ORAL ARGUMENT NOT YET SCHEDULED

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

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,	)	
Petitioners,	)	
v.	)	**Case No. 15-1409**
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and GINA McCARTHY, Administrator, United States Environmental Protection Agency	)	
Respondents.	)	

Petitioner Mississippi Department of Environmental Quality's
Corrected Motion for Stay of EPA's
Existing Source Performance Standards for Electric Generating Units

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The Mississippi Department of Environmental Quality ("MDEQ") moves this Court to stay the implementation of the United State Environmental Protection Agency's ("EPA") Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (Oct. 23, 2015) ("Final Rule") to prevent the immediate and irreparable harms EPA's unlawful rule is causing MDEQ.

A. Introduction

EPA is attempting to take unlawful and unprecedented steps to restructure the generation, transmission, and regulation of electricity in the United States. EPA relies on a rarely used section of the Clean Air Act ("CAA"), Section 111(d), 42 U.S.C. § 7411(d), as its source of authority to promulgate its effort to transform the electric industry. EPA, in fact, has no such authority under Section 111(d) of the CAA and is ignoring the entire cooperative federalism structure established under the CAA. Despite, EPA's apparent lack of authority, it seeks to require States to drastically change their electricity systems by favoring certain types of generation over others. In forcing States to undertake this burdensome task, EPA set an unrealistic timeline for States to accomplish this massive overhaul of electricity generation. States will be required to make irreversible decisions in the short-term to determine how to comply prior to the Court's opportunity to review the legality of the Final Rule.

EPA's Rule must be stayed to prevent the immediate and irreparable harm to the sovereign authority reserved for States to regulate the generation and transmission of electricity. Without a stay, in light of the timelines in the Final Rule, EPA will force States and affected facilities into compliance before this Court has the opportunity to vacate the rule, just as occurred with EPA's illegal MATS rule. *See Michigan v. EPA*, 135 S. Ct. 2699 (2015).

B. Background

Under Section 111 of the Clean Air Act ("CAA"), Congress granted EPA the authority to regulate emissions from new stationary sources. 42 U.S.C. § 7411(b). This section obligates EPA to set standards of performance for many new sources of air emissions that require such sources to adopt the "best system of emission reduction . . . adequately demonstrated" ("BSER"). 42 U.S.C. § 7411(a). EPA's authority for regulating existing sources is much more limited. A "standard of performance" is a "standard for emissions of air pollutants which 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) the Administrator determines has been adequately demonstrated." *Id.* § 7411(a)(1).

In the case of existing sources EPA may require States to establish "standards of performance" that will be applicable for existing sources – and then only for certain pollutants. *Id.* § 7411(d). EPA's primary role in this process is simply to "establish a procedure" for States to submit a plan establishing the standards of performance. *Id.* § 7411(d)(1). Under Section 111(d), the onus is squarely on the states to develop a state plan that establishes standards of performance. Only if a State "fails to submit a satisfactory plan" will EPA have the authority to act as the State and regulate the affected sources directly. These state plans are required to "take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies. *Id.* Although EPA has often invoked its authority to regulate new sources, EPA has only lawfully invoked its Section 111(d) authority to require states to regulate existing sources five times. *See* 80 Fed. Reg. at 64,703 n.275.

EPA's authority under Section 111(d) is further restricted by the fact that Section 111(d) expressly prohibits the regulation of "any air pollutant" that is, inter alia, "emitted from a source category which is regulated under [Section 112 of the Clean Air Act]." 42 U.S.C. § 7411(d)(1). *Id.* § 7411(d)(2)(A) (hereinafter "Section 112 Exclusion"). Section 112 is actively used by EPA to regulate a class of air pollutants known as "hazardous pollutants." Congress added the Section 112 Exclusion in 1990 as part of its decision to expand Section 112.

Specifically, Congress decided that if EPA already regulates an existing source under the newly expanded Section 112 program, then "any air pollutant" emitted from that source may not be regulated under Section 111(d).

In EPA's Final Rule, which was published on October 23, 2015, EPA established three "building blocks" as the BSER. 80 Fed. Reg. at 64,667. These building blocks require: (1) increasing efficiency at coal-fueled power plants; (2) shifting generation from coal-fueled power plants to natural gas combined cycles; and (3) shifting generation away from fossil fuels to low- or non-emitting renewable energy sources. *Id.* Of note, only Building Block 1 actually regulates existing sources, whereas Building Blocks 2 and 3 simply mandate shifts in generation to EPA's preferred selection of energy resources.

EPA used its building blocks to develop numeric rate- and mass-based CO_2 goals for each State. *Id.* at 64,824–25. Specifically, EPA established a rate-based goal of 945 lbs CO_2/MWh and a mass-based goal of 25,204,337 short tons of CO2 for Mississippi. *Id.* EPA acknowledges that its only Building Block that actually regulates emissions cannot accomplish these lofty goals. 80 Fed. Reg. at 64,727 (finding that efficiency measures could reduce emissions by only between 4.3 and 2.1 percent, depending on the region). As a result, EPA's Final Rule unlawfully requires Mississippi to implement the "beyond-the-fenceline" measures prescribed in Building Blocks 2 and 3 to comply with the State's goal.

C. Argument

This Court considers four factors to determine whether a stay pending review is warranted: (1) the likelihood that the moving party will prevail on the merits; (2) the prospect of irreparable injury to the moving party if relief is withheld; (3) the possibility of substantial harm to other parties if relief is granted; and (4) the public interest. *Wash. Metro. Area Transit Comm'n v. Holiday Tours, Inc.*, 559 F.2d 841, 842-43 (D.C. Cir. 1977); D.C. Cir. R. 18(a). A stay is warranted because delaying implementation of the Final Rule will "preserve the status quo pending the outcome of litigation." *Cobell v. Kempthorne*, 455 F.3d 301, 314 (D.C. Cir. 2006).

1. MDEQ is Likely to Succeed on the Merits

Section 111(d) of the CAA prohibits EPA from regulating air pollutants emitted from a "source category which is already regulated under [Section 112 of the CAA]." 42 U.S.C. § 7411(d)(1)(A). The Supreme Court has recognized this prohibition in stating that "EPA may not employ [Section 111(d)] if existing stationary sources of the pollutant in question are regulated . . . under [Section 112]." *Am. Elec. Power Co., Inc. v. Connecticut*, 131 S. Ct. 2527, 2537 n.7 (2011).

EPA relies on Section 111(d) to promulgate the Final Rule, but EPA is explicitly banned from doing so. EPA attempts to ignore its longstanding

interpretation of Section 111(d) to allow a new interpretation that EPA believes would make the Final Rule permissible. Specifically, EPA argues that Section 111(d) "only exclud[es] the regulation of [] emissions under CAA section 111(d) [that are actually regulated under Section 112] and only when th[e] source category [at issue] is regulated under CAA section 112." 80 Fed. Reg. at 64,714. But, this interpretation is not tenable.

This Court should strike down the Final Rule for violating this prohibition, just as it has done before when EPA previously attempted to regulate power plants under Section 111(d). *See New Jersey v. EPA*, 517 F.3d 574, 583-84 (D.C. Cir. 2008).

a. EPA's Final Rule goes beyond EPA's authority under Section 111(d)

i. EPA's new interpretation of "system of emission reduction" is indefensible

Performance standards under Section 111 must be "achievable through the application of the best system of emission reduction" that is "adequately demonstrated" for that source. 42 U.S.C. § 7411(a)(1). EPA has always adopted a performance standard in which it applied a "best system of emission reduction" that achieves a lower emission rate through technologies or operational processes applied *at the individual source*. *See, e.g.*, 40 Fed. Reg. 53,340, 53,342 (Nov. 17,

1975) ("the technology based approach of … section [111] … extend[s] … to action under section 111(d)."). EPA attempts to abandon this approach and ignore the Supreme Court's statement that statutory terms "must be read in their context and with a view to their place in the overall statutory scheme." *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2441 (2014) (internal quotation marks and citation omitted) ("*UARG*"). Ignoring its years of precedent and general statutory interpretation, EPA has inflated the phrase "system of emission reduction" to mean any "set of measures [undertaken anywhere] that work together to reduce emissions. 80 Fed. Reg. at 64,720. This interpretation allows EPA to require essentially anything it wants – including, it says, a reduction in the operation of an affected source, rather than the implementation of a control technology.

Congress has never given EPA any reason to believe they have the authority to require the closure of coal-fueled power plants to favor other types of generation. *See, e.g.*, S. Con. Res. 8, S. Amdt. 646, 113th Cong. (2013) (rejecting carbon tax); Climate Prot. Act of 2013, S. 332, 113th Cong. (2013) (rejecting fees on greenhouse gas emissions); Clean Energy Jobs & Am. Power Act, S. 1733, 111th Cong. (2009) (rejecting greenhouse gas cap-and-trade program); *compare* The Powerplant and Industrial Fuel Use Act of 1978, 42 U.S.C. §§ 8301 *et seq.* (prohibiting new oil- and gas-fired generation in favor of coal-fired generation).

The Supreme Court has recently warned EPA against this type of action, noting that "[w]hen an agency claims to discover in a long-extant statute an unheralded power to regulate a significant portion of the American economy," courts "typically greet its announcement with a measure of skepticism." *UARG*, 134 S. Ct. at 2444 (internal quotation marks and citation omitted). Section 111 of the CAA has never been read to treat the raw action of turning off an affected source as a "system of emission reduction," and EPA points to nothing to support its drastic departure from longstanding interpretations of the CAA.

ii. EPA's emission limits are not achievable

EPA seeks to reach beyond the affected sources and far "beyond-the-fenceline" to require an increase in generation from non-affected sources for utilities to be able to meet their emission limits. It is clear that EPA's emission limits are not achievable at the affected sources themselves. Section 111 applies to "stationary sources" of air pollution, which are defined as "any building, structure, facility, or installation which emits or may emit any air pollutant." 42 U.S.C. § 7411(a)(3). EPA ignores this definition to re-interpret "sources" to "include[] the 'owner or operator' of any building . . . for which a standard of performance is applicable," excluding only "actions beyond the ability of the [source's] owners/operators to control." 80 Fed. Reg. at 64,762 & n.472. From this, EPA decided that performance standards under Section 111(d) may reflect "overall

emission reductions" from sources other than the affected sources – so long as they have a common owner or operator. *Id.* at 64,762, 64,779, 64,911. This rewrites Congress's intent when writing Section 111 and nearly 40 years of Clean Air Act law, and would allow EPA to impose operating requirements on sources not even subject to the Final Rule.

iii. EPA's existing source standard are more stringent than its new source standards

EPA defies all logic by imposing standards on existing sources that are *more stringent* than the standards it is imposing on new sources.[1] This demonstrates that even the newest electric generating units with the most advanced control technologies cannot accomplish the overly stringent standards established for existing sources, and belies EPA's new-found understanding of the word "system." Courts take a close look at whether Congress "expressly" "assign[ed]" an agency the power to resolve issues when the agency decides by itself it has the authority to resolve "question[s] of deep economic and political significance." *King v. Burwell*, 135 S. Ct. 2480, 2489 (2015) (internal quotation marks omitted). Not only is EPA's approach illogical, but it also unlawful. EPA claims to have the authority to regulate the entire electricity sector, all the way from generation to transmission, an area where

[1]The standard for new coal-fired EGUs, for instance, is 1,400 lbs. CO /MWh, 95 lbs. higher than the 1,305 lb. standard EPA has set for existing coal-fired EGUs. 40 C.F.R. pt. 60, sbpt. TTTT, Tbl. 1.

Congress granted the Federal Energy Regulatory Commission authority. EPA cannot occupy the entire field of the electricity sector, and Congress has not granted it the authority to do so.

2. MDEQ Will Suffer Irreparable Injury Absent a Stay

The Section 111(d) Rule is causing MDEQ and the State of Mississippi to suffer immediate and irreparable harm. Unless this Court stays the Rule, Mississippi's injuries will continue to increase as MDEQ takes steps to prepare for the implementation of the Final Rule that will be expensive and cannot be reversed. Specifically, MDEQ's irreparable harm comes from three independent bases: (1) the Final Rule infringes on the State's sovereign interests; (2) the Final Rule will result in immediate and irreparable economic loss due to the time and resources necessary to devote to the development of a state plan; and (3) the significant economic harm that cannot later be reversed will result in the near-term as a result of actions utilities must take to prepare for compliance with the Final Rule.

The Final Rule usurps MDEQ's authority to establish standards of performance and take into account necessary considerations, such as the sources' remaining useful life. It is well established that the States have the "traditional responsibility in the field of regulating electrical utilities for determining questions of need, reliability, cost and other related state concerns." *Pac. Gas &*

Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n, 461 U.S. 190, 205 (1983); *cf.* 18 U.S.C. § 808(d)(2)(A).

EPA's invasion of Mississippi's sovereign interests causes *per se* irreparable injury on the State. In general, "'[a]lthough a plaintiff seeking equitable relief must show a threat of substantial and immediate irreparable injury, a prospective violation of a constitutional right constitutes irreparable injury for these purposes.'" *Gordon v. Holder*, 721 F.3d 638, 653 (D.C. Cir. 2013) (alteration in original) (quoting *Davis v. District of Columbia*, 158 F.3d 1342, 1346 (D.C. Cir. 1998)). Specifically, interference with sovereign status is "sufficient to establish irreparable harm." *Kansas v. United States*, 249 F.3d 1213, 1227–28 (10th Cir. 2001). *See also Planned Parenthood of Greater Tex. Surgical Health Servs. v. Abbott*, 134 S. Ct. 506, 506 (2013) (Scalia, J., joined by Thomas & Alito, JJ., concurring in denial of application to vacate stay entered by circuit court) (state irreparably harmed where it is prevented "from effectuating statutes enacted by representatives of its people" (quotation omitted)); *Maryland v. King*, 133 S. Ct. 1, 3 (Roberts, Circuit Justice 2012); *New Motor Vehicle Bd. of Cal. v. Orrin W. Fox Co.*, 98 S. Ct. 359, 363 (Rehnquist, Circuit Justice 1977); *Dows v. City of Chicago*, 78 U.S. (11 Wall.) 108, 110 (1870) (interference with State tax collection "may derange the operations of government, and thereby cause serious detriment to the public").

Here, the Final Rule forces MDEQ to begin immediate work on implementing a plan to comply with "the most complex air pollution rulemaking undertaken" in Mississippi's history. Rikard Decl. ¶ 3. MDEQ has already devoted significant time and resources to understanding the potential impacts of the Final Rule, Rikard Decl. ¶ 6, and these efforts will only have to increase and continue. *Id.*

Additionally, although MDEQ has prepared various state plans for implementing other rules established by EPA, "[t]he Clean Air Act recognizes the time and resources necessary to draft and finalize such plans by providing three to five years, at a minimum for States to submit them." *Id.* Here, States will have approximately one to three years to develop a plan. To make this process more difficult, "other Mississippi agencies will need to participate in enforcing parts of Mississippi's plan," so MDEQ recognizes that it will need to have "other State agencies closely involved in the development and administration of air quality rules . . . ." *Id.* ¶ 4.

Beyond the challenges in determining what plan may best suit Mississippi, "broad new State Legislative authority may be required." *Id.* Specifically, "MDEQ does not currently have the regulatory authority to: a) set state energy policy; b) require utilities or other entities to use natural gas instead of coal to generate electricity; or c) require utilities to obtain electricity from renewable

energy sources." *Id.* ¶ 5. The necessity to take these actions undermines the States' sovereign choices.

Mississippi will also suffer irreparable injury as its utilities are required to make decisions regarding their future investments, and these decisions cannot be later reversed. It can take anywhere from four to seventeen years to plan and implement significant changes to the State's generating resources. Utility Air Regulatory Group Motion to Stay, No. 15-1370, Reaves Decl. ¶¶ 3, 7 ("Reaves Decl."). Utilities in the State must make decisions in the near-term about the future viability of their generating resources. Many of these actions, such as shuttering facilities or foregoing investments in existing facilities to avoid stranded assets, cannot later be reversed. Not only will these harms impact utilities, but they will also impact the communities in which those utilities operate. In 2016 alone, over $10 million dollars in annual property taxes and over 90 jobs are at stake in Mississippi. Reaves Decl. ¶¶ 25–26. Allowing EPA to proceed with its unlawful Final Rule without judicial review allows it to accomplish its goal: to "do more than just regulate—[to] change markets."[2] The Court should stay EPA's Final Rule to prevent EPA's unlawful overreach that will cause immediate and irreparable harm.

[2] Gina McCarthy, Administrator, Envtl. Prot. Agency, Remarks on U.S. Climate Action at the American Center (Aug. 26, 2015).

3. The Balance of Harms and the Public Interest Favor a Stay

EPA seeks to accomplish its goal of shuttering fossil fuel-fired power plants through unlawful rules prior to allowing the Court to assess the merits of its Final Rule. A stay of EPA's Final Rule is necessary to maintain the status quo, particularly in light of "the sheer breadth of the ripple effects caused by the Rule[] . . . ." *In re EPA*, Nos. 15-3799/3822/3853/3887, --F.3d --, --, 2015 WL 5893814, at *3 (6th Cir. Oct. 9, 2015). A stay would "temporarily silence[] the whirlwind of confusion that springs from uncertainty about the requirements of the new Rule and whether they will survive legal testing . . . ." *Id.*

Additionally, "enforcement of an unconstitutional [regulation] is always contrary to the public interest." *Gordon*, 721 F.3d at 653. *See also, e.g.*, *G&V Lounge, Inc. v. Mich. Liquor Control Comm'n*, 23 F.3d 1071, 1079 (6th Cir. 1994) ("[I]t is always in the public interest to prevent the violation of a party's constitutional rights."). EPA makes no claims that the Final Rule will alter the course of climate change, as it does not even address one percent of global human-made greenhouse emissions. *See* EPA, Regulatory Impact Analysis Table ES-2 at ES-6 (Aug. 2015). Further, there is a public interest "in having legal questions decided on the merits, as correctly and expeditiously as possible." *WMATA v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Cir. 1977). As a result, the balance of harms and public interest tip in favor of a stay.

D. Conclusion

MDEQ respectfully requests that this Motion for Stay be granted.

Dated: November 5, 2015

Respectfully submitted,

Attorney for the Petitioner, Mississippi Department of Environmental Quality

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CERTIFICATE OF SERVICE

I certify that on November 5, 2015, I caused a copy of the foregoing Motion to be served by U.S. mail on the following:

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CERTIFICATE OF COMPLIANCE WITH CIRCUIT RULE 18(a)(2)

I certify that on November 5, 2015, Eric Hostetler, counsel for the Respondents U.S. Environmental Protection Agency, et al., was informed by telephone of the filing of the Mississippi Department of Environmental Quality for Stay of Rule.

Attorney for the Petitioner, Mississippi Department of Environmental Quality

Certificate as to Parties, Rulings, and Related Cases

Petitioner Mississippi Department of Environmental Quality ("MDEQ") respectfully files this Certificate as to Parties, Rulings, and Related Cases. D.C. Cir. R. 18(a)(4), 28(a)(1).

1. PARTIES AND *AMICI*

Petitioners:

Petitioners in No. 15-1363 include the States of West Virginia, Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, the Arizona Corporation Commission, the State of Louisiana Department of Environmental Quality, the State of North Carolina Department of Environmental Quality, and Attorney General Bill Schuette on behalf of the People of Michigan. Respondents include the United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency.

Petitioners in No. 15-1364 include the State of Oklahoma, ex rel. E. Scott Pruitt, in his official capacity as Attorney General of Oklahoma, and the Oklahoma Department of Environmental Quality.

Petitioners in 15-1365 include the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL- CIO.

Petitioner in No. 15-1366 is Murray Energy Corporation.

Petitioner in No. 15-1367 is the National Mining Association.

Petitioners in No. 15-1368 is the American Coalition for Clean Coal Electricity.

Petitioners in No. 15-1370 include the Utility Air Regulatory Group and the American Public Power Association.

Petitioners in No. 15-1371 include the Alabama Power Company, Georgia Power Company, Gulf Power Company, and the Mississippi Power Company.

Petitioner in No. 15-1372 is the CO2 Task Force of the Florida Electric Power Coordinating Group, Inc.

Petitioner in No. 15-1373 is Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc.

Petitioner in No. 15-1374 is the Tri-State Generation and Transmission Association, Inc.

Petitioner in No. 15-1375 is the United Mine Workers of America.

Petitioners in No. 15-1376 include the National Rural Electric Cooperative Association, Arizona Electric Power Cooperative, Inc., Associated Electric Cooperative, Inc., Big Rivers Electric Corporation, Brazos Electric Power Cooperative, Inc., Buckeye Power, Inc., Central Montana Electric Power Cooperative, Central Power Electric Cooperative, Inc., Corn Belt Power

Cooperative, Dairyland Power Cooperative, Deseret Generation & Transmission Co-operative, Inc., East Kentucky Power Cooperative, Inc., East River Electric Power Cooperative, Inc., East Texas Electric Cooperative, Inc., Georgia Transmission Corporation, Golden Spread Electric Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., Minnkota Power Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Northwest Iowa Power Cooperative, Oglethorpe Power Corporation, Powersouth Energy Cooperative, Prairie Power, Inc., Rushmore Electric Power Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, South Texas Electric Cooperative, Inc., Southern Illinois Power Cooperative, Sunflower Electric Power Corporation, Tex-La Electric Cooperative of Texas, Inc., Upper Missouri G. & T. Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Western Farmers Electric Cooperative, and Wolverine Power Supply Cooperative, Inc.

Petitioner in No. 15-1377 is Westar Energy, Inc.

Petitioner in No. 15-1378 is NorthWestern Corporation, doing business as NorthWestern Energy.

Petitioner in No. 15-1379 is the National Association of Home Builders.

Petitioner in No. 15-1380 is the State of North Dakota.

Petitioners in No. 15-1382 include the Chamber of Commerce of the United States of America, National Association of Manufacturers, American Fuel & Petrochemical Manufacturers, National Federation of Independent Business, American Chemistry Council, American Coke and Coal Chemicals Institute, American Foundry Society, American Forest & Paper Association, American Iron and Steel Institute, American Wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and the Portland Cement Association.

Petitioner in No. 15-1383 is the Association of American Railroads.

Petitioners in No. 15-1386 include Luminant Generation Company, LLC, Oak Grove Management Company, LLC, Big Brown Power Company, LLC, Sandow Power Company, LLC, Big Brown Lignite Company, LLC, Luminant Mining Company, LLC, and Luminant Big Brown Mining Company, LLC.

Petitioner in No. 15-1393 is Basin Electric Power Cooperative.

Petitioner in No. 15-1398 is Energy & Environment Legal Institute.

Petitioner in 15-1409 is Mississippi Department of Environmental Quality.

Respondents: Respondents in all cases include the Environmental Protection Agency and Regina A. McCarthy, Administrator, U.S. Environmental Protection Agency

Movant-Internevors for Respondents: Movant-Intervenors for Respondents 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, Peabody Energy Corporation, Sierra Club, Solar Energy Industries Association, State of New York, State of California, State of Delaware, State of Hawaii, State of Illinois, State of Iowa, State of Maine, State of Maryland, Commonwealth of Massachusetts, State of Minnesota, State of New Hampshire, State of New Mexico, State of Oregon, State of Rhode Island, State of Vermont, Commonwealth of Virginia, State of Washington, District of Columbia, City of Boulder, City of Chicago, City of New York, City of Philadelphia, City of South Miami, and Broward County, Florida.

Amicus Curiae: Amicus Curiae is Philip Zoebisch.

2. RULINGS UNDER REVIEW

The motion relates to EPA's final rule titled *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 80 Fed. Reg. 64,662 (Oct. 23, 2015).

3. RELATED CASES

This Court has previously issued opinions and orders in the related cases of *In re Murray Energy Corp*., 788 F.3d 330 (D.C. Cir. June 9, 2015); *West Virginia v. EPA*, Nos. 14-1112, 14-1146, 14-1151 (D.C. Cir. June 9, 2015); *In re West Virginia*, No. 15-1277 (D.C. Cir. Sept.9. 2015) (per curiam); *In re Peabody Energy Corp*., No. 15-1284 (D.C. Cir. Sept. 9. 2015) (per curiam). This Court also lists as related the pending case *State of West Virginia, et al. v. EPA*, et al., No. 15-1381 (D.C. Cir.).

Attorney for the Petitioner, Mississippi Department of Environmental Quality