachian area due to inherently higher costs of mining. Lower production will reduce the royalties Norfolk Southern is able to realize on its PLC reserves.

14. Although such financial impacts are harmful enough on their own, significant reductions in coal volumes would result in additional negative impacts. Norfolk Southern's coal franchise is supported by significant investments in track and infrastructure. Such investments are largely fixed, meaning they cannot be repurposed for other parts of Norfolk Southern's business; track serving a shuttered power plant or coal mine cannot simply be relocated to another portion of the country. Coal transportation also relies on dedicated equipment. For example, Norfolk Southern has a fleet of approximately 22,000 coal cars, of which more than 4,000 are used in utility service. Significant changes in coal volumes will strand such investments made in reliance on the current regulatory environment well before the end of their useful lives. As a result, Norfolk Southern will be forced to rationalize and reduce portions of its current network.

15. Reduced coal transportation and corresponding rationalization of Norfolk Southern's network will also lead to reductions in the size of Norfolk Southern's workforce.

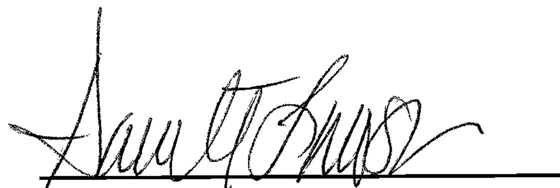
16. Even now, the Rule is a disincentive to current investment in Norfolk Southern's coal franchise. Norfolk Southern is constantly evaluating investment decisions related to our coal-related assets. Impacts

from the Rule will be felt during the useful life of most railroad assets purchased or constructed now. And many investment decisions Norfolk Southern must make now cannot be reversed easily or cheaply, if at all, several years down the road.

17. Finally, these impacts will be felt by all users of Norfolk Southern's rail network. Coal volumes and revenue support Norfolk Southern's ability to reinvest in our network, including a $2.1 billion capital spending program in 2014. Although the direct effects of the Rule will be focused on coal transportation, such traffic shares the same network with Norfolk Southern's other freight traffic, including among others intermodal shipments, chemical commodities, agriculture products, and automotive, as well as passenger trains that operate over our lines. Reduced revenues and incentive to invest in coal transportation will restrict Norfolk Southern's ability to justify investments in our system going forward that otherwise would result in benefits for our other customers and the public at large.

[Signature Page to Follow]

Executed this 19th day of November, 2015.



David T. Lawson
Vice President Coal
Norfolk Southern Corporation

EXHIBIT E

EXHIBIT E: DECLARATION OF SEAN D. MAJOR

I, John D. Major, declare under penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge and belief:

1. My job title is Executive Vice President, General Counsel and Secretary of Joy Global Inc. In this capacity, I have responsibility for all legal matters for Joy Global Inc.

2. I provide this declaration in support of the motion to intervene in challenges to the Rule issued by the United States Environmental Protection Agency ("EPA"), "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Rule"). This declaration is based on my personal knowledge of facts and analysis conducted by my staff and me.

The Company's Business

3. Joy Global Inc. is a leading manufacturer and servicer of high productivity mining equipment for the extraction of metals and minerals. We manufacture and market original equipment and parts and perform services for both underground and surface mining, as well as certain industrial applications. Our equipment is used in major mining regions throughout the world to mine coal, copper, iron ore, oil sands, gold and other minerals. We

are a major manufacturer of underground mining machinery for the extraction and haulage of coal and other bedded minerals. We are also a major producer of surface mining equipment for the extraction and haulage of copper, coal and other minerals and ores. Our principal manufacturing facilities are located in the United States, including facilities in Alabama, Pennsylvania, Texas and Wisconsin, and internationally, including facilities in Australia, Canada, China, South Africa, the United Kingdom, and France. As of October 31, 2014, we employed approximately 15,400 employees worldwide, with approximately 5,500 employed in the United States.

Summary of Harms from the Rule

4. The Rule is aimed at reducing coal use in the United States. EPA's Regulatory Impact Assessment accompanying the Rule predicts that the Rule will reduce coal production for power sector use by 5-7% by 2020, 14-17% by 2025, and 24-25% by 2030. Table ES-11, p. ES-24. EPA predicts that the Rule will reduce coal-fueled electric generation by 5-6% by 2020, 12-15% by 2025, and 22-23% by 2030. Table 3-11, p. 3-26.

5. In fact, EPA's modeling reveals that the agency expects that the Rule will force the full or partial closure of many coal-fueled Electric Generating Units ("EGUs") ***as early as 2016***. In particular, EPA's own

modeling based on the Rule shows the shutdown of 11 gigawatts of coal-fueled generation ***in 2016***.

6. These impacts will adversely affect the company. As of October 31, 2014, approximately 61% of our revenues came from our thermal and metallurgical coal-mining customers. Many of these customers supply coal for the generation of electricity. Diminished demand for coal as a fuel for electricity generation in the United States will discourage our customers from expanding existing coal mines or developing new coal mines and may also cause some of our customers to limit or even discontinue their coal mining operations, all of which can be anticipated to lead to reduced capital expenditures by our customers. This will, in turn, reduce demand for our mining equipment and services.

Executed this 20th day of November, 2015.

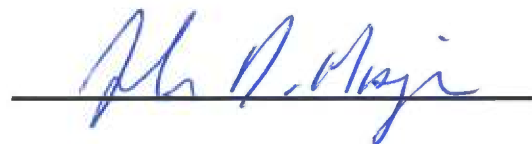


EXHIBIT F

ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, *et al.*, Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	No. 15-1363 (and consolidated cases)

DECLARATION OF MICHAEL NASI

I, Michael Nasi, declare and state as follows:

1. My name is Michael Nasi. I am over the age of 21 and otherwise qualified to make this declaration. I have personal knowledge of the facts contained in this declaration, and they are true and correct.

2. I am a partner in the law firm of Jackson Walker LLP. I am also the general counsel of the Gulf Coast Lignite Coalition (GCLC). In that capacity, I am knowledgeable about GCLC's structure, function, purpose, and membership. As general counsel of GCLC and from my law practice, I am familiar with the Texas electricity market and GCLC's members' participation in that market.

3. I am providing this declaration is support of GCLC's intervention in the challenges to the Rule issued by the U.S. Environmental Protection Agency under Section 111(d)

of the Clean Air Act entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "111(d) Rule" or the "Rule"). This declaration is based on my personal knowledge of GCLC and its members and my personal knowledge of the 111(d) Rule and multiple analyses of the Rule conducted by me and my law firm and the members of GCLC.

4. GCLC is a Texas non-profit corporation, organized under the Texas Nonprofit Corporation Act, Chapter 22 of the Texas Business Organizations Code. GCLC is comprised of individual electric generating and mining companies. All of GCLC's members own and/or operate lignite-fired power plants and/or lignite mines. 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.

5. Collectively, GCLC's members own and operate approximately 12,500 megawatts (MW) of installed electric generation capacity in Texas from coal-fired electric power plants that will be regulated by the 111(d) Rule if it is upheld. Many of these plants are lignite-fired plants. 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, lignite burning power plants are typically mine-mouth operations—power plants that are associated with the mines that supply their coal. Usually these mines have no purpose other than to supply coal for the plant.

6. Additionally, GCLC's members 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.

7. Many of the lignite-fired power plants owned and operated by GCLC's members are operated in 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. Additionally, other lignite-fired power plants owned by GCLC members operate within the Southwest Power Pool in Texas and other states. These lignite-fired power plants owned by GCLC's members are affordable and reliable sources of electric power, and together they make up a significant percentage of the installed capacity in Texas, and also provide power to other states. But for the threat of retirement posed by the 111(d) Rule, these power plants have projected useful lives that extend beyond 2022, when the Rule's emissions limitations will take effect.

8. If allowed to stand, the 111(d) Rule will cause severe harm to GCLC's members. Indeed that harm is already occurring.

9. One purpose of the Rule is to reduce the use of coal as a fuel for power plants in the United States, and it targets lignite-fired plants most of all because, generally speaking, lignite-fired power plants have higher CO_2 emissions than power plants fired by other ranks of coal.

10. No coal-fired power plant, including lignite-fired plants owned and operated by GCLC's members, can meet the 111(d) Rule's categorical standard emissions limitation of 1,305 pounds CO_2 per megawatt hour for coal-fired power plants. There is no technology that can be installed or operational changes that can be made to allow lignite-fired plants to reach this rate and continue to operate at what would otherwise be its most economical capacity. Therefore, GCLC's members' lignite-fired plants will have to close or curtail production and/or purchase emission credits or allowances under a CO_2 emissions trading program that does not yet exist—

assuming they have sufficient assets to curtail production and/or purchase credits and still continue to operate profitably. EPA's own modeling and estimates predict that the Rule will reduce the use of coal for power plants by as much as 25% by 2030. Additionally, EPA's own modeling predicts that many coal-fired power plants, including lignite-fired plants, will close beginning as early as 2016, six years before the Rule's emissions limitations are scheduled to take effect. Furthermore, some lignite-fired power plants have no source of revenue other than the plant itself. If they are forced to curtail production, they cannot generate revenue to purchase emissions credits to allow them to keep operating.

11. Because of this, although the Rule's emissions limitations are not scheduled to take effect until 2022, the Rule is already incentivizing the otherwise uneconomic construction or expansion of generation from renewable energy sources and lower-carbon dioxide ("CO_2") emitting natural gas sources. These sources have high initial costs and would not otherwise be developed without the effects of the Rule to impact market choices. But for the Rule, their construction would not be economical, and so there is no reason to believe they would be built. Once developed, these renewable energy sources and lower-CO_2 emitting natural gas sources will operate at a lower cost than GCLC's members' lignite-fired plants. Therefore, these renewable and natural gas sources can displace GCLC's members' lignite-fired plants in the marketplace, and, once built, they will likely continue to operate, even if the 111(d) Rule is struck down.

12. But for the 111(d) Rule, the lignite-fired power plants owned by GCLC's members have market values of several million dollars, in some cases over $100 million. If these power plants are forced to close because of the Rule, these once-valuable assets will thereafter likely have little value beyond scrap metal.

13. These plants were built pursuant to a long-standing United States policy, dating back at least to the Kennedy administration, to encourage the development of coal as a cheap and reliable fuel for electric power plants and to reduce the United States' dependence on foreign oil.

14. In the 1970s and 1980s, U.S. national energy policy favored coal over natural gas as a fuel for power plants, and some of GCLC's members' plants were constructed during this period, when, under the Power Plant and Industrial Fuel Use Act of 1978, it was, practically speaking, virtually impossible to build a natural-gas or oil-fired power plant.

15. Thus, the lignite-fired power plants of GCLC's members represent the investment-back 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. If the 111(d) Rule is allowed to stand, some of GCLC's members' lignite plants will likely be forced to close, rendering these costly investments essentially valueless, to be replaced by otherwise uneconomical and, in some cases, less reliable fuel sources. In other words, GCLC's members will be forced to disproportionately bear the cost of the 111(d) Rule—a Rule that EPA's own figures demonstrate will have virtually no effect on climate change.

16. Similarly, if GCLC's members' lignite-fired power plants are forced to close prematurely because of the Rule, the lignite mines and lignite reserves owned by GCLC's members will be substantially reduced in value if not rendered completely valueless. Because of its composition, lignite is uneconomical to transport to other markets, so, unlike many other

ranks of coal, lignite is not traded extensively in the world market. Thus, when the mine-mouth lignite-fired power plants close, the lignite mines close with them.

17. Similarly, if GCLC's power plants are forced to curtail production and/or purchase emissions credits (rather than close entirely), the value of their power plants and lignite mines will likely be substantially decreased—for the simple reason that a power plant that can only run one-half or one-quarter of the amount of time it used to run is worth less than it was before.

18. GCLC's members must make future planning and investment decisions for existing plants and lignite mines years in advance. If a power plant is to be closed, that decision must be made years before actual closure. Similarly, if a new area of a lignite mine is to be opened, that decision must be made—and significant capital expenditures must be made—well in advance of the commencement of mining operations. This decision is an important one because, over the normal—i.e., but for the Rule—useful life of the power plant, these expenditures would be justified, even though in the short term they would add to existing debt. Opening a new area of the mine would ultimately lower fuel costs because mining coal from the newly-opened area will be much cheaper than the existing areas currently in use, which are nearing the end of their useful life. If the plant must close prematurely because of the 111(d) Rule, however, it may have to forgo opening a new area of the mine. This will result in higher electric costs over the remaining life of the plant because of the higher costs of mining lignite from older areas of the mine, primarily because of the distance of the coal from the surface and from the plant. In addition, there will be several million dollars in stranded costs that have already been incurred related to the plant and the mine, such things as, for example, environmental controls recently installed to comply with other Clean Air Act regulations, lignite

reserves paid for that will not be used, and costs incurred preliminary to opening new areas of the mine that will now not be opened.

19. While every member's circumstances are different, all own and operate lignite-fired power plants that would be forced to either close or substantially curtail operations from what they otherwise would be but for the 111(d) Rule. All have property that will be rendered less valuable solely because of the Rule, and all will be forced to bear a disproportionate share of the Rule's cost (for little or no environmental benefit). In addition, those plants that close will face increased costs and additional debt; those that do not will experience increased competition from power sources that would not, and could not economically, be built but for the economic incentives created by the Rule. This is particularly true for those plants operating in the ERCOT region, which is not rate regulated.

I make this Declaration under penalty of perjury pursuant to 28 U.S.C. § 1746.

Michael Nasi

Dated: 11/20/15

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