ORAL ARGUMENT NOT YET SCHEDULED
No. 15-1363 (and consolidated cases)

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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

v.

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

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

BASIN ELECTRIC POWER COOPERATIVE'S MOTION TO STAY FINAL RULE

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in Case No. 15-1393 (consolidated with Lead Case No. 15-1363)

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GLOSSARY

BSER	Best system of emission reduction
CAA	Clean Air Act
CO_2	Carbon dioxide
EGU	Electric generating unit
EPA	U.S. Environmental Protection Agency
MWh	Megawatt-hour
NGCC	Natural Gas Combined Cycle
Rule	Final Rule, Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015)

INTRODUCTION

This Court should stay the effective date of EPA's Final Rule ("the Rule")[1] pending judicial review and should extend all compliance dates by the number of days between publication of the Rule and a final decision in this consolidated appeal.[2]

EPA has dramatically expanded the reach of its authority to an unprecedented extent. Whereas in the past EPA has established standards of performance that apply to individual sources, the Rule regulates the entire electricity generation system, across the nation. Also unlike past regulations, the Rule mandates that sources shut down or reduce operations and that new and different sources of electricity be built to replace them. This is not regulating emissions; it is regulating the production of electricity. There are serious questions about the validity of this unparalleled expansion of EPA's authority and, therefore, there is a strong possibility this Court will vacate the Rule.

Meanwhile, compliance with the Rule will require a huge and costly effort by the regulated community, beginning immediately, to develop a vast amount of new electricity generating facilities. Basin Electric Power Cooperative ("Basin Electric") alone will have to spend hundreds of millions of dollars while this appeal is pending, unless a stay is granted. Collectively, parties regulated under the Rule will spend billions in that time frame. If this Court vacates the Rule, these resources will have

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[1] Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64662 (Oct. 23, 2015) (Att. 4).

[2] Basin Electric submitted a request to stay to EPA on October 29, 2015, but has received no response. Also, counsel for Basin Electric has attempted to notify lead counsel for Respondents by telephone and left a voice mail regarding the motion.

been wasted. Balanced against this probable waste is the fact that neither other parties nor the public will suffer any meaningful harm if a stay is granted. Therefore, the Court should stay the Rule pending judicial review of this case.

BACKGROUND

I. Legal Background.

Under § 111(b) of the Clean Air Act ("CAA"), EPA sets "standards of performance" for new sources that belong to certain source categories EPA has found to "cause[], or contribute[] significantly to, air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7411(b)(1)(A). A standard of performance "reflects the degree of emission limitation achievable through the application of the best system of emission reduction which (taking into account the cost of achieving such reduction and any nonair quality health and environmental impact and energy requirements) [EPA] determines has been adequately demonstrated." *Id.* § 7411(a)(1). But for existing sources, § 111(d)(1) grants EPA the more limited authority to establish procedures for the States to establish standards of performance for sources "to which a standard of performance … would apply if such existing source were a new source." *Id.* § 7411(d)(1).

EPA's Rule, rather than simply creating guidelines for the States, establishes stringent standards of performance for carbon pollution from existing fossil fuel-fired electric generating units ("EGUs") premised on a re-structuring of the entire EGU sector. EPA's standards consist of "emission performance rates" for the two

subcategories of coal-fired and natural-gas-fired plants: 1,305 lbs CO_2/MWh (coal) and 771 lbs CO_2/MWh (gas). 80 Fed. Reg. at 64742. Comparatively, in the final rule for *new sources*, EPA set less stringent rates: 1,400 lbs CO_2/MWh (coal) and 1,000 lbs CO_2/MWh (gas). 80 Fed. Reg. 64510, 64512-13 (Oct. 23, 2015).

To reach the emission performance rates for existing sources, EPA used a two-prong analysis: (1) determining the "best system of emission reduction . . . adequately demonstrated" ("BSER"), 80 Fed. Reg. at 64666; and (2) quantifying the BSER and applying it to the source categories, *id.* at 64811. In the first prong, EPA determined that the BSER consisted of three "building blocks": (1) improving efficiency at coal-fired plants; (2) shifting electricity generation from coal-fired plants to lower-emitting natural gas-fired plants; and (3) shifting electricity generation from coal- and natural gas-fired plants to zero-emitting renewable energy sources. *Id.* at 64667. Only the first of these building blocks addresses actions that can be taken at the source. The other two must be implemented externally. Yet EPA argues that all three building blocks are available to affected sources through on-site activities ("operational shifts") or off-site actions ("direct investment" in lower-emitting sources and "emissions trading"). *Id.* To include off-site activities as part of the BSER, EPA interpreted "system of emission reduction" to include not only actions a source can implement at the facility, but any "set of measures that source owners or operators can implement to achieve an emission limitation applicable to their existing source." *Id.* at 64762.

In the second prong, EPA quantified the emission reductions it believed were achievable through application of the building blocks. Applying those reductions, EPA determined the national performance rates for the two sub-categories. *Id.* at 64811. EPA then translated those rates into a single Statewide rate-based goal and an equivalent mass-based goal. *Id.* at 64821. The final performance rates—or the State equivalents—must be achieved by 2030. *Id.* at 64811. EPA also set "mandatory reduction" requirements for the periods of 2022-24, 2025-27, and 2028-29 as "interim performance rates" to create a "glide path" to meet the final goals. *Id.* at 64827-28. In total, EPA estimates that the Rule will result in a 32% reduction in carbon dioxide ("CO_2") emissions from 2005 levels. *Id.* at 64665.

II. Movant's Interests.

Basin Electric is a not-for-profit regional wholesale electric generation and transmission cooperative that provides wholesale power to member rural electric systems in nine States. Basin Electric owns and/or operates electric generation facilities in North Dakota, South Dakota, Wyoming, Montana, and Iowa, serving approximately 2.9 million consumers. Several of these facilities will be required to comply with the Rule's stringent emission requirements. Based on a preliminary assessment, Basin Electric estimates that it will need to retire about 43% of its existing coal-fired generating capacity and build an unprecedented amount of new natural gas-fired and renewable generation resources at a cost of more than 5 billion dollars, with more than $300 million of that amount being spent during the course of this appeal.

ARGUMENT

This Court reviews four factors in determining whether to stay agency action pending appeal: (1) the likelihood that the movant will succeed on the merits; (2) the prospect of irreparable harm to the movant absent a stay; (3) the possibility of harm to other parties if a stay is granted; and (4) the public interest. *See* D.C. Cir. R. 18(a); *Cuomo v. U.S. Nuclear Regulatory Comm'n*, 772 F.2d 972, 974 (D.C. Cir. 1985).

All four criteria are satisfied here, and the Court should issue a stay.

I. Petitioners are Likely to Succeed on the Merits.

Petitioners are likely to succeed on the merits because EPA has exceeded its statutory authority under the CAA. EPA has impermissibly expanded the reach of its § 111(d) authority beyond the statutory directive to regulate emissions from individual sources, and seeks instead to control the operation of the entire electricity generation and distribution structure in the country. EPA also exceeded its § 111(d) authority by regulating existing sources more stringently than new sources, attempting to use BSER to reduce output at existing units, and usurping the regulatory powers Congress conferred upon the States. Finally, even if the Rule were within EPA's authority, the Rule still is neither appropriately justified nor the result of reasoned decisionmaking and, therefore, it is arbitrary and capricious. *See Nat'l Asphalt Pavement Ass'n v. Train*, 539 F.2d 775, 786 (D.C. Cir. 1976) (applying arbitrary and capricious review standard).

1. <u>EPA's authority does not extend beyond individual sources</u>. EPA does not have the authority to include within its BSER framework building blocks 2 and 3,

which reach facilities and activities beyond the "fence line" of an existing source. Under § 111(d), EPA establishes regulations that set forth the procedures for a State to submit a plan that "establishes standards of performance for any *existing source*." 42 U.S.C. § 7411(d)(1) (emphasis added). "Existing source" means any "stationary source" other than a new source, and "stationary source" means "any building, structure, facility, or installation that emits any air pollutant." *Id.* § 7411(a)(3), (6). The CAA thus plainly limits "standards of performance" to the emission of pollutants from the regulated *source*, as performance standards are "emission limitation[s]" that apply to individual buildings, structures, facilities, or installations. *Id.* § 7411(a)(1).

The Rule, however, reaches beyond individual sources to restructure the entire power generating system. EPA recognizes that actions at the facility itself could not achieve significant greenhouse gas emission reductions, particularly where cost would preclude technologies from qualifying as "standards of performance." *See* 80 Fed. Reg. at 64769 (recognizing that building block 1 "yield[s] only a small amount of emission reductions," but that other technologies with greater emission reductions "are substantially more expensive than building blocks 2 and 3"). So to achieve greater reductions, EPA argues that the reference to a "system of emission reduction" radically enlarges its authority. EPA uses a dictionary definition of "system" to argue that the word has a "broad meaning" encompassing emission reduction measures taken outside the facility. 80 Fed. Reg. at 64720, 64761-62. But this distorts the plain meaning of the statute, which provides that a § 111(d) standard of performance

applies only to an existing *source*. When the statute says a standard of performance means what is achievable through the "best system of emission reduction" (or BSER), that "system" is referring back to the standard of performance. Thus, just as the standard of performance applies to the *source*, so does BSER also apply to the *source*. BSER has no meaning independent of the standard of performance, and is not a basis for extending EPA's statutory beyond the individual source.

EPA also argues that the CAA reaches beyond the source to its owners and operators because, "[a]s a practical matter, the 'source' includes the 'owner or operator' of any building, structure, facility or installation for which a standard of performance is applicable." *Id.* at 64762. EPA rationalizes that the CAA references "application" of the BSER, thereby limiting the system to "measures that can be implemented –'appl[ied]' – by the sources themselves, that is, as a practical matter, by the actions by the owners or operators of the sources." *Id.* at 64720. But it defies both the statute and common sense to equate a source with its owner and anything else the owner affects or controls. If that were so, it would follow that, since General Electric manufactures jet engines and washing machines, EPA could treat jet engines and washing machines as the same source. Certainly, that it not the case.

Standards of performance under § 111(d) apply only to sources, not to the country's entire electricity generating framework. EPA is attempting to "change the basic unit to which the [standard applies] from a single building, structure, facility, or installation"—"the unit prescribed in the statute." *ASARCO Inc. v. EPA*, 578 F.2d

319, 327 (D.C. Cir. 1978). But EPA "has no authority to rewrite the statute in this fashion." *Id.* Just as this Court in *ASARCO* rejected EPA's attempt to define a source under § 111 as an entire plant instead of a single building, structure, facility or installation, so should the Court now reject EPA's attempt to define a source to include thousands of plants and other facilities spread across the nation. *See also Util. Air Regulatory Group v. EPA*, 134 S. Ct. 2427, 2442 (2014) (EPA must "operate 'within the bounds of reasonable interpretation'") (citation omitted).

2. EPA cannot regulate existing sources more stringently than new sources. EPA's reliance on a BSER that cannot be implemented by a facility alone results in a standard that is even more stringent than EPA's aggressive standards for new sources. *See supra* at 3. This is fundamentally at odds with the structure and legislative history of the CAA, and thus is not a reasonable application of the CAA.

The CAA is structured to distinguish between new or modified sources and existing sources, and to "recognize that the easiest and most economical time to impose the requirements on major new sources of pollution [is] when a new facility [is] being proposed for construction." *In re Rochester Public Utilities*, PSD Appeal No. 03-03 at 11 (Aug. 3, 2004) (citing H. Rep. No. 95-294 at 185 (1977)). In contrast to § 111(b)'s provisions for new sources, § 111(d) involves an express balancing of the costs of controls and remaining useful life of existing sources against the benefits of regulation. 42 U.S.C. § 7411(d)(1) (requiring the "State in applying a standard of performance . . . to take into consideration, among other factors, the remaining useful

life of the existing source"). This discrepant treatment reflects Congress' judgment that "it was only right that the costs of applying best practicable control technology be considered by the owner of a large new source of pollution as a normal and proper expense of doing business." 1977 H. Rep. No. 95-294 at 184. By promulgating a § 111(d) standard for existing sources that is more stringent than the corresponding § 111(b) standard, EPA has turned this statutory framework on its head.

EPA concedes that the § 111(d) existing source performance standards "have a lower nominal emission limit than the standards for new and modified sources," but argues that assessing the relative stringencies of these standards is "an 'apples-to-oranges' comparison" due to the "flexibility that this rule offers." 80 Fed. Reg. at 64785. This is an apples-to-oranges comparison only because EPA properly applied the § 111(b) standard to "sources" as defined in the CAA, but unlawfully applied the 111§ (d) standard to the entire U.S. electricity generation and transmission system.

Even if EPA were authorized to regulate beyond sources, its claim of flexibility is based on oversimplification and conjecture. For example, Basin Electric has fossil-fuel fired generating assets in two States—North Dakota and Wyoming—with the most stringent State "goals" and the fewest opportunities to take advantage of the Rule's so-called flexibilities.[3] Two of Basin Electric's steam generating units are

[3] Wyoming's goal is 1,299 lbs of CO_2/MWh, a 44.3% reduction from the 2012 baseline, while North Dakota's goal is 1,305 lbs of CO_2/MWh, a 44.9% reduction from the baseline. *See* EPA, Clean Power Plan State-Specific Fact Sheets, www2.epa.gov/cleanpowerplantoolbox/clean-power-plan-state-specific-fact-sheets.

located in Wyoming, which has only one NGCC plant (currently under construction).[4] Under this scenario, "phasing in" reductions as EPA proposes, 80 Fed. Reg. at 64676, provides no meaningful relief for existing steam generating EGUs that must comply with a limit that EPA determined is more stringent than the BSER for new sources.

EPA's interpretation of these provisions therefore fails to "account for both 'the specific context in which . . . language is used' and 'the broader context of the statute as a whole.'" *Util. Air Regulatory Group*, 134 S. Ct. at 2442 (citation omitted).

3. EPA cannot use BSER to reduce generation at existing units. The CAA and source performance standards have never before been used to require facilities to reduce output. EPA concedes as much, noting that "reduced generation by itself does not fit within our historical and current interpretation of the BSER." 80 Fed. Reg. at 64780. Yet EPA also admits that building blocks 2 and 3 are premised on reducing generation at existing fossil-fuel fired EGUs and replacing it with generation from zero-emitting resources. *Id.* at 64724. *See also id.* at 64725 ("[E]ach individual affected EGU is integrated into a 'complex machine' that makes it possible for generation from one generating unit to be replaced with generation from another generating unit *for the purpose of reducing generation from CO_2-emitting generating units*.") (emphasis added).

EPA asserts that limits on a source's capacity are regularly used under other CAA programs. *See id.* at 64780-81; EPA, *Legal Memorandum Accompanying Clean Power*

[4] EPA, Clean Power Plan State Goal Visualizer, State Generation Mix, www2.epa.gov/cleanpowerplantoolbox.

Plan for Certain Issues, www3.epa.gov/airquality/cpp/cpp-legal-memo.pdf ("Legal Mem.") at 62-75. But in each of these cases, a source could install control technology to meet the standard and continue operating; and if it decided to shut down instead of installing controls, that was its choice. *Id.* Here, sources have no such choice. The standard itself is premised on shutting down or reducing output at fossil-fuel fired EGUs—which is an improper use of EPA's § 111 authority. *Cf. Michigan v. EPA*, 135 S. Ct. 2699, 2706-12 (2015); *Util. Air Regulatory Group*, 134 S. Ct. at 2449.

4. EPA impermissibly usurps authority Congress granted to the States. Section 111 creates a clear delineation of authority between EPA and the States in establishing emission reduction requirements for new and existing sources. For new sources, EPA can establish, implement, and enforce standards of performance. 42 U.S.C. § 7411(b). But for existing sources, the *States* are authorized to establish, implement, and enforce such standards; and EPA's authority is limited to prescribing regulations pursuant to which the States establish the standards. *Id.* § 7411(d)(1). These procedures must allow States to take "remaining useful life" and "other factors" into account in determining how to apply a performance standard to a particular source, as the CAA expressly permits the States to consider these factors. *Id.* Only in instances where a State fails to submit a satisfactory plan can EPA step in to establish, implement, and enforce its own performance standard. *Id.* § 7411(d)(2).

In the Rule, EPA has—under the guise of identifying emission guidelines for the States—established binding standards of performance for existing EGUs, thereby

usurping the States' authority under § 111(d). And by prohibiting the States from adjusting their goals based on remaining useful life and other facility-specific factors, 80 Fed. Reg. at 64870, the Rule contravenes the express language of § 111(d).

EPA claims it can limit the manner in which States consider remaining useful life in applying the standards of performance. *See* 80 Fed. Reg. at 64873; Legal Mem., p. 37-38. But EPA cannot reasonably interpret the CAA or its implementing regulations to allow such authority, because "Congress has directly spoken to the precise question at issue." *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984); *see also Medtronic, Inc. v. Lohr*, 518 U.S. 470, 512 (1996) ("Where the language of the statute is clear, resort to the agency's interpretation is improper.").

EPA argues that the Rule provides "inherent flexibility" to allow States to consider remaining useful life within the limits set by EPA. 80 Fed. Reg. at 64871. Yet the "inherent flexibility" EPA relies on does not, in fact, exist. *See supra* at 9-10. Although EPA allows States to consider remaining useful life in *implementing* EPA's standards, it precludes States from considering remaining useful life in *setting* the standards, as provided by the statute.

Further, EPA's terse analysis of stranded assets—which simply assumes that the performance rates can be met without retiring any EGUs before they or any expensive pollution controls installed on them have fully depreciated—does not reflect reality. *See* Legal Mem., p. 44; EPA, Memo to Docket, "Stranded assets analysis," www.regulations.gov/#!documentDetail;D=EPA-HQ-OAR-2013-0602-

36478. In Wyoming and North Dakota, for instance, most of Basin Electric's coal-based EGUs were constructed between the mid-1970's and mid-1980s and are undergoing significant capital investments for pollution controls to meet various requirements of the CAA. Applying the Rule's new requirements to its operations, Basin Electric has determined that 5 of its 12 coal-fired EGUs, representing about 43% of its current coal-fired generating capacity, may have to be shut down before fully depreciated. Att. 1 (Raatz Decl.), ¶ 12. Forcing the premature retirement of these units by limiting their hours or operation will result in stranded investment and considerable premature and uneconomical investment in new resources.

5. EPA's BSER is neither adequately demonstrated nor reasonable. As EPA admits, the BSER cannot be "purely theoretical or experimental," but must "reasonably be projected to be available to an individual source" and "capable of being met under most adverse conditions which can reasonably be expected to recur and which are not or cannot be taken into account when determining the 'costs' of compliance." 80 Fed. Reg. at 64722 (citations omitted). Additionally, the costs of the BSER cannot be "exorbitant," "excessive," or "unreasonable." *Id.* at 64720 (citations omitted); *see also* 42 U.S.C. § 7411(a)(1) (defining "standard of performance").

EPA claims the BSER includes a "menu of actions" that EGUs "may implement in different amounts and combinations in order to achieve their emission limits at reasonable cost." 80 Fed. Reg. at 64724. But nowhere in the Rule does EPA demonstrate that this "menu of actions" (taken alone or in concert) is technically

feasible, is reasonable from a cost perspective, or actually can be implemented by all or most EGUs. *See Nat'l Lime Ass'n v. EPA*, 627 F.2d 416, 431 (D.C. Cir. 1980) (remanding a New Source Performance Standard because "the record does not support the 'achievability' of the promulgated standards for the industry as a whole").

EPA's regional grid-based approach to determining the BSER—which depends on unsupported assumptions about heat rate improvements, increased utilization at certain NGCC facilities, and vast increases in renewable energy availability—is not reflective of what reasonably can be achieved by any single facility. *See* 80 Fed. Reg. at 64727-30. Imposing broad assumptions of an entire "system" on a single source fundamentally redefines the nature of the source, which runs contrary to EPA's policy on the scope of technologies considered when permitting new and modified sources. EPA Office of Air Quality Planning & Standards, "PSD and Title V Permitting Guidance for Greenhouse Gases," EPA-457/B-11-001 at 26 (Mar. 2011), citing *In re Prairie State Generating Co.*, 13 E.A.D. 1, 23 (EAB 2006) ("GHG Permitting Guidance"). According to EPA's guidance, for example, "the option of using natural gas as a primary fuel would fundamentally redefine a coal-fired [EGU]" in most cases. *Id.* at 27. *See also In re La Paloma Energy Center, LLC*, 16 E.A.D __, PSD Appeal No. 13-10, slip op. at 27 (EAB Mar. 14, 2014) (noting the Environmental Appeals Board has upheld determinations "that an all-solar facility would be inconsistent with the applicant's business purpose of providing baseload supply of electricity"). Yet the Rule requires coal-based power plants to comply with a rule premised on the use of

NGCC, nuclear, or renewable generation in a manner not achievable by the source.[5] This effectively redefines the source, arbitrarily departing from EPA's own guidance.

Nor is this an issue on which the Court can defer to EPA, as EPA is not an expert on the nation's electricity generating framework . *See Unbelievable, Inc. v. N.L.R.B.*, 118 F.3d 795, 805 (D.C. Cir. 1997) ("court does not defer to agency decision in matter outside of agency's expertise").

For these reasons and those cited in other Petitioners' motions, EPA's Rule is unlawful, arbitrary, and capricious, and Petitioners are likely to succeed on the merits.

II. Basin Electric Will be Irreparably Harmed if a Stay is Not Granted

If the effective date of the Rule is not stayed and the compliance dates are not extended, Basin Electric will be forced to spend more than $300 million during the course of this appeal to ensure compliance by 2022, notwithstanding that this Court (or the Supreme Court) may well conclude that the Rule is beyond EPA's authority, arbitrary and capricious, or otherwise invalid. Att. 2 (McCollam Decl.), ¶ 22.

Notwithstanding its ongoing efforts to incorporate renewable energy resources into its overall generating portfolio, complying with even the initial interim step requirement under the Rule will require Basin Electric to take immediate, large-scale,

[5] The § 111(a) performance standards set a regulatory floor for the pre-construction permitting program known as "prevention of significant deterioration." *See* 42 U.S.C. § 7479(3). Because the case-by-case Best Available Control Technology determination is source-specific and requires that technology be technically feasible, it follows that the regulatory floor for this assessment—the standard of performance—also must be reasonably applied to the source. *See* GHG Permitting Guidance at 17.

and expensive actions. Att. 1 (Raatz Decl.), ¶ 11; Att. 2 (McCollam Decl.), ¶ 12. Basin Electric will need to spend more than $5 billion dollars building new natural gas baseload capacity and wind and back-up gas generating assets, as well as associated transmission lines, that otherwise are not needed to meet its members' electricity demands. Att. 1 (Raatz Decl.), ¶¶ 22-23. Further, Basin Electric will need to retire significant generating capacity that has between 8 and 28 years of remaining useful life. *Id.*, ¶¶ 4, 21. The net result will be a stranding of assets and significant additional costs that must be borne by Basin Electric's members and their customers. *Id.*, ¶ 22.

Building this renewable energy, gas generation, and transmission infrastructure will involve a complex set of tasks undertaken on a scale significantly beyond anything Basin Electric has ever undertaken in its efforts to integrate renewable energy into its generation mix. Att. 2 (McCollam Decl.), ¶ 22. Basin Electric will need to undertake about 15 large scale projects to develop wind farms and natural gas-fired electric generating facilities just to meet the initial interim step requirements scheduled to take effect in 2022. *Id.*, ¶ 9. Tasks like selecting sites, purchasing property and rights-of-way, conducting necessary technical and environmental analyses, obtaining permits, and constructing and commissioning resources will take years to complete and must be initiated now. *Id.*, ¶¶ 11-12. Immediate efforts are required to ensure that Basin Electric has the ability to satisfy its contractual obligations to provide electricity to its various members while complying with the Rule's emission standards. *Id.*, ¶¶ 11-14.

For Basin Electric to develop the massive amount of new generating assets and transmission lines needed to comply with the Rule's emission requirements in the next six years, before the start of the first compliance period in 2022, would be challenging even during normal times. But these are not normal times. If the Rule goes into effect, it will necessitate a radical transformation of the U.S. electric generation sector, consisting of an unprecedented shutdown of existing coal-fired generating units and a build-out of enormous amounts of new renewable and gas-fired generating resources. The increased demand for all the equipment and services necessary to accomplish this transformation over the next six years likely will result in serious supply shortages and necessitate that companies like Basin Electric act quickly to acquire the necessary equipment to ensure they can continue meeting their customers' electricity demand needs while at the same time complying with the stringent CO_2 emission requirements that, absent a stay, will go into effect in 2022. *See* Att. 2 (McCollam Decl.), ¶ 21. The sheer magnitude of the projects Basin Electric must undertake also necessitates additional time to complete the tasks, above and beyond what would be required for individual projects undertaken in the ordinary course of business. *Id.*, ¶ 11.

Compliance for Basin Electric is further complicated by the likelihood that some of the projects it will need to complete prior to the effective date of the Rule will need to undergo review under the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4321 *et seq.* Basin Electric's service area, particularly in Wyoming, includes extensive federal lands, and the massive amount of acreage necessary for wind farms

as well as substantial transmission infrastructure means it is reasonably possible, if not probable, that some of these projects will be subject to NEPA review. While there is no set time for the NEPA process, it typically requires 3-5 years for large projects such as those that Basin Electric will need to undertake. Att. 3 (Witham Decl.), ¶ 13. The time needed for the NEPA process increases the time pressure to begin immediately to develop the generation assets necessary to comply with the Rule.

Contrary to EPA's predictions suggesting that companies can readily meet the Rule's required CO_2 emission standards through a combination of proven strategies, Basin Electric's specific analysis of its compliance obligations just to meet the initial interim step standard in 2022 show that it could not possibly comply with that standard if it waits until the Court rules on the pending Petitions for Review to begin to develop more than $5 billion in new facilities. While EPA may suggest that Basin Electric can wait until this Court rules on the Petitions for Review before undertaking this herculean task, such a delay would be reckless if Basin Electric expects to both meet its customers' needs and comply with the Rule in the event that it is upheld. Accordingly, Basin Electric must undertake substantial efforts costing hundreds of millions of dollars during the next two years in order to ensure that it will be able to comply with the current 2022 effective date.

In the likely event that the Rule is overturned, Basin Electric's significant expenditures during the pendency of the appeal will have been wasted, and Basin Electric will have no recourse against EPA or any other party to recover those costs.

See, e.g., *Thunder Basin Coal Co. v. Reich*, 510 U.S. 200, 220-21 (1994) (Scalia, J., concurring) ("complying with a regulation later held invalid almost *always* produces the irreparable harm of nonrecoverable compliance costs"); *Chamber of Commerce v. Edmonson*, 594 F.3d 742, 770-71 (10th Cir. 2010) ("Imposition of monetary damages that cannot later be recovered for reasons such as sovereign immunity constitutes irreparable injury."); *Cal. Pharmacists Ass'n v. Maxwell-Jolly*, 563 F.3d 847, 851-52 (9th Cir. 2009) (monetary losses may constitute irreparable harm where sovereign immunity precludes a party from obtaining a remedy in damages against the government defendant), *vacated and remanded on other grounds sub nom.*, *Douglas v. Indep. Living Ctr. of S. Cal., Inc.*, 132 S. Ct. 1204 (2012).

Delaying the effectiveness the Rule and extending the compliance dates to account for the time necessary for the appellate process will avoid such waste.

III. There is Little Risk of Harm in the Absence of a Stay, and the Public Interest Will be Served by a Stay.

A stay will not harm other parties and will serve the public interest. EPA has acknowledged that the Rule "is not about pollution control" but, rather, is "about increased efficiency at our plants," "investments in renewables and clean energy," and "investments in people's ability to lower their electricity bills by getting good, clean, efficient appliances, homes, rental units." *Hearing on EPA's Proposed Clean Power Plan before the Senate Comm. on Envt. & Public Works*, 113 Cong. (2014) (statement of Gina McCarthy, Administrator, EPA). EPA does not attempt to show that the Rule will

actually benefit the climate (and thus the public health and welfare) in any meaningful way. And others' calculations suggest that the Rule may avert the rise of only "less than two one-hundredths of a degree Celsius by the year 2100."[6]

Thus, EPA's regulatory goals will not be thwarted by a stay, and time is not of the essence in implementing the Rule. Indeed, EPA missed its agreed-upon deadline to finalize a rule regulating greenhouse gases from existing EGUs by more than three years. *See* 75 Fed. Reg. 82392 (Dec. 30, 2010) (EPA agreeing to act by May 26, 2012). EPA also extended the implementation date of the Rule two years beyond its initial proposal. 80 Fed. Reg. at 64669. And EPA has recognized that electric utilities already have made strides to reduce greenhouse gas emissions and will continue to do so even without the Rule. *See id.* at 64662 ("This final rule will continue progress already underway in the U.S. to reduce CO_2 emissions from the power sector.").

The public interest also will be served by a stay, which will ensure during the pendency of this appeal the continued provision of affordable and reliable electricity. And, as noted above, delaying compliance with the Rule for a short time will not have any significant impact on climate or public health or welfare.

CONCLUSION

For all these reasons, the Court should stay the Rule.

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[6] Paul C. "Chip" Knappenberger & Patrick J. Michaels, "0.02°C Temperature Rise Averted: The Vital Number Missing from the EPA's 'By the Numbers' Fact Sheet," CATO at Liberty, www.cato.org/blog/002degc-temperature-rise-averted-vital-number-missing-epas-numbers-fact-sheet (June 11, 2014).

Dated: November 5, 2015.

Respectfully submitted,

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Attorneys for Petitioner Basin Electric Power Cooperative

CERTIFICATE OF SERVICE

I hereby certify that the foregoing MOTION TO STAY was electronically filed today through the Court's CM/ECF system, which will electronically serve all registered counsel for the parties to this case.

Dated: November 5, 2015

s/ Christina F. Gomez
Christina F. Gomez
Counsel for Petitioner Basin Electric Power Cooperative

ADDENDUM PURSUANT TO CIRCUIT RULE 18(a)(4)

Pursuant to D.C. Cir. Rule 18(a)(4), Basin Electric states as follows:

Petitioners in Case No. 15-1363 and consolidated cases are:

State of Oklahoma
Oklahoma Department of Environmental Quality
State of West Virginia
State of Texas
State of Alabama
State of Arkansas
State of Colorado
State of Florida
State of Georgia
State of Indiana
State of Kansas
State of Louisiana
State of Missouri
State of Montana
State of Nebraska
State of New Jersey
State of Ohio
State of South Carolina
State of South Dakota
State of Utah
State of Wisconsin
State of Wyoming
Commonwealth of Kentucky
Arizona Corporation Commission
State of Louisiana Department of Environmental Quality
State of North Carolina Department of Environmental Quality
Attorney General Bill Schuette on behalf of the People of Michigan
International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO
Murray Energy Corporation
National Mining Association
American Coalition for Clean Coal Electricity
Utility Air Regulatory Group
American Public Power Association
Alabama Power Company

Georgia Power Company
Gulf Power Company
Mississippi Power Company
CO2 Task Force of the Florida Electric Power Coordinating Group, Inc.
Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.
Tri-State Generation and Transmission Association, Inc.
United Mine Workers of America
National Rural Electric Cooperative Association
Westar Energy, Inc.
NorthWestern Corporation, doing business as NorthWestern Energy
National Association of Home Builders
State of North Dakota
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
Portland Cement Association
Association of American Railroads
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
Luminant Big Brown Mining Company, LLC
Basin Electric Power Cooperative
Energy & Environment Legal Institute

Respondents in these cases are:

United States Environmental Protection Agency (EPA)
Regina A. McCarthy, Administrator, EPA

Movant-Intervenors are:

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
State of New York
State of California (by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Kamala D. Harris)
State of Connecticut
State of Delaware
State of Hawaii
State of Illinois
State of Iowa
State of Maine
State of Maryland
State of Minnesota (by and through the Minnesota Pollution Control Agency)
State of New Hampshire
State of New Mexico
State of Oregon
State of Rhode Island
State of Vermont
State of Washington
Commonwealth of Massachusetts
Commonwealth of Virginia
District of Columbia
City of Boulder

City of Chicago
City of New York
City of Philadelphia
City of South Miami
Broward County, Florida

Amicus curiae are:

Philip Zoebisch

s/ Christina F. Gomez
Christina F. Gomez
Counsel for Petitioner Basin
Electric Power Cooperative

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ATTACHMENT 1

DECLARATION OF DAVID RAATZ

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, *et al.*,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 15-1363
	)	(and consolidated cases)
U.S. ENVIRONMENTAL PROTECTION AGENCY *et al.*,	)	
	)	
	)	
Respondents.	)	

DECLARATION OF DAVID RAATZ IN SUPPORT OF PETITIONER BASIN ELECTRIC POWER COOPERATIVE'S MOTION FOR STAY OF FINAL RULE

I, David Raatz, hereby declare and state that the following is true and correct to the best of my knowledge, based on my personal knowledge and information provided by Basin Electric Power Cooperative ("Basin Electric") personnel:

1. My name is David Raatz, and I am the Vice President for Cooperative Planning for Basin Electric. My business address is 1717 East Interstate Avenue, Bismarck, North Dakota. I am over the age of 18 years and am competent to testify concerning the matters in this declaration. I have over 35 years of experience in electricity generation. I have been employed at Basin Electric since 1980 and have a Bachelor of Science degree in Electrical Engineering from North Dakota State University, Fargo. As Vice President for Cooperative Planning, I am responsible for developing Basin Electric's long-term electrical generation

planning processes and working with member cooperatives to manage electrical load expectations to assure reliability of the Basin Electric system. Long-term generation planning processes include negotiations for long-term resources through power purchase and sale arrangements as well as the development of long-term hedging strategies. I am responsible for the transmission service arrangements required to serve member load levels, capacity and reserve sharing activities. I represent Basin Electric in all power pool and Regional Transmission Organizations electric generation activities. As the Vice President for Cooperative Planning, I am also responsible for the negotiation, development and implementation of member wholesale power contracts including rates, billing data and member support services.

2. This declaration is submitted in support of Basin Electric's request for a stay of EPA's rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule," 80 Fed. Reg. 64661 (October 23, 2015) (the "Final Rule").

3. Basin Electric is a not-for-profit regional wholesale electric generation and transmission cooperative owned by over 130 member cooperatives. Basin Electric provides wholesale power to member rural electric systems in nine states, with electric generation facilities in North Dakota, South Dakota, Wyoming, Montana, and Iowa serving approximately 2.9 million consumers.

4. Basin Electric has numerous electric generating units ("EGUs") that are affected facilities and must comply with the stringent carbon dioxide ("CO_2") emission limits under the Final Rule. These affected EGU's have long remaining useful lives and currently emit CO_2 at rates that are significantly above the rates required under the Final Rule. Table 1 below identifies the EGUs that will be impacted when the Final Rule goes into effect in 2022.

TABLE 1

Affected EGU	Location	Unit Type	2012-2014 Avg. CO_2 Emission Rate	Depreciable Life
Leland Olds Station Unit 1	North Dakota	Coal-Fired Steam Unit	2,514 lbs/MWh	2030
Leland Olds Station Unit 2	North Dakota	Coal-Fired Steam Unit	2,403 lbs/MWh	2040
Antelope Valley Station Unit 1	North Dakota	Coal-Fired Steam Unit	2,453 lbs/MWh	2036
Antelope Valley Station Unit 2	North Dakota	Coal-Fired Steam Unit	2,505 lbs/MWh	2038
Laramie River Station Unit 1	Wyoming	Coal-Fired Steam Unit	2,438 lbs/MWh	2032
Laramie River Station Unit 2	Wyoming	Coal-Fired Steam Unit	2,259 lbs/MWh	2033
Laramie River Station Unit 3	Wyoming	Coal-Fired Steam Unit	2,525 lbs/MWh	2034
Dry Fork Station	Wyoming	Coal-Fired Steam Unit	2,286 lbs/MWh	2044
Deer Creek Station	South Dakota	Natural Gas Combined Cycle Unit	1,013 lbs/MWh	2045
George Neal Station Unit 4	Iowa	Coal-Fired Steam Unit	2,060 lbs/MWh	2040
Wisdom Generating Station Unit 1	Iowa	Natural Gas Fired Steam Unit	2,820 lbs/MWh	2025
Walter Scott Junior Energy Center Unit 3	Iowa	Coal-Fired Steam Unit	2,000 lbs/MWh	2038

Walter Scott Junior Energy Center Unit 4	Iowa	Coal-Fired Steam Unit	1,780 lbs/MWh	2050

5. Basin Electric is committed to an "all of the above" generating strategy that includes both fuel-fired and renewable generating resources. Basin Electric has invested over a billion dollars in developing new renewable energy resources and currently has a non-hydroelectric renewable energy portfolio of approximately 750 MW. Additionally, Basin Electric will bring approximately 670 MW of new wind generating capacity on-line during the next two years. Once this wind generation is running, non-hydroelectric renewable energy will make up approximately 22.5% of Basin Electric's total generating capacity.

OVERVIEW OF THE FINAL RULE

6. Under the Final Rule, affected EGU's must meet stringent CO_2 emission limits. Specifically, the Final Rule establishes final and interim CO_2 emission performance rates for two sub-categories of existing EGUs, fossil-fuel fired steam generating units (including coal and natural gas fired boilers) and stationary combustion turbines (consisting of natural gas combined cycle ("NGCC") units and combined heat and power units). By 2030 steam generating affected EGU's must meet a final limit of 1,305 lbs/MWhnet and NGCC units must meet a limit of 771 lbs/MWhnet. 80 Fed. Reg. 64661, 64962 (40 CFR Part

60, Subpart UUUU, Table 1)[1]. During the interim period from 2022-29 these units must meet a limit of 1,534 lbs/MWhnet and 832 lbs/MWhnet. *Id.* As an alternative to the sub-category emission rate standards, the Final Rule allows states to adopt a single emission rate performance goal applicable to both categories of affected EGU's. *Id.* at 64962 (40 CFR Part 60, Subpart UUUU, Table 2).[2] Finally, the Final Rule requires that states establish interim step standards for the years 2022-24, 2025-27, and 2028- 29. *Id.* at 68849. For the states where Basin Electric has coal-fired steam generating units (North Dakota, Wyoming and Iowa) the state performance goal for the first interim step in 2022-2024 ranges from 1638 lbs/MWhnet to 1671 lbs/MWhnet. *Id.* at 64824.[3]

7. Because affected coal fired steam generating units cannot meet the emission rate requirements of the Final Rule through technological or operational changes at the units themselves, the Final Rule contemplates that these units will reduce their effective CO_2 emission rates by reducing generation and replacing it

[1] The Final Rule does provide states with the option of establishing mass based limits under Subpart UUUU Tables 3 and 4, *see* 80 Fed. Reg. at 64961-64, but ultimately any alternative standard must be equivalent to the sub-category specific CO_2 emission performance rates set forth in 40 CFR, Part 60, Subpart UUUU Table 1. *Id.* at 64667. Based on Basin Electric's analysis of the different options to date it appears that while the form of the standards that states ultimately adopt may result in marginally different compliance obligations for affected EGUs, the overall impact of the rule will be similar regardless of which options states select.

[2] To calculate the state emission rate goals EPA used a weighted average of the two sub-category performance rate standards based on the relative proportion of generation from the two sub-categories in the particular state during 2012. USEPA, *CO_2 Emission Performance Rate and Goal Computation Technical Support Document for CPP Final Rule*, at 20 (August 2015). Accordingly, for states with only steam generation affected facilities, Such as North Dakota, the state performance rate goal is the same as the steam generation sub-category performance rate. *See* 40 CFR, Part 60, Subpart UUUU Table 2. 80 Fed. Reg. at 64962.

[3] While states have some flexibility to establish a different emission rate for the interim period steps, if they select emission rates different than what EPA established they must demonstrate that these interim step period requirements will meet the overall emission rate requirement for the interim period. 80 Fed. Reg. at 64849.

with generation at new zero emitting renewable energy sources and lower emitting existing natural gas combined cycle units. 80 Fed. Reg. at 64667.

8. To facilitate this process the Final Rule provides that states can issue emission rate credits ("ERCs") to certain resources including new renewable energy resources and existing natural gas generating resources that affected facilities can then use to blend down their effective CO_2 emission rates. *See* 40 CFR §§ 60.5795-60.5810 (80 Fed. Reg. at 64950-51). To accomplish this the Final Rule also allows for states to establish trading programs that allow affected entities in their states to buy and sell ERCs. *Id.* The right to buy or sell ERCs, however, is not absolute, and can only occur if specifically provided for under the applicable state plans. *See* 40 CFR §60.5810(b). Additionally, certain requirements in the Final Rule limit the ability of an otherwise qualified resource to generate ERCs. *See e.g.* 40 CFR §§ 60.5800(a)(3)(ii) (providing that ERCs cannot be generated from a resource that is located in a state that adopts a mass based CO_2 emission goal). Accordingly, while the Final Rule relies on the ability of affected EGUs to demonstrate compliance with the sub-category emission performance rates through the purchase of ERCs, because the Final Rule does not establish a market for ERCs, and places limits on the states in establishing such markets under state plans, it is entirely uncertain whether, and the extent to which,

affected EGUs can rely on the actions of others to provide the amount of ERCs necessary to comply with the Final Rule.

9. EPA suggests that states will have significant flexibility in crafting state plans and that as a result of this flexibility states can tailor requirements to address the particular circumstances of affected EGUs within their state. In fact, this flexibility is severely limited. While states have the option of modifying the form of the standards that EGUs must comply with they have no authority to adopt standards that are less stringent than those established under the Final Rule. *See* 40 CFR § 60.5855(b).

10. In fact, the flexibility afforded states under the Final Rule creates uncertainty for affected EGUs. Final state plans are due at the earliest on September 6, 2016, and states have the option to get an extension until September 6, 2018. 40 CFR § 60.5855(b). Accordingly, affected EGUs may face significant uncertainty with respect to their specific compliance obligations until 2018.

IMPACT OF THE FINAL RULE ON BASIN ELECTRIC

11. Since the EPA Administrator signed the Final Rule on August 3, 2015, Basin Electric has undertaken an extensive analysis of its potential compliance obligations in meeting the final standards, the interim standards and the first interim step standard. This analysis has included looking at various different compliance scenarios that could be required under the Final Rule

including compliance with the sub-category performance rates, the statewide emission performance goals, and compliance with a mass based standard. While the compliance obligations under these different scenarios vary somewhat, regardless of the scenario, Basin Electric will need to radically alter its current (and planned) generation mix through the significant curtailment of existing coal-fired generation assets and the development of massive new amounts of renewable energy. Because the new renewable energy will be an intermittent source, and because Basin Electric will need to meet its customers' demands regardless of whether the renewable energy is available, Basin Electric will also need to develop roughly equivalent amounts of gas generation resources to provide electricity when electricity from renewable sources is not available. Finally, to bring the electricity generated from these new resources to the market, Basin Electric will need to build significant amounts of new transmission lines and associated infrastructure.

12. Specifically, Basin Electric has analyzed what actions it will need to undertake in complying with the applicable state emission performance rates during the first interim step period. *See* 80 Fed. Reg. at 64824. As described more fully below, in order to meet this emission rate starting in 2022 Basin Electric estimates that it will need to develop approximately 1,350 MW of new wind[4] and 1,740 MW of new natural gas resources and shut down or curtail operations at 5 of

[4] While the rule allows other forms of renewable energy, given the location of Basin Electric's assets and its customers, and the relative costs of various forms of renewable resources, wind is by far the most cost-effective option for Basin Electric.

its existing coal-fired steam generating units, representing approximately 43% of its existing coal-fired generation capacity.

A. Methodology and Assumptions Used in Assessing Impact of the Final Rule on Basin Electric as of 2022

13. To assess the impact of the Final Rule on Basin Electric we conducted an in-depth analysis of changes to Basic Electric's generating assets necessary to accomplish two requirements: 1) providing sufficient electricity to meet the projected demand of our members; and 2) the creation of sufficient ERCs necessary to blend down the effective CO_2 emission rates of the affected coal-fired steam generating units that will continue to operate under the compliance scenario.

14. As a starting point, we calculated actions that Basin Electric would need to take to meet projected member demand in 2022 absent the Final Rule under a base case scenario. To do this we used standard planning procedures regarding customer demand and current projections about the development of new generating assets. Using these standard procedures, Basin Electric projects that it will complete the ongoing construction of approximately 670 MW of wind generation (slated to go on-line in the next two years) and approximately 600 MW of natural gas generation by 2022.

15. Next, Basin Electric calculated what would be needed in 2022 if the Final Rule remains in effect. This calculation used the same projection

methodologies used in the base case, but also assessed what additional changes would be needed to meet the 2022 emission rate requirements.

16. As an initial matter we made certain assumptions about what we would need to comply with under the Final Rule, and what actions could be used to demonstrate compliance. First, we assumed our affected coal-fired generating units would need to comply with the state emission performance rate goals that the EPA calculated for the first interim step period (1,671 lbs/MWhnet for North Dakota, 1,662 lbs/MWhnet for Wyoming, and1,638 lbs/MWhnet for Iowa) . While it is possible the states Basin Electric operates within could adopt mass based performance requirements, because the rule does not provide how states must allocate mass based allowances, it is not clear what requirements Basin Electric will be required to comply with under a mass based system until completion of state plans in 2016 or 2018. Alternatively, states could adopt the sub-category performance rate goals set forth in 40 CFR Part 60, Subpart UUUU Table 1; but because the state performance goals in the states where Basin Electric's coal-fired generating assets are located are so close to the sub-category performance rate for coal-fired steam generating units, the difference between the two scenarios is inconsequential. Second, we assumed Basin Electric would need to rely on its own actions to comply rather than using ERCs generated by non-Basin Electric entities. As noted above, while a market for ERCs could potentially

develop, no such market currently exists. Further, the Final Rule does not mandate such a market, leaving it up to the various state plans, and there are potentially significant regulatory impediments to the development of a robust market. Finally, even if there were a market mechanism, there is absolutely no guarantee other entities will generate excess ERCs by over-complying with the stringent requirements of the rule, particularly during the first few years of the Final Rule, or that they will not bank these excess ERCs to ensure they have sufficient credits to comply in later years. Accordingly, given the potentially significant penalties associated with exceeding emission limits, prudence dictates Basin Electric assume it will need to comply through its own actions.

17. While Basin Electric assumes it cannot rely on ERCs obtained on the open market, it also assumes that it can freely allocate ERCs generated in one state to show compliance at a unit located in another state. Because interstate trading of ERCs is only allowed when provided for under individual state plans, this assumption may not necessarily be true. If Basin Electric must show compliance based solely on ERCs generated within the state where an affected facility is located, it will need to build even more wind generation than projected in the analysis to-date.

18. Our analysis did not attempt to quantify reductions that could be accomplished through either heat rate improvements at existing steam generating

units or the re-dispatch of generation from steam generating units to the NGCC units. Based on the age of our existing steam generating units and improvements that have previously been undertaken, we are skeptical whether any meaningful heat rate improvements could be achieved. Further the 2-4% heat rate improvements EPA projects in the Final Rule are so small compared to the emission rate reductions required, achieving such heat rate improvements will have a very small impact on the amount of new renewable energy resources required to comply. Similarly, in the states Basin Electric operates within, there is little existing NGCC capacity. Accordingly, re-dispatching to existing NGCC capacity provides minimal benefit for Basin Electric.

19. As part of this scenario, Basin Electric accounted for projected reduced demand as a result of compliance with the Final Rule. Specifically, the analysis assumed a 30% reduction in demand obligations in one of Basin Electric's load serving areas in Wyoming to account for the projected reduced production of coal, potential coal mine shutdowns, and resultant reduction in electricity demand from Wyoming's coal mines, as a result of the Final Rule.

20. Finally, Basin Electric took the difference of the new projected assets necessary to comply with the Final Rule with the assets projected to be built under the base case to determine the net impact of the Final Rule.

B. Detailed Summary of Existing Resource Curtailment and New Resource Development to Comply with the Final Rule

21. Based on this analysis (and pending additional more detailed analysis) it is anticipated Basin Electric will need to undertake the following changes to its generating assets in order for its affected steam generating EGUs to comply with the Final Rule in 2022:

- Develop approximately 1,350 MW of new wind resources in addition to the approximately 670 MW of wind generation that is scheduled to come on-line during the next two years;[5]
- Shut down the following existing steam generating units;
  - Leland Olds Station Units 1 and 2;
  - Laramie River Station (2 out of the 3 existing units);[6] and
  - Earl F. Wisdom Generating Station Unit 1;
- Build approximately 1740 MW of natural gas generating capacity. This generation will be needed to back-up the new wind generating capacity and replace existing base-load generation capacity lost from the shut-down of existing coal-fired generation units. Based on an

[5] While the costs of this additional 670 MW of wind resources are not included in the calculation of the impact of the Final Rule, the ERCs projected to be generated from these resources are used as part of the compliance calculation.

[6] All three Laramie River Station Units are owned by the Missouri Basin Power Project ("MBPP"). Each entity comprising MBPP has an individual joint interest in the station as a whole with different scheduling entitlements according to the unit. Basin Electric's analysis described herein only accounts for the share of LRS that Basin Electric owns. Basin Electric has not tried to account for MBPP as a whole or any entity therein and makes no representation regarding what MBPP or any entity therein may do with respect to the remaining share of LRS. Further, any final determination on retirement would require an affirmative vote of all participants.

initial high level assessment, this gas generating capacity could be configured as follows:

- 670 MW of reciprocating engine generating capacity to back-up the new wind generation;
- 270 MW of simple cycle combustion turbine generating capacity; and
- 800 MW natural gas combined cycle turbine to replace base-load generating capacity lost[7].

22. The expected costs of building all these new assets, to comply with the Final Rule in 2022, is approximately $5 billion. Additionally, significant costs will be incurred in building new transmission lines and substations. However, because the location of all of these required new generating assets has not been determined, the costs associated with building this new transmission infrastructure cannot be quantified.

23. This cost figure represents the total estimated cost that Basin Electric will incur during the period from now until 2022. As discussed more fully in the Declaration of Gavin A. McCollam attached to Basin Electric's Motion for Stay, a significant portion of these costs will be incurred during 2016 and 2017 when the Court is considering whether to overturn the Final Rule. If the Court determines

[7] More detailed analysis could indicate that a different configuration would be more optimal to meet Basin Electric's needs, but that configuration is anticipated to include some combination of simple cycle, combined cycle and reciprocating engines, and would not be materially different from a cost or scheduling perspective.

that the rule is invalid, these expenditures will have been wasted since Basin Electric does not need this additional generating capacity to meet projected demand from its customers in 2022.

CONCLUSION

24. Notwithstanding its past and ongoing efforts to incorporate renewable energy resources into its overall generating portfolio, complying with even the initial interim step requirement under the Final Rule will have a drastic impact on Basin Electric's operations. Basin Electric will need to spend billions of dollars building new generating assets that are completely unneeded to meet its member's electricity demands. Further, Basin Electric will need to retire significant, perfectly good coal-fired generating capacity that has between 8 and 28 years of remaining useful life. The net result will be a stranding of assets and the imposition of significant additional costs that must be borne by Basin Electric's members and their customers.

25. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4 day of November, 2015 in Bismarck, North Dakota.

David Raatz

ATTACHMENT 2

DECLARATION OF GAVIN McCOLLAM

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, *et al.*,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 15-1363
	)	(and consolidated cases)
U.S. ENVIRONMENTAL PROTECTION AGENCY *et al.*,	)	
	)	
	)	
Respondents.	)	

DECLARATION OF GAVIN A. McCOLLAM IN SUPPORT OF PETITIONER BASIN ELECTRIC POWER COOPERATIVE'S MOTION FOR STAY OF FINAL RULE

I, Gavin A. McCollam, hereby declare and state that the following is true and correct to the best of my knowledge, based on my personal knowledge and information provided by Basin Electric Power Cooperative ("Basin Electric") personnel:

1. My name is Gavin McCollam, and I am the Engineering Services Director for Basin Electric. My business address is 1717 East Interstate Avenue, Bismarck, North Dakota. I am over the age of 18 years and am competent to testify concerning the matters in this declaration. I have over 22 years of experience in electricity generation. I have a Master of Science degree in Systems Management from the University of Southern California and a Bachelor of Science

degree in Mechanical Engineering from North Dakota State University. I am a registered professional engineer in North Dakota.

2. I manage the Basin Electric engineering function to meet the needs of Basin Electric and its partners, including engineering of new and existing facilities, equipment, and systems. I also monitor and direct the overall performance program and coordinate the technical review of other Basin Electric operating functions such as system chemistry, water balance, and other functions.

3. This declaration is submitted in support of Basin Electric's request for a stay of EPA's rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule," 80 Fed. Reg. 64661 (October 23, 2015) (the "Final Rule").

4. Basin Electric is a not-for-profit generation and transmission cooperative that was incorporated in 1961. Basin Electric is consumer-owned by 137 member cooperative systems. Basin Electric provides wholesale power to member rural electric systems in nine States, with electric generation facilities in North Dakota, South Dakota, Wyoming, Montana, and Iowa. The electricity produced by Basin Electric ultimately serves 2.9 million consumers.

5. Basin Electric is committed to an "all of the above" generating strategy that includes both fuel-fired and renewable generating resources. As a result, during the past decade it has experience developing both wind and natural

gas generating resources, along with the necessary transmission lines to bring this electricity to our members.

6. As set forth in greater detail in the Declaration of Dave Raatz, the Basin Electric Cooperative Planning Department has conducted an analysis of the changes to Basin Electric's current (and planned) generating assets needed to comply with the requirements of the Final Rule during the first interim step planning period that is currently scheduled to commence in 2022. Based on this analysis, Basin Electric will need to build approximately 3,100 megawatts ("MW") of wind and natural gas generating resources and shut down 5 currently operating coal-fired steam generating units in order for Basin Electric to comply.

7. Specifically, with respect to the development of new generating resources, Basin Electric would have to do the following:

- Develop approximately 1,350 MW of wind resources in addition to the approximately 670 MW of wind generation that is scheduled to come on-line during the next two years;
- Build approximately 670 MW of reciprocating engine generating capacity to back-up the new wind generation;
- Build approximately 270 MW of simple cycle combustion turbine generating capacity; and

- Build an approximately 800 MW natural gas combined cycle turbine to replace base-load generating capacity lost from the shut-down of existing generating units in North Dakota.

8. Additionally, in order to deliver the electricity generated from these new assets to our members, significant new transmission infrastructure will need to be built. Because the location of all of the required new generating assets has not been determined, the number of miles of new transmission lines and substations cannot be quantified at this time. We know, however, from our past generation development experience that the need for new transmission infrastructure will be substantial.

9. The required generating assets will need to be constructed as discrete projects. For the purpose of this analysis, Basin Electric makes the following project assumptions[1]:

- Wind generation facilities will be broken into 9 separate sites, each with approximately 100 turbines each, thus nominally 150MW per site (~1.5MW per turbine);
- Reciprocating engine generation stations will be built on 3 separate sites with 24 engines per site, thus nominally 224MW per site;

[1] Utilizing this mix and grouping of assets makes sense given Basin Electric's past experiences building these types of facilities. While a different configuration of assets could be used for this analysis it would not materially impact either the overall compliance burden or the near-term compliance costs discussed below.

- Simple cycle stations will be built on 2 separate sites with 3 turbines per site, thus nominally 135MW per site; and
- Combined Cycle Generating Station will be a standalone station on one site.

10. In order to construct these facilities, Basin Electric will need to procure the following major equipment:

- 2 F-Class gas turbines
- 2 Heat Recovery Steam Generators ("HRSG's")
- 1 Steam Turbine
- 900 1.5MW Wind Turbines
- 6 LM6000 gas turbines and associated generators
- 72 natural gas fired reciprocating engines and associated generators.

Using generally-accepted, preliminary costing methodologies for each of the types of facilities, based on a cost per MW of capacity, the approximate total cost of developing, procuring and installing all these resources for Basin Electric will be approximately $5 billion. While much of these costs can be deferred until later in the project development schedule, in the absence of a stay of EPA's Final Rule and an extension of the compliance dates, Basin Electric will nevertheless incur substantial costs during the 2016-17 time frame.

11. While Basin Electric has experience constructing these types of generating facilities, it has never had to undertake simultaneous construction on anything even remotely close to this scale. This unprecedented level of resource development will severely strain Basin Electric's capabilities and make it extremely challenging to complete the necessary construction and commissioning by the beginning of 2022 - even if it begins now to develop and build these assets. Realistically, considering the magnitude of this undertaking, building all of these facilities starting now will take at least 5 to 6 years. If Basin Electric were to await the outcome of its Petition for Review of the Final Rule and not begin the process for a couple of years, it would likely be impossible for Basin Electric to accomplish the myriad of activities necessary to develop these resources and have them available to deliver electricity to its members by 2022.

12. The facilities identified above are large and complex, necessitating a series of inter-related and sequential actions occurring over multiple years from initial conception to final commissioning. Categories of activities that will need to be completed before these facilities are available to deliver power (and lower Basin Electric's CO_2 emission rate sufficiently to comply with the 2022 standards) include:

- Site selection and land/right-of-way acquisition;

- Preliminary engineering including the following: equipment technology assessment; preliminary equipment specifications; preliminary design (general, civil, structural, architectural, mechanical and electrical) and subsurface investigation;
- Environmental assessment and permitting;
- Final engineering and design, and development of final specifications and equipment procurement (in some cases involving substantial lead time);
- Completion of interconnection studies for transmission, gas and needed utilities;
- Site construction including foundation, buildings, mechanical and electrical construction;
- Installation of generation equipment; and
- Commissioning and start-up.

Each of these categories involves a multitude of sub-tasks, which must be completed in the proper sequence. Given the thousands of sub-tasks that must be completed for each project, there are ample opportunities for projects to be delayed, sometimes significantly. The risk of significant delay is greatly increased in this case considering that Basin Electric must complete 15 separate projects over the next 6 years.

13. For the identified projects, site selection and acquiring/leasing land/right-of-ways will be an enormous challenge, particularly for the wind farms. The overall compliance plan consists of 9 wind farms. Historically, one wind farm of the size required for compliance required approximately 55,000 acres. Therefore, land leases or easements will be required for approximately 495,000 acres for the wind farms alone. Before easements are purchased, approximately one year of meteorological data must be obtained to determine whether a site is appropriate for efficient wind generation. Land will also need to be acquired to build the gas generation facilities. Based on past experience, Basin Electric projects that it will need one quarter-section of land for each of the 6 separate sites. Accordingly, Basin Electric will ultimately need to purchase options for 6 quarter-sections, or 960 acres, for the gas generation sites. While assessment of proper siting for the gas generation sites will be less critical and time consuming than for the wind sites, certain specifications must be met such as reasonable access to a sufficiently large high pressure gas line and, in the case of the combined cycle facility, ready availability of water. Basin Electric anticipates that, because of the magnitude of the new projects that will be required of all EGUs under the Final Rule, there may be strong competition for suitable sites, and therefore prudence dictates that we begin now to obtain and reserve land rights.

14. Identification of suitable sites and acquiring the land/right-of-way early in the process is crucial to Basin Electric meeting a 2022 compliance date since site selection is necessary prior to the development of necessary transmission infrastructure. Since such transmission infrastructure will typically take 3-5 years to complete from conception, locations of the generating resources must be identified and acquired within the next two years to ensure timely start-up of the generating facilities.

15. Due to the extraordinary amount of land required for this plan, Basin electric will need to hire third-party right-of-way assistance in order to meet the aggressive timelines required for land acquisition.

16. Unless the Court stays the Final Rule and extends compliance dates, right-of-way and land acquisition costs during 2016 and 2017 will likely be substantial. Basin Electric estimates that these costs will be approximately $15,000,000, calculated as follows:

- Land easements for wind farms:
  - 9 wind farms x 55,000 acres x $25/acre = $12,375,000
  - Third-party ROW assistance = 3 agents/site x 9 sites x 200 days x $600/day = $3,240,000
- Land purchase options for gas generation facilities (15% of purchase price)

- 160 acres/project x 6 projects x $10,000/acre x .15= $1,440,000

17. Project development also includes preliminary engineering, site equipment technology assessment, and developing preliminary equipment specifications. These activities are related to both the natural gas generation facilities and the wind farms. Based on the magnitude of the overall set of projects, Basin Electric will need to conduct this preliminary engineering and assessment during 2016 and 2017 in order to meet the overall compliance schedule.

18. Based on experiences from past projects, up-front project development, engineering and preliminary assessment costs are projected to be approximately $2,000,000 in contracted services for each of the 15 projects for a total cost of approximately $30,000,000.

19. As with the preliminary engineering/design, environmental assessment and permitting is an up-front activity that must be completed prior to actual construction of the facilities. For large gas generating facilities, air quality permitting can easily take 1 to 2 years. Given the complexity associated with such permitting, to ensure timely completion of the project schedules, Basin Electric projects that it will need to commence environmental permitting activities for the gas generating facilities within the next year. While the wind farms will not have air emissions, they may have severe impacts on eagles and other migratory birds.

Given the protections afforded these birds under the Migratory Bird Treaty Act and the Bald and Golden Eagle Protection Act, Basin Electric may need to conduct 1-2 years of bird studies prior to commencing construction of any wind generation facility. In any event, Basin Electric will need to expend funds conducting at least preliminary assessments during 2016 to ensure that they will not incur criminal or civil liability under these Acts for the illegal take of protected avian species.

20. Given the size of these projects and the extensive assessment and permitting needed, Basin Electric projects that the environmental permitting/assessment costs for each of the projects will be approximately $2,500,000, for a total cost during 2016-17 of $37,500,000.

21. In addition to the typical up-front costs associated with building large, complex electric generating facilities as detailed above, equipment supply and demand factors associated with the unprecedented development of renewable resources and back-up gas generation required by the Final Rule dictate that Basin Electric, as a matter of prudence, incur additional equipment procurement costs during the 2016-17 timeframe to ensure that it can timely obtain the necessary wind and gas generating resources and at a reasonable cost.[2] With the likelihood

[2] Basin Electric experienced the impacts of high demand on the price of gas generation during the construction of the Deer Creek Station combined cycle facility in South Dakota from 2007 to 2012. Due to the historically high demand for gas generating units during this period, the purchase price for the Deer Creek gas generator was approximately 40% higher. Given this potential substantial increase, locking in pricing during the next 2 years before market distortions created by the Final Rule occur is a reasonable and prudent measure. Also, given the inevitable competition for both gas generating units and wind turbines, the existing manufacturing capacity for such equipment may make it impossible to procure the necessary equipment in time if orders are not placed soon.

of many utilities moving toward gas and wind fired generation in order to comply with the Final Rule in the event it is ultimately upheld, the supply chain for wind turbines, gas turbines and reciprocating engines will be extremely stressed. In order to ensure adequate supply for the massive gas and wind build out in our system, at the most reasonable cost possible, Basin Electric will attempt enter into equipment supply contracts much earlier than normally necessary for a typical project schedule. Without detailed negotiations with equipment suppliers, we assume that we will need to enter into early contracts with these suppliers to ensure adequate delivery to meet the overall timeline. We estimate that each contract will require approximately 10% of the equipment value[3] as a down payment upon contract execution. Based on this figure, up front-equipment procurement costs during 2016-17 will be as follows:

- 2 F-Class gas turbines. 2 x $45,000,000 x .10 = $9,000,000
- 2 HRSG's. 2 x $35,000,000 x .10 = $7,000,000
- 1 Steam Turbine. 1 x $40,000,000 x .10 = $4,000,000
- 900 1.5MW Wind Turbines 900 x $2,000,000 x .10 = $180,000,000
- 6 LM6000 gas turbines. 6 x $25,000,000 x .10 = $15,000,000
- 72 natural gas fired reciprocating engines. 72 x $4,500,000 x .10 = $32,400,000.

[3] Typical equipment purchase contracts that we have entered into in the past include an initial 10% cancellation fee for cancellation shortly after contract execution. As time progresses the cancellation fee will generally increase. For example, for the gas turbine purchased for the Deer Creek Station the cancellation fee started at 10% and escalated to 40% before escalating to 100% when the turbine was completed and ready to ship.

22. Given the magnitude of the changes to Basin Electric's generating assets necessary to comply with the Final Rule in 2022, the size and complexity of these generating facilities, and the long lead time to build both generation and transmission, Basin Electric will need to incur the substantial costs noted above during the Court's consideration of challenges to the Final Rule in order to ensure compliance in a timely fashion if the Final Rule is upheld. Based on its preliminary estimates detailed above, total costs incurred during this period will be approximately $330,000,000. These costs will not be recoverable, so if the Court decides to overturn the Final Rule, these expenditures will have been wasted on developing generating assets that are unnecessary to meet Basin Electric's member projected demand.

23. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4th day of November, 2015 in Bismarck, North Dakota.

Gavin A. McCollam

ATTACHMENT 3

DECLARATION OF LYLE WITHAM

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, et al.,	)	
	)	
Petitioners,	)	
	)	
v.	)	Case No. 15-1363
	)	(and consolidated cases)
U.S. ENVIRONMENTAL PROTECTION AGENCY et al.,	)	
	)	
	)	
Respondents.	)	

DECLARATION OF LYLE WITHAM IN SUPPORT OF PETITIONER BASIN ELECTRIC POWER COOPERATIVE'S MOTION FOR STAY OF FINAL RULE

I, Lyle Witham, hereby declare and say that the following is true and correct to the best of my knowledge, based on my personal knowledge and information provided by Basin Electric Power Cooperative personnel:

1. My name is Lyle Witham, and I am the Manager of Environmental Services for Basin Electric Power Cooperative ("Basin Electric"). My business address is 1717 East Interstate Avenue, Bismarck, North Dakota. I am over the age of 18 years and am competent to testify concerning the matters in this declaration. I have been Basin Electric's Manager of Environmental Services for 8 years and before that worked in the Office of the Attorney General for the State of North Dakota representing the State in environmental matters for 16 years. I have

a Juris Doctor degree from the University of Minnesota. I have been involved exclusively in environmental and natural resource development law and policy for the past 25 years.

2. This declaration is submitted in support of Basin Electric's request for a stay of EPA's rulemaking entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Generating Units; Final Rule," 80 Fed. Reg. 64661 (October 3, 2015) (the "Final Rule").

3. As set forth in detail in the Declaration of Gavin McCollam, Basin Electric will have to build an unprecedented amount of new generating assets and transmission lines in a very short period of time in order to comply with the first interim 2022 standards under the Final Rule, and in the absence of a stay of the Final Rule would have to begin now to develop the necessary facilities and would have to spend large sums to do so in 2016-2017.

4. The purpose of this Declaration is to provide information regarding how the National Environmental Policy Act ("NEPA") might affect the development and timing of the new generating and transmission assets.

5. NEPA applies to major federal actions. Because we don't know whether the new assets will be located on federal land or otherwise have a federal nexus, it's not possible to predict whether the projects for development of such assets will

be major federal actions subject to NEPA. However, for the reasons noted herein, it is likely that at least some of projects will have to undergo review under NEPA because they either will be located on or cross federal lands or will involve interconnections to facilities of the Western Area Power Administration ("Western").

6. Basin Electric currently has extensive generation assets in Wyoming. To replace the shutdown of these assets or the curtailment of generation required by the EPA's Final Rule, and comply with the Final Rule, Basin Electric will need to build extensive new generation and transmission facilities in Wyoming, including wind farms and associated transmission lines. There is also a high percentage of federal land and tribal land in western North Dakota, South Dakota and eastern Montana, where the best wind resources are available for compliance with the Final Rule.

7. Forty-two percent of the land in Wyoming is federal land, and the federal lands are broadly distributed across the State. http://www.nytimes.com/interactive/2012/03/23/us/western-land-owned-by-the-federal-government.html?_r=0.

8. The Department of the Interior has identified significant acreage of lands administered by the Bureau of Land Management ("BLM") in Wyoming with medium or high wind potential. http://windeis.anl.gov/guide/maps/map3.html.

9. Large amounts of land are necessary for wind farms and the associated right-of-way and transmission facilities.

10. Therefore, it is at least reasonably possible, if not likely, that new wind and/or transmission facilities developed by Basin Electric would be located on or cross federal lands and therefore would be subject to NEPA review. If such projects have no significant environmental impacts, they would require only an Environmental Assessment ("EA"). If they have significant environmental impacts, they would require an Environmental Impact Statement ("EIS"), which involves a more extensive review.

11. For major transmission lines, the BLM normally requires an EIS. Department of the Interior, Department Manual Part 516, National Environmental Policy Act of 1969: 516 DM 11.8 (May 2008).

12. Also, interconnections with facilities of Western are subject to NEPA. Interconnections of new generation sources greater than 50 MW typically require an EIS. 10 C.F.R. part 1021, Appendix D, Classes of Actions that Normally Require EISs. Various Basin Electric facilities in Wyoming are interconnected

with Western facilities; and it is reasonable to expect that new Wyoming wind generation might well be interconnected with Western facilities.

13. Attached as Appendix A is a compilation of publicly available information regarding transmission line and wind power EAs and EISs. As can be seen from Appendix A, EAs for such projects typically take about 18 months to 3 years to complete (although they can take more or less time); and EISs for such projects typically take about 3 to 5 years to complete (although they can take more or less time).

14. Although various other tasks involved in the development of such projects, such as design and engineering tasks, can overlap and be done concurrently with an EA or EIS, the NEPA process, especially an EIS, can substantially increase the overall time it takes to complete a project. This can add years to how long the project otherwise would take.

15. Because of the initial interim compliance deadline under the Final Rule and the extra time that can be needed for the NEPA process, it is important for Basin Electric to begin developing those projects that might be subject to NEPA soon, in order to comply with interim Final Rule standards.

16. Without a stay of the Final Rule, Basin Electric may need to spend several million dollars during 2016-2017 for NEPA-related activities, including

environmental consultants, baseline data gathering, public and agency outreach, biological and cultural resource surveys, and agency cost-recovery agreements.

17. I declare under penalty of perjury that the foregoing is true and correct.

Executed this 4 day of November, 2015 in Bismarck, North Dakota.

Lyle Witham
Manager of Environmental Services
Basin Electric Power Cooperative

Transmission Line Projects with Environmental Impact Statements

Name of Project	Project Description and Federal Agency(ies)	Location	Timeline	Citation
North Steens 230-kV Transmission Line Project	46-mile, 230-kV transmission line BLM and USFWS rights-of-way	Diamond, Oregon	Application in Dec. 2008 NOI in July 2009 ROD in Dec. 2011 **3 years from application to ROD** **2.5 years from NOI to ROD**	http://www.blm.gov/or/districts/burns/plans/steen_trans/
Gateway West Transmission Line Project	990-mile, 230-kv and 500-kv transmission line BLM right-of-way and USFS special use permit	Glenrock, Wyoming to Melba, Idaho	Application in May 2007 NOI in May 2008 ROD for 8 segments in Nov. 2013 ROD for last 2 segments pending **6.5 years from application to partial ROD**	http://www.wy.blm.gov/nepa/cfodocs/gateway_west/
SunZia Project	Two 515-mile, 500-kV transmission lines (in same right-of-way) BLM right-of-way with possible BOR, DOD, and BIA rights-of-way	Corona, New Mexico to Coolidge, Arizona	Application in September 2008 NOI in May 2009 ROD in January 2015 **6.3 years from application to ROD** **5.7 years from NOI to ROD**	http://www.blm.gov/nm/st/en/prog/more/lands_realty/sunzia_southwest_transmission.html
TransWest Express Transmission Line Project	730-mile, 600-kV transmission line BLM right-of-way and Western financing or investment	Sinclair, Wyoming to near Las Vegas, Nevada	(Amended) Application in Jan. 2010 NOI in January 2011 FEIS in May 2015 No ROD yet **5.3 years from application to FEIS** **4.3 years from NOI to FEIS**	http://www.blm.gov/wy/st/en/info/NEPA/documents/hdd/transwest/docs.html
Hooper Springs Transmission Project	24-mile, 115-kV transmission line BPA (proposed agency action)	Caribou County, Idaho	Agency project so no application NOI in July 2010 ROD in March 2015 **4.7 years from NOI to ROD**	http://efw.bpa.gov/environmental_services/Document_Library/HooperSprings/
Antelope Valley Station to Neset Transmission Project	265 miles of 345-kV line and 13 miles of 230-kV line RUS funding, Western interconnect, USFS special use permit	Northwest North Dakota	NOI in November 2011 RODs in September and December 2014 **3 years from NOI to RODs**	http://energy.gov/nepa/downloads/eis-0478-final-environmental-impact-statement

Name of Project	Project Description and Federal Agency(ies)	Location	Timeline	Citation
OnLine Transmission Line	35-mile, 500- kV transmission line BLM right-of-way	White Pine, Nye, Lincoln, and Clark counties, Nevada	NOI for original project in January 2007 NOI for revised project and supplemental DEIS in July 2009 ROD in March 2011 **4 years from original NOI to ROD**	http://www.blm.gov/nv/st/en/fo/ely_field_office/blm_programs/energy/on_line_transmission.html
Big Eddy-Knight Transmission Line	28-mile-long, 500-kV transmission line BPA (proposed agency action)	The Dalles, Oregon to Goldendale, Washington	Agency project so no application NOI in May 2009 ROD in September 2011 **2.3 years from NOI to ROD**	http://energy.gov/nepa/downloads/eis-0421-record-decision
Tropic to Hatch 138-kV Transmission Line	29-mile, 138-kV transmission line BLM right-of-way and USFS special use permit	Garfield County, Utah	NOI in February 2008 USFS ROD in April 2011 BLM ROD in September 2011 **3.5 years from NOI to ROD**	https://www.federalregister.gov/articles/2011/09/14/2011-23485/notice-of-availability-of-record-of-decision-for-the-tropic-to-hatch-garkane-138-kv-transmission; http://data.ecosystem-management.org/nepaweb/nepa_project_exp.php?project=24622
Teckla-Osage-Rapid City 230 kV Transmission Line Project	144-mile, 230-kV transmission line BLM right-of-way and USFS special use permit	Campbell County, Wyoming to Rapid City, South Dakota	Listed in USFS SOPA in April 2011 NOI in August 2011 BLM Application in Sept. 2011 USFS and BLM RODs in May 2015 **3.7 years from NOI to RODs**	http://www.fs.usda.gov/project/?project=30774&exp=overview; http://www.blm.gov/wy/st/en/info/NEPA/documents/nfo/Teckla.html

Wind Power Facilities with Environmental Impact Statements

Name of Project	Project Description and Federal Agency(ies)	Location	Timeline	Citation
Grande Prairie Wind Farm	266-turbine wind facility Western interconnect	Holt County, Nebraska	Interconnect request in Sept. 2007 NOI in April 2012 ROD in April 2015 **3 years from NOI to ROD** **6.5 years from interconnection request to ROD**	http://energy.gov/nepa/downloads/eis-0485-record-decision
Mohave County Wind Farm Project	Wind facility of up to 243 turbines On BLM and BOR land; Western interconnect	Mohave County, Arizona	NOI in November 2009 ROD in June 2013 **3.5 years from NOI to ROD**	http://www.blm.gov/az/st/en/prog/energy/wind/mohave/reports.html
Searchlight Wind Energy Project	Wind facility of up to 96 turbines On BLM land; Western interconnect	Southern Clark County, Nevada	NOI in December 2008 ROD in March 2013 **4.2 years from NOI to ROD**	http://www.blm.gov/nv/st/en/fo/lvfo/blm_programs/energy/searchlight_wind_energy.html
Grapevine Canyon Wind Project	Wind facility of up to 333 turbines Western interconnect; new Western facility on USFS lands	Coconino County, Arizona	NOI in July 2009 ROD in September 2012 **3 years from NOI to ROD**	http://energy.gov/nepa/downloads/eis-0427-record-decision
Whistling Ridge Energy Project	Wind facility of up to 50 wind turbines BPA interconnect and new substation	Skamania County, Washington	NOI in April 2009 FEIS in September 2011 ROD in July 2015 (delayed due to litigation) **6 years from NOI to ROD**	http://energy.gov/nepa/downloads/eis-0419-record-decision
Alta East Wind Project	51-turbine wind facility On BLM land	Kern County, California	Application in May 2010 NOI in July 2011 ROD in May 2013 **2 years from NOI to ROD** **3 years from application to ROD**	http://www.blm.gov/ca/st/en/fo/ridgecrest/alta_east_wind_project.html
Deerfield Wind Project	17-turbine wind facility On USFS land	Green Mountain National Forest, Vermont	Application in November 2004 NOI in July 2005 Revised NOI in September 2007 ROD in January 2012 **6.5 years from NOI to ROD** **7 years from application to ROD**	http://data.ecosystem-management.org/nepaweb/fs-usda-pop.php?project=7838
West Butte Wind Project	Wind facility of up to 52 wind turbines BLM right-of-way for transmission line	Deschutes and Crook Counties, Oregon	Application in December 2008 NOI in January 2010 ROD in July 2011 **1.5 years from NOI to ROD** **2.5 years from application to ROD**	http://www.blm.gov/or/districts/prineville/plans/wbw_power_row/

Name of Project	Project Description and Federal Agency(ies)	Location	Timeline	Citation
Tule Wind Project	62-turbine wind facility BLM right-of-way for transmission line	San Diego County, California	Application in December 2007 NOI in December 2009 ROD in December 2011 **2 years from NOI to ROD** **4 years from application to ROD**	http://www.blm.gov/ca/st/en/fo/elcentro/nepa/tule.html

Transmission Line Projects with Environmental Assessments

Name of Project	Project Description	Location	Timeline	Citation
Belfry to Clark Electrical 69 kV Transmission Line Project	21.6-mile, 69-kV transmission line BLM right-of-way	Carbon County, Montana to Park County, Wyoming	Application filed in June 2006 Scoping notice in October 2006 Final EA in February 2008 **17 months from scoping notice to EA**	http://www.blm.gov/wy/st/en/info/NEPA/documents/cyfo/beartooth_powerline.html
Grass Valley 120kV Transmission Line ROW Project	4,000 feet of 120-kV transmission line BLM right-of-way	Humboldt County, Nevada	Application in October 2008 Scoping open house in June 2009 FONSI and Decision Record in July 2012 **3.75 years from application to FONSI** **3 years from scoping to FONSI**	https://www.blm.gov/epl-front-office/projects/nepa/31053/38774/40679/EPlanning_GV_Decision_Record.pdf
RE Cinco Gen-Tie Project	2-mile, 230-kv generation interconnection line to serve a solar facility BLM right-of-way	Kern County, California	Application in August 2011 No scoping Final EA in August 2011 FONSI and Decision Record in December 2014 **3.3 years from application to FONSI**	http://www.blm.gov/ca/st/en/fo/ridgecrest/cinco_gen_tie_project.html
Harry Allen-Mead 500-kV Transmission Line Project	48-mile, 500-kV transmission line	Las Vegas, Nevada	Application in October 2002 Scoping meeting in April 2003 FONSI in October 2004 **2 years from application to FONSI** **1.5 years from scoping meeting to FONSI**	http://energy.gov/nepa/downloads/ea-1470-finding-no-significant-impact
Southwest Nevada Intertie Project	60-mile, 500-kV transmission line BLM, BOR, and Western rights-of-way and Western interconnect	Clark County, Nevada	Applications filed in March and April 2010 No public scoping FONSI in November 2014 **4.5 years from applications to FONSI**	https://eplanning.blm.gov/epl-front-office/eplanning/projectSummary.do?methodName=renderDefaultProjectSummary&projectId=31253

Wind Power Facilities with Environmental Assessments

Name of Project	Project Description and Federal Agency(ies)	Location	Timeline	Citation
Summit Wind Farm	41-turbine wind facility Western interconnect; impacts to USFWS easements	Grant County, South Dakota	Interconnection request in March 2013 Scoping Notice in January 2014 Final EA and FONSI in August 2015 **2.4 years from interconnection request to FONSI** **19 months from scoping notice to FONSI**	https://www.wapa.gov/regions/UGP/Environment/Pages/summit-wind-nepa.aspx
Wray Wind Energy Project	Wind facility of up to 56 turbines Western interconnect	Yuma County, Colorado	Interconnection request in May 2008 Scoping meeting in May 2011 Final EA and FONSI in Dec. 2012 **4.5 years from interconnection request to FONSI** **19 months from scoping meeting to FONSI**	http://energy.gov/nepa/ea-1884-invenergy-interconnection-wray-wind-energy-project-town-wray-yuma-county-co
South Table Wind Farm Project	Wind facility of up to 40 turbines Western interconnect	Kimball County, Nebraska	Interconnection request in Sept. 2008 Scoping notice in June 2011 Final EA and FONSI in August 2012 **4 years from interconnection request to FONSI** **14 months from scoping meeting to FONSI**	http://energy.gov/nepa/downloads/ea-1909-finding-no-significant-impact
Haxtun Wind Energy Project	18-turbine facility DOE funding and Western interconnect	Phillips and Logan counties, Colorado	Scoping notice in May 2010 Final EA and FONSI in Jan. 2012 Supplemental Analysis in Oct. 2013 Western FONSI in Nov. 2013 **2.5 years from scoping notice to second FONSI**	http://energy.gov/nepa/ea-1812-haxtun-wind-energy-project-logan-and-phillips-county-colorado
Campbell County Wind Farm	55-turbine wind facility Western interconnect	Pollock, South Dakota	Interconnection request in January 2010 Scoping meeting in March 2013 Final EA and FONSI in June 2015 **5.5 years from interconnection request to FONSI** **2 years from scoping meeting to FONSI**	https://www.wapa.gov/regions/UGP/Environment/Pages/campbell-nepa.aspx
PrairieWinds – ND I	77-turbine wind facility Western interconnect and RUS funding	Minot, North Dakota	NOI in March 2008 Final EA in June 2009 FONSI in August 2009 **17 months from NOI to FONSI**	http://energy.gov/nepa/downloads/ea-1689-finding-no-significant-impact

Acronym List

BIA	Bureau of Indian Affairs
BLM	Bureau of Land Management
BOR	Bureau of Reclamation
BPA	Bonneville Power Administration
DEIS	Draft Environmental Impact Statement
DOD	Department of Defense
DOE	Department of Energy
EA	Environmental Assessment
EIS	Environmental Impact Statement
FONSI	Finding of No Significant Impact
NOI	Notice of Intent
ROD	Record of Decision
RUS	Rural Utilities Service
USFS	U.S. Forest Service
USFWS	U.S. Fish and Wildlife Service
Western	Western Area Power Administration