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

STATE OF WEST VIRGINIA, *et al.*, Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	Case No. 14-1146

PETITIONERS' MOTION TO SET A CONSOLIDATED BRIEFING SCHEDULE AND TO EXPEDITE CONSIDERATION

Pursuant to Federal Rule of Appellate Procedure 27 and this Court's Rule 27, the States of West Virginia, Alabama, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, South Carolina, and Wyoming, and the Commonwealth of Kentucky ("the States"), respectfully move for a consolidated briefing schedule and expedited consideration. The States propose the following schedule, which merges the dispositive motion and merits briefing:

October 2, 2014[1]	EPA's Dispositive Motions, If Any
October 15, 2014	States' Opening Brief and Response To EPA's Dispositive Motions, If Any
November 17, 2014	EPA's Response Brief and Reply Brief In Support Of Its Dispositive Motions, If Any
December 1, 2014	States' Reply Brief

The States also respectfully request that oral argument be scheduled as soon as practicable upon completion of this briefing schedule.

Such consolidated briefing of both threshold and merits issues is common in administrative law challenges, as it permits the parties to brief all of the issues in the case in an orderly manner, facilitates a single oral argument, and permits timely adjudication of important matters. *See, e.g.*, *Ctr. for Biological Diversity v. Blank*, 933 F. Supp. 2d 125 (D.D.C. 2013); *Int'l Swaps & Derivatives Ass'n v. CFTC*, 887 F. Supp. 2d 259 (D.D.C. 2012); *see also NRDC v. EPA*, No. 10-1056, dkt. 1253186 (D.C. Cir. July 2, 2010) (directing parties to re-brief motion to dismiss, along with the merits, in a single consolidated briefing). What the States request here is a more modest version of expedited briefing that this Court has ordered in other recent cases, which also raised issues of great public importance. *See, e.g.*, *Inv.*

[1] EPA has declined to consent to this motion. EPA has also informed the States that it will seek a 45-day extension from this Court's September 18 deadline for the filing of dispositive motions. The States oppose an extension of that length, for reasons they will explain in a separate opposition. As a gesture of good will, the States are willing to agree to a 14-day extension of the original September 18 deadline and reflect that accommodation in this proposed schedule.

Co. Inst. v. CFTC, No. 12-5413, dkt. 1415205 (D.C. Cir. Jan. 15, 2013); *Halbig v. Burwell*, No. 14-5018, dkt. 1476316 (D.C. Cir. Jan. 23, 2014).

This consolidated briefing schedule will reduce irreparable harm to the States and to the public. Under this Court's rules and absent an order of this Court, briefing on the merits of the States' Petition for Review will not begin until after EPA's dispositive motion is fully briefed and (perhaps) adjudicated. *See* D.C. Cir. R. 27(g)(3). As a practical matter, this could well mean that argument on the merits of the States' Petition would not take place until spring or fall of 2015, with a decision coming some months thereafter. In such circumstances, the States may be forced to wait *a full year or more* for decision on the merits of their Petition. For the reasons explained below, the rulemaking process arising from EPA's unlawful commitments made in the settlement agreement is harming the States and the public *now*, and further delay will compound that harm immensely.

At the same time, EPA would suffer no prejudice from an order setting the proposed consolidated briefing schedule. EPA too would benefit from a timely resolution of the deeply consequential issues at stake in the Petition. And it would be no burden for EPA to brief this case comprehensively within the States' proposed schedule, as the merits of this case present a single purely legal issue of statutory interpretation, an issue that EPA has already expounded upon at length in a recently-issued legal memorandum.

BACKGROUND

This case involves review of a final settlement agreement pursuant to which the Environmental Protection Agency ("EPA") committed to proposing and then finalizing a rule requiring States to regulate existing coal-fired power plants under Section 111(d) of the Clean Air Act ("CAA"), *see* 42 U.S.C. § 7411(d). *See* Exh. A. Subsequent events have rendered the settlement unlawful, but EPA has nevertheless pressed on with the rulemaking to which it agreed in the settlement.

1. The settlement agreement at issue was finalized on March 2, 2011, between EPA and various non-party States, governmental entities, and private organizations who had threatened litigation against the agency to require EPA to regulate existing coal-fired power plants under Section 111. *See* Exh. A.[2] As relevant here, EPA committed in the settlement, in order to avoid the threatened lawsuit, that it "will" issue a "proposed rule under Section 111(d) that includes emissions guidelines for [carbon dioxide]," and "will" "transmit . . . a final rule that takes action with respect to" existing power plants. Exh. A at 3, 4. EPA stated that it "inten[ded] to be bound" by this commitment. *Id.* at 3. The settlement also contains suggested and now-lapsed compliance dates for proposing and finalizing the Section 111(d) rule, but does not state that those dates are material terms of the

[2] The other parties to the settlement agreement have filed pending motions to intervene in this case. *See* dkts. 1510244 & 1510348.

agreement or that EPA's commitment to propose and finalize the Section 111(d) rule would terminate if the agency did not meet those dates. *See* Exh. A at 3-4.

2. On June 20, 2011, the Supreme Court explained in *American Electric Power, Inc. v. Connecticut*, 131 S. Ct. 2527 (2011) ("*AEP*"), that EPA could not regulate the same sources under both Section 112 and Section 111(d) of the Clean Air Act. Section 112 permits national regulations of sources of hazardous air pollutants. Section 111(d), on the other hand, is a rarely used provision that grants EPA authority to require States to regulate emissions from existing sources on a state-by-state basis under certain narrow circumstances, but that expressly excludes from EPA's authority the power to regulate "any air pollutant . . . emitted from a source category which is regulated under [Section 112]." 42 U.S.C. § 7411(d).

In *AEP*, several parties brought a common law public nuisance action, seeking abatement of emissions of carbon dioxide. *See AEP*, 131 S. Ct. at 2533-34. The Court held "that the Clean Air Act and the EPA actions it authorizes displace any federal common law right to seek abatement" of such emissions. *Id.* at 2537-38. In the course of explaining that EPA is required under Section 111(d) to regulate carbon dioxide emissions from existing sources under certain circumstances, the Court noted the Section 112 "exception" to the regulation of such existing sources under Section 111(d): "EPA may not employ [Section

111(d)] if existing stationary sources of the pollutant in question are regulated under . . . the 'hazardous air pollutants' program, [Section 112]." *Id.* at 2537 n.7.

3. On February 16, 2012, EPA finalized a national emission standard for new and existing power plants under Section 112. *See* 77 Fed. Reg. 9,304 (Feb. 16, 2012). Specifically, EPA reaffirmed that power plants should be listed as a "source category" under Section 112. *See* 77 Fed. Reg. at 9,365-66. It then proceeded to impose under Section 112 onerous regulations on those plants, with which compliance will cost over $9 billion per year. *See* 77 Fed. Reg. at 9,366-75; EPA, *Regulatory Impact Analysis for the Final Mercury and Air Toxics Standards* at 3-13 (2011), http://www.epa.gov/mats/pdfs/20111221MATSfinalRIA.pdf ("MATS RIA"); *see also White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014) (cert. pending). As a result, the Clean Air Act precluded additional regulation of existing power plants under Section 111(d), rendering unlawful EPA's commitment in the settlement agreement to regulate existing power plants under Section 111(d). EPA thus made the strategic decision to regulate power plants using a national emission standard under Section 112 rather than relying upon Section 111(d) to achieve state-by-state emission reductions.

4. But on June 2, 2014, EPA made clear both that it believes it can ignore the Clean Air Act's plain text and the Supreme Court's explanation of that text in *AEP*, and that it would continue to abide by its settlement agreement commitment

to regulate existing coal-fired power plants under Section 111(d). On that date, EPA issued a Legal Memorandum setting forth its legal analysis in support of its intention to finalize a Section 111(d) rule regulating existing power plants, notwithstanding its Section 112 rule.[3] In that Memorandum, EPA admitted that the "literal" terms of the Clean Air Act, as they appear in the U.S. Code, prohibit regulation of existing power plants under both Section 111(d) and Section 112. *See* Mem. at 26. EPA argued, however, that it has discretion to rewrite this "literal" text. *See* Mem. at 21-23; *see infra*, at 12-15. The Memorandum cited to the Supreme Court's decision in *AEP* (Mem. at 21), but failed to mention the critical language in that decision that contravenes EPA's attempt at double regulation (*see AEP*, 131 S. Ct. at 2537 n.7).

In response to EPA's Legal Memorandum, Petitioner State of West Virginia immediately alerted the agency to the clear statutory prohibition against double regulation under Section 111(d) and Section 112. *See* Exh. B. EPA ignored this letter and the request therein that EPA stop the rulemaking. Two weeks later, the agency published in the Federal Register a proposed rule regulating carbon dioxide emission from coal-fired power plants under Section 111(d), just as it had

[3] *See* EPA, *Legal Memorandum for Proposed Carbon Pollution Emission Guidelines for Existing Electric Utility Generating Units*, Docket No. EPA-HQ-OAR-2013-0602 (June 2014), http://www2.epa.gov/carbon-pollution-standards/clean-power-plan-proposed-rule-legal-memorandum ("Mem.").

committed to do in the settlement agreement at issue here. *See* 79 Fed. Reg. 34,830 (June 18, 2014).

5. The proposed Section 111(d) rule, issued to satisfy EPA's commitment under the settlement agreement, would require States to cut carbon dioxide emissions from 2005 levels by an average 30% nationwide by 2030, and does so through a far reaching and novel regulatory regime. Specifically, the proposed rule would force States to satisfy ambitious carbon dioxide reduction targets across their *entire citizenry* by developing multifaceted implementation plans ("State Plans"). Under the proposed rule, *these State Plans must be submitted by June 30, 2016*, absent special circumstances. *See* 79 Fed. Reg. at 34,838.

States must begin work now if they have any hope of meeting the proposed rule's deadlines. That is because, to achieve the levels of emissions reduction required by the proposed rule, EPA requires States to undertake a complex regulatory enterprise that has no historical equivalent. *See* 79 Fed. Reg. 34,830; Exh. E at 21. Rather than merely requiring power plants to upgrade their technology to reduce carbon dioxide emission, the proposed rule directs States to look beyond the power plants themselves and to consider measures such as forcing a greater state-wide reliance on natural gas, renewable energy, and nuclear power. *See* 79 Fed. Reg. at 34,836. In addition, the proposed rule instructs States to consider measures that will reduce consumer demand for energy in general, on the

theory that this reduction in demand will lower consumption of carbon-based energy. *Id.* at 34,849. While the States are not required to adopt any particular set of measures under the proposed rule, in practice the States will be able to meet EPA's aggressive emission targets only if they impose a combination of these regulations. In short, the proposed rule effectively requires States to revolutionize their energy sectors—and, indeed, much of their economies—and to do so in less than two years.

To meet this aggressive deadline, the States must as a necessary first step make a comprehensive determination as to which measures each will adopt to reach EPA's emission reduction targets. *See generally* Exhs. C, D, E. Among the many complicated policy choices that States face is deciding whether to limit reductions at particular power plants by certain amounts, or whether instead to adopt a state-wide or even multi-state cap-and-trade system for carbon dioxide emission permits among power plants. *See* Exh. C. Even greater complications accompany the States' assessments of the measures each can feasibly take to increase natural gas, nuclear, and renewable usable energy, and to reduce energy consumption among their citizens. *See generally* Exhs. C, D, E. Each of these sensitive and complicated choices will require consideration of massive amounts of input from citizens, industry actors, state regulators, and other interested parties

and stakeholders. *See id.* Only after a State receives all of this input can it finally formulate its required State Plan. *See generally* Exhs. D, E.

Once a State has designed a State Plan that meets EPA's emission reduction targets and hears out the concerns all of its various stakeholders, the State will need to begin the challenging task of shaping its laws and regulatory structures to implement the Plan. *See* Exh. D at 1-2, 5-6, 8, 12. Given the complexity and novelty of the measures that are needed to change the sources of energy within a State, as well as to reduce consumer demand for energy, even EPA has admitted that States may be forced to establish entire new institutional structures. Exh. C at 16-17; *accord* Exh. D at 1-2, 5-6, 8, 12. Depending on what measures States choose, this will necessitate the enactment of new legislation or even constitutional amendments, overhauling the regulation of state utilities and installing a centralized resource planning structure. *See* Exh. D at 5-6, 8, 12.

In sum, the proposed Section 111(d) rule, issued to satisfy EPA's commitment under the settlement agreement, creates an incredibly complex and time-consuming enterprise for the States that must be completed within a comparatively short time period. The States thus need to begin designing their State Plans well before the proposed rule is finalized. As advised in a "State Planning Guide" put forward by a university-based "Center for the New Energy Economy"—a think tank that supports increasing clean energy sources—"[t]he

compliance timeline [in the Section 111(d) rule] is aggressive, particularly given the level of interagency coordination states will need to develop their plans, as well as the potential need for additional statutory authority in some states." Exh. E at 7. Consistent with this sound advice, States have *already* begun expending resources to design their State Plans, and such expenditures will only increase in the coming months, well before the rule is ever finalized. *See* Exh. E at 24.[4]

ARGUMENT

Consolidated briefing and expedited consideration are appropriate for two independently sufficient reasons. First, the settlement agreement "is subject to substantial challenge" and additional "delay will cause irreparable injury" to the States. U.S. Court of Appeals for the District of Columbia Circuit, *Handbook of Practice and Internal Procedures* 33 (2013). Second, consolidated briefing and expedited consideration would advance the public interest, as the public has an "interest in prompt disposition" of this critical matter. *Id.*

[4] *See, e.g.*, Christina Nunez, *Coal-Dependent Arkansas Faces Stiff Emissions Target and a Running Clock: State officials are pondering a formidable task under proposed EPA rule*, Nat'l Geographic (Aug. 19, 2014), Exh. F ("[The State is] going to need to really spend a lot of time on preparing a plan. That's one reason we got started early.'); James Bruggers, Kentucky, *Indiana get head start on global warming regs*, The Courier-Journal (June 13, 2014), Exh. G.

I. The Settlement Agreement Is Subject To Substantial Challenge And Delay Will Cause The States To Suffer Irreparable Injury

A. The Settlement Agreement Is Now Unlawful Because The Clean Air Act Prohibits The Regulation Of Existing Power Plants Under Section 111(d) When They Are Already Regulated Under Section 112

There are strong reasons to conclude that the settlement agreement at issue must be invalidated. It is well-settled that a party may not "agree to take action that conflicts with or violates" a statute (*Local No. 93, Int'l Ass'n of Firefighters v. City of Cleveland*, 478 U.S. 501, 526 (1986)), and this legal requirement applies to federal agencies seeking to settle litigation (*see, e.g.*, *Conservation Nw. v. Sherman*, 715 F.3d 1181, 1185 (9th Cir. 2013)). In the settlement agreement, EPA promised that it "will" both propose and finalize a rule under Section 111(d) regulating carbon dioxide emissions from existing coal-fired power plants. *See* Exh. A (3-4). But as shown below, that commitment is now plainly unlawful in light of EPA's 2012 regulation of coal-fired power plants under Section 112.

The Clean Air Act unambiguously prohibits the regulation of existing coal-fired power plants under Section 111(d), as contemplated in the settlement agreement, when such plants are already regulated under Section 112. The plain text of the Clean Air Act, as found in the U.S. Code, bars EPA from regulating "any emissions" from a "source category" under Section 111(d) where that "source category . . . is regulated under [Section 112]. . . ." 42 U.S.C. § 7411(d). As the

Supreme Court explained in *AEP*, this text means what it says: "EPA may not employ [Section 111(d)] if existing stationary sources of the pollutant in question are regulated under . . . the 'hazardous air pollutants' program, [Section 112]." 131 S. Ct. at 2537 n.7. Indeed, even EPA has itself admitted that the "literal" terms of this plain text mean that it "c[an] not regulate [under Section 111(d)] *any* air pollutant from a source category regulated under section 112. . . ." Mem. at 26 (emphasis added); *accord* 70 Fed. Reg. 15,994, 16,031 (March 29, 2005). This prohibition against double regulation of *existing*—as opposed to new—sources is wholly sensible, given that overlapping regulation of existing sources raises special considerations of reliance and sunk costs.

EPA's attempt to create an "ambigu[ity]" in the Clean Air Act, which the agency would then exploit to impose double regulation on existing coal-fired power plants, is wholly unpersuasive. Mem. at 8, 26. EPA draws its argument from its own prior analysis of Section 111(d), which EPA had conducted in a rulemaking that this Court vacated in *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008). *See* Mem. at 26. In that prior rulemaking, EPA pointed out that the 1990 Amendments to the Clean Air Act contain a "drafting error," which was not included in the U.S. Code. 70 Fed. Reg. at 16,031. That "drafting error" is nothing more than a clerical renumbering that should have been omitted after it was rendered moot by a separate, substantive amendment rewriting the provision

that was to be renumbered. EPA correctly understood that this entry is merely "a drafting error and therefore should not be considered," but then conveniently asserted that it must nevertheless "give effect" to this error. 70 Fed. Reg. at 16,031. EPA used the stray clerical entry to claim ambiguity and arrogate to itself the power to rewrite the Clean Air Act's restriction on double regulation of coal-fired power plants. *See* Mem. at 26; 70 Fed. Reg. at 16,031.

EPA's argument will not withstand scrutiny. When the codifier of the U.S. Code encountered both the substantive amendment—which changed Section 111(d) to prohibit double regulation of sources already regulated under Section 112—and the stray clerical entry that would have renumbered a statutory cross-reference had the reference not been removed by the substantive amendment, the codifier followed uniform practice and merely noted that the clerical amendment "could not be executed." Revisor's Note, 42 U.S.C. § 7411. The codifier's approach was required by controlling case law, which holds that clerical errors that conflict with substantive changes should be given no weight. *See, e.g., Am. Petroleum Inst. v. SEC*, 714 F.3d 1329, 1336-37 (D.C. Cir. 2013). Under that case law and uniform legislative practice, the clerical "drafting error" does not create any "ambiguity" (*id.*) in the plain terms of the Clean Air Act, as EPA claims.

In any event, even if EPA were correct that it must "give effect" to the stray clerical entry, that does not give the agency license to ignore the prohibition on

double regulation. EPA must follow principles of statutory interpretation. The most basic of these principles is that both courts and agencies must "give effect, if possible, to every word Congress used." *Reiter v. Sonotone Corp.*, 442 U.S. 330, 339 (1979). Regulated parties have long advised EPA that there is a straightforward way to give effect both to the codified prohibition against double regulation and to the stray clerical entry.[5] EPA has never denied that such an interpretation is possible, and could not possibly do so. This alone is sufficient to refute EPA's cynical reliance on what it has admitted is a mere "drafting error," in an effort to rewrite the "literal" terms of the Clean Air Act.

B. The States Will Suffer Irreparable Injury Absent An Order Coordinating The Briefing Schedule And Expediting Consideration

Failure to coordinate the briefing schedule and to expedite consideration would visit irreparable injury on the States. Absent the requested relief, the States will not receive a ruling on their Petition for Review for perhaps a year or more. Each additional month that elapses without relief will impose significant, unrecoverable costs on the States, which must *now* begin the costly process of designing State Plans to comply with the Section 111(d) rule.

As described above, the State Plans that States must create to comply with the proposed Section 111(d) rule are an incredibly complicated endeavor, which

[5] *See* Letter from Nat'l Ass'n of Manufacturers et al. to EPA 26-27 (July 25, 2012), *available at* http://www.nam.org/~/media/53e86e050c7a495a9cc84f9778ba1f10/association_ghg_nsps_comments_june_25_2012.pdf.

could take States *years* to create, but which the proposed rule provides must be submitted to EPA by June 2016, absent special circumstances. *See supra*, at 8-11. To establish a State Plan that meets EPA's aggressive emission reduction targets, each State will first need to develop a multifaceted plan, which may well involve revolutionizing the State's entire energy economy. *See supra*, at 9-11. The State Plan will include not only the imposition of rules on existing coal-fired power plants themselves, but broad intrastate and perhaps cooperative interstate regimes to increase reliance on natural gas, renewable, and nuclear sources, and to reduce energy consumption. *See supra*, at 9-10. Then, to implement the State Plan, a State may need to restructure longstanding regulatory institutions such as public service commissions. *See supra*, at 10-11. This process will likely involve major state legislative action and perhaps state constitutional revision, processes that can take years and substantial resources to complete. *See supra*, at 10-11.

The time-consuming nature of this endeavor will be compounded by the fact that what EPA is requiring under the Section 111(d) rule is completely novel. There are no model State Plans that States can follow, as no prior EPA rule has imposed anything like the complex, systemic changes that the proposed Section 111(d) rule requires. *See* Exh. E at 22 ("the development of this type of plan . . . will be unique"). What the Proposed Rule means for the States and their respective agencies is thus not completely understood. *See* Exh. E at 21 ("It has been almost

two decades since some states were required to submit a § 111(d) plan and institutional experience may not be available."). Indeed, even EPA admits that "there is considerable uncertainty with regards to the precise measures that states will adopt to meet the proposed requirements." *See* 79 Fed. Reg. at 34,934.

In view of these major hurdles and complexities, the Center for the New Energy Economy assumes that the "first six steps in [its] proposed [State Plan] process are *concluded prior to the issue of the final rule*." Exh. E at 37 (emphasis added). Starting compliance in the first quarter of 2014, the Center explains, is necessary to "maximize the time available for the states to gather relevant information and stakeholder input prior to the final development of the rule." *Id.* For example, during *this quarter* of 2014, the Center expects that States will "map" existing state policy, "[c]onvene a state 111(d) team," and review public utility commission and air quality regulatory authority. *Id.* The Center further advises that States begin "[c]ompliance scenario modeling" in October. *Id.*

Consistent with this advice urging the necessity of action to design the State Plans in advance of the rule's finalization, many States are *already* expending resources to prepare their Plans. *See supra*, at 11 & n.3. These expenditures will only increase in the coming months—indeed, increase a great deal—well before the rule is finalized. Every month that this litigation is delayed will compound this burden. Worse still, the resources the States must devote to creating these State

Plans are being completely wasted, given that the proposed rule is entirely unlawful, for several reasons including as explained above. *See supra*, at 11-15.

This forced, wasteful expenditure of State resources imposes "irreparable per se" harm on the States because EPA cannot be made to pay damages to redress the harm should the States ultimately prevail in this matter. *See Feinerman v. Bernardi*, 558 F. Supp. 2d 36, 51 (D.D.C. 2008); *Nalco Co. v. EPA*, 786 F. Supp. 2d 177, 188 (D.D.C. 2011); *see also Sottera, Inc. v. FDA*, 627 F.3d 891, 898 (D.C. Cir. 2010); *Philip Morris USA Inc. v. Scott*, 131 S. Ct. 1, 4 (2010) (Scalia, J., in chambers). The relief requested in this motion is a modest, measured way to alleviate some of this harm.

II. The Public Has Great Interest In The Prompt Disposition Of This Case

The public interest also heavily favors setting a briefing schedule that will lead to prompt resolution of the legality of the settlement agreement that prompted the Section 111(d) rule, and this public interest consideration provides an independently sufficient reason to grant the present motion.

As explained above, the proposed rule requires States to adopt yet-to-be-defined, novel measures to revolutionize their energy economies. *See supra*, at 8-10. Facing this unprecedented regulatory project, citizens, industry, and other interested parties will all need to provide detailed input as States prepare their State

Plans. This will require the expenditure of substantial time and resources, which will be entirely wasted if the entire rule is a legally futile enterprise.

In addition, the uncertainty created by delaying adjudication of the issues raised by the States here may force industry to make capital expenditures and other business planning decisions now, causing unnecessary harm to the public. Exh. D at 6. For example, existing coal-fired power plants are currently attempting to comply with the Section 112 rule, which will cost them over $9 billion per year. *See* MATS RIA at 3-13. With the April 2015 compliance deadline fast approaching, *see* 40 C.F.R. § 63.9984(b), these plants must decide *now* whether to invest millions to stay in business, or simply close up shop. *See* MATS RIA at 6A-8, 2-1 (projecting that the Section 112 rule will result in the retirement of nearly 14% of the nation's total coal-fired generating capacity); Exh. H ("plant owners may choose to retire their units rather than make additional investments"); Exh. I at 31. The impact of a novel, broad-reaching, and legally uncertain Section 111(d) rulemaking greatly complicates these calculations and may force more coal-fired power plants to close their doors. *See* Exh. H (discussing accelerated coal plant retirements). Such additional plant closures will necessarily cause energy prices to increase, while also raising the chances that customers will suffer power outages during periods of high energy needs. *See* Exh. I at 30; *see generally* Exh. J at 4.

EPA too would benefit from having this case decided as quickly as practicable. The proposed Section 111(d) rule is generating a staggering volume of comments, and EPA will need to expend considerable public resources to address those comments, as it proceeds toward finalizing the rule, consistent with its commitment in the settlement agreement. An expedited ruling from this Court that the settlement—and thus the entire rulemaking—is unlawful will save these public resources and redirect EPA's resources to more legally sound projects.

CONCLUSION

For the foregoing reasons, the motion for a consolidated briefing schedule and expedited consideration should be granted.

Dated: September 3, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 3rd day of September, 2014, a copy of the foregoing *Petitioners' Motion To Set A Consolidated Briefing Schedule And To Expedite Consideration* was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Elbert Lin
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