

**ORAL ARGUMENT NOT YET SCHEDULED**

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

STATE OF WEST VIRGINIA, )  
STATE OF ALABAMA, STATE )  
OF INDIANA, STATE OF KANSAS, )  
COMMONWEALTH OF KENTUCKY,) )  
STATE OF LOUISIANA, STATE OF )  
NEBRASKA, STATE OF OHIO, )  
STATE OF OKLAHOMA, STATE OF )  
SOUTH CAROLINA, STATE OF )  
SOUTH DAKOTA, and STATE OF )  
WYOMING, )

Petitioners )

v. )

UNITED STATES )  
ENVIRONMENTAL )  
PROTECTION AGENCY )

Respondent. )

No. 14-1146

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**UNOPPOSED MOTION OF SIERRA CLUB, NATURAL  
RESOURCES DEFENSE COUNCIL, AND ENVIRONMENTAL  
DEFENSE FUND FOR LEAVE TO INTERVENE IN SUPPORT  
OF RESPONDENT**

Sierra Club, Natural Resources Defense Council, and Environmental Defense Fund (“movants”) respectfully move under Fed. R. App. P. 15(d) to intervene in support of respondent Environmental Protection Agency (“EPA”) in the above-captioned proceeding for review of a 2011 settlement agreement between EPA and movants and a number of state and local governments. Pursuant to D.C. Circuit Rule 15(b), the present motion also constitutes a motion to intervene in all petitions for review of the challenged settlement agreement.

Counsel for petitioners have indicated they do not oppose this motion, as have counsel for respondent EPA.

## INTRODUCTION

In the current action, West Virginia and 11 other states (“petitioners”) seek review of a settlement agreement that EPA entered into with environmental movants and a number of state and local governments in December 2010. *See* 75 Fed. Reg. 82,392 (Dec. 30, 2010).<sup>1</sup> Under the terms of this agreement, EPA committed to

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<sup>1</sup> The settlement was signed on December 30, 2010, but was not approved by EPA as final until March 2, 2011, following an opportunity for public notice and comment pursuant to section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g). The parties filed an amended agreement

undertake a rulemaking concerning greenhouse gas emissions from new and existing electric utility steam generating units under sections 111(b) and 111(d) of the Clean Air Act, respectively. *See* 42 U.S.C. § 7411(b), (d). The settlement agreement committed the agency to propose regulations and take final action by specified dates. Those dates were extended in subsequent modifications to the agreement.

The agency did not adhere to the modified dates specified in the settlement agreement. Instead, the agency published proposed regulations for greenhouse gas emissions for new and existing power plants on January 8 and June 18, 2014, respectively. *See* 79 Fed. Reg. 1430 (Jan. 8, 2014); 79 Fed. Reg. 34,830 (June 18, 2014).<sup>2</sup>

Movants seek to intervene in order to argue that the Court lacks jurisdiction to review the final settlement agreement, and to preserve their right to participate in the event that the Court does not dismiss the petitions on that basis.

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on June 13, 2011, that modified certain dates for EPA's actions but otherwise left the agency's responsibilities unaltered.

<sup>2</sup> The agency initially proposed regulations for new power plants on April 13, 2012, *see* 77 Fed. Reg. 22,392 (Apr. 13, 2012), but withdrew that proposal upon publishing the newer proposal in January 2014. *See* 79 Fed. Reg. 1352 (Jan. 8, 2014).

## BACKGROUND

### A. Movants

Sierra Club is a national nonprofit environmental organization with approximately 600,000 members nationwide. One of Sierra Club's major programs is its national Climate Recovery Partnership, a coordinated effort to promote a clean energy economy and protect communities and natural environments threatened by global warming. Among other goals, the Sierra Club advocates strongly for the replacement of fossil fuel-fired electricity generation with renewable energy and energy efficiency.<sup>3</sup>

The Natural Resources Defense Council ("NRDC") is a national nonprofit environmental organization with over 300,000 members nationwide. NRDC uses law, science, and the support of its members to ensure a safe and healthy environment for all living things. One of NRDC's top priorities is to reduce emissions of the air pollutants that are causing global warming.<sup>4</sup>

The Environmental Defense Fund ("EDF") is a national nonprofit nonpartisan environmental organization representing more than

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<sup>3</sup> See Ex. 1, Declaration of Mary Anne Hitt, ¶¶ 2-12.

<sup>4</sup> See Ex. 2, Declaration of Gina Trujillo, ¶¶ 3-7.

325,000 members nationwide. Since 1967 EDF has linked science, economics, and law to create innovative, equitable, and cost-effective solutions to the most urgent environmental problems. Protecting public health and the environment from harmful airborne pollutants, including greenhouse gases, is a core organizational mission, and EDF participates in regulatory and judicial proceedings on air pollution policy at the federal and state level to protect human health and the environment.<sup>5</sup>

## **B. The Settlement Agreement**

The settlement agreement that is the subject of this lawsuit grew out of actions by movants and numerous state and local governments to enforce EPA's responsibility under the Clean Air Act to address greenhouse gas emissions from fossil fuel-fired power plants, the nation's largest source of greenhouse gas pollution. In 2006, movants and their state and local government co-litigants sued EPA in this Court (No. 06-1148) for its failure to include standards for greenhouse gas emissions in its 2006 revision of the new source performance standards ("NSPS") for fossil fuel-fired power plants. After the Supreme

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<sup>5</sup> See Declaration of John Stith, ¶¶ 3-7.

Court held in 2007 that greenhouse gas emissions are subject to regulation under the Clean Air Act, *see Massachusetts v. EPA*, 549 U.S. 497 (2007), the Court remanded the power plant case back to the agency to reevaluate its decision not to issue NSPS for greenhouse gases in light of the Supreme Court's holding.

Despite the remand and a 2009 determination by the EPA Administrator that greenhouse gas emissions from mobile sources endanger public health and welfare, *see* 74 Fed. Reg. 66,496 (Dec. 15, 2009) ("the Endangerment Finding"), EPA did not take any steps to limit greenhouse gas pollution from power plants under section 111. After nearly three years of inaction by the agency, movants submitted a letter to EPA indicating their intention to revive the 2006 litigation unless the agency took timely steps to amend the NSPS for power plants to cover greenhouse gas emissions.

In response to these actions, EPA entered into settlement negotiations with the parties on a schedule for regulatory action. The settlement agreement, finalized in 2011, required the agency to propose regulations for greenhouse gas emissions from new and existing power plants under sections 111(b) and 111(d) of the Clean Air Act,

respectively, and to take final action on the proposal by May of 2012.

This agreement was published in the Federal Register on December 30, 2010, *see* 75 Fed. Reg. at 82,392, and was subject to public comment for a thirty-day period as provided by section 113(g) of the Clean Air Act, 42 U.S.C. § 7413(g).

The agency did not act by the agreed-upon dates. It eventually proposed regulations for carbon dioxide<sup>6</sup> emissions from new fossil fuel-fired power plants in April 2012, but withdrew that proposal on January 8, 2014. That same date, the agency re-proposed carbon dioxide emission regulations for new plants. The agency proposed emission guidelines for carbon dioxide emissions from existing plants in June.

### **C. Petitioners' Claims**

None of the petitioners submitted comments on the settlement agreement during the 30-day period provided under section 113(g) or sought judicial review of the agreement at the time.<sup>7</sup> Petitioners filed

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<sup>6</sup> Carbon dioxide is one of the six well-mixed pollutants covered under the regulatory definition of “greenhouse gases.”

<sup>7</sup> A settlement agreement is not a “final action” subject to judicial review under section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b), which provides a 60-day window for challenging true final actions.

this challenge to the settlement agreement three years later. Movants believe that the argument on which petitioners base their challenge—namely, that by regulating power plant *mercury* emissions under section 112 of the statute, 42 U.S.C. § 7412, EPA has deprived itself of the authority to regulate power plant *carbon dioxide* emissions under section 111(d)—will not be ripe until EPA issues final regulations (and will be substantively meritless even then).

Movants seek leave to intervene to argue that the Court lacks jurisdiction to hear the petitioners' arguments and that those arguments fail on the merits in any event.

### **STATEMENT OF INTEREST AND GROUNDS FOR INTERVENTION**

A motion to intervene must provide “a concise statement of the interest of the moving party and the grounds for intervention.” Fed. R. App. P. 15(d). Environmental movants easily satisfy this requirement. First, petitioners seek to challenge the legality of a settlement agreement to which environmental movants were parties. Second, environmental movants have a strong interest in protecting their members from the danger posed by emissions of carbon dioxide and other pollutants from power plants. EPA's proposal, if finalized, would



significantly reduce carbon dioxide emissions from power plants and have the co-benefit of reducing other harmful air pollutants as well. Environmental movants have participated extensively in the administrative and judicial proceedings leading up to EPA's proposed regulation under section 111(d) of the Clean Air Act, which is the ultimate target of this action. Environmental movants' interests, as well as those of their members, would be harmed if the Court agreed to review the settlement agreement and issued a ruling that nullified the proposed 111(d) rule. Additionally, this motion is timely.

First, intervention is proper because the state litigants' petition purports to seek review of and to characterize the December 2010 settlement agreement to which movants were parties. Movants have a legitimate interest in participating here insofar as the petitioners can be expected to continue to characterize and assert claims about the settlement agreement.

Furthermore, movants' extensive participation in greenhouse gas regulatory proceedings, which spans more than a decade leading up to EPA's issuance of the proposed 111(d) rule, underscores their substantial interest in defending a regulatory process that would result

in federal rules requiring limits on carbon dioxide emissions from fossil fuel-fired power plants. In 2001, two of the movants—NRDC and Sierra Club—filed comments in support of a petition to EPA calling for greenhouse gas regulations under section 202 of the Clean Air Act, 42 U.S.C. § 7521. *See* Comments of NRDC, EPA Docket No. A-2000-04 (filed May 23, 2001). All three movants (along with others) then challenged EPA’s denial of that petition in 2003 by initiating litigation that led to the Supreme Court’s holding in *Massachusetts* that greenhouse gases are air pollutants subject to control under the Clean Air Act. 549 U.S. at 534. After that decision, the movants advocated for EPA’s issuance of the Endangerment Finding and motor vehicle emission standards, as well as the regulation of greenhouse gas emissions from stationary sources. Movants intervened in defense of EPA and filed briefs as intervenors in the related proceedings in this Court challenging various EPA actions relating to greenhouse gases (Nos. 09-1322, *et al.*; Nos. 10-1167, *et al.*; Nos. 10-1092, *et al.*; Nos. 10-1073, *et al.*) that were at issue in *Coalition for Responsible Regulation v. EPA*, 684 F.3d 102 (D.C. Cir. 2012), *cert. granted in part and denied in*

*part, and aff'd in part and rev'd in part sub nom. Utility Air Regulatory Group v. EPA*, 134 S. Ct. 2427 (2014) (“UARG”).

Movants have participated extensively in litigation and rulemaking proceedings to advocate that EPA carry out its responsibilities to establish standards of performance for carbon dioxide emissions from power plants. In a 2005 rulemaking to review the NSPS for fossil fuel-fired power plants, movants filed comments arguing that EPA must address carbon dioxide emissions in its updated performance standards. *See* EPA Document No. EPA-HQ-OAR-2005-0031-0108 (Joint Comments of EDF, NRDC, and Sierra Club). Movants then challenged EPA’s final decision in 2006 not to regulate carbon dioxide emissions in the updated NSPS and the agency’s legal position that it lacked authority to do so under the Clean Air Act. *State of New York, et al. v. EPA*, No. 06-1322 (D.C. Cir.). After the Supreme Court rejected the agency’s position in *Massachusetts*, this Court remanded the NSPS rule to EPA for action consistent with the Supreme Court’s decision. *State of New York v. EPA*, No. 06-1322 (D.C. Cir. Sept. 24, 2007) (order remanding to EPA). After more than three years of inaction, movants

executed a settlement agreement with EPA that is the subject of the current action.

Movants have long advocated that EPA carry out its responsibilities under the Clean Air Act to issue national emission standards for power plants under section 111. Movants have testified at the public hearings and filed extensive comments on both the 2012 and 2014 section 111(b) proposals and are preparing comprehensive comments on the section 111(d) proposal. *See, e.g.*, EPA Docket ID No. EPA-HQ-OAR-2013-0495-9514 (Sierra Club, EDF, NRDC, *et al.*); No. EPA-HQ-OAR-2011-0660-10798 (Sierra Club, EDF, NRDC, *et al.*). Many thousands of movants' members also submitted individual comments on these proposals.

Movants' significant participation in the proceedings related to EPA's regulation of carbon dioxide emissions from power plants strongly favors their motion for leave to intervene. This Court has regularly allowed intervention by movants<sup>8</sup> and other environmental

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<sup>8</sup> *See, e.g., Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (EDF, NRDC, Sierra Club and CLF intervened in support of EPA), *rev'd in part on other grounds, UARG*, 134 S.Ct. at 2427; *White Stallion Energy Center, LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014); *Las Brisas Energy Center, LLC v. EPA, et al.*, No.

and industry organizations<sup>9</sup> when those parties seek to support EPA against challenges brought under the Clean Air Act. This Court's practice of granting intervention to private organizations—including environmental groups, trade organizations, private companies, and others—supporting agency actions in which they have an interest recognizes that such private entities have distinctive perspectives that contribute to the process of judicial review.

**A. Movants and their Members Will Be Harmed if the Court Grants the Claims Attacking EPA's Proposed 111(d) Rule**

Movants have a strong interest in regulations to curb carbon emissions from the existing fleet of power plants, which is the largest contributor of greenhouse gas pollution in the United States. As EPA

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12-1248 and consolidated cases (Nov. 5, 2012) (ordering granting intervenor status to EDF, NRDC, Sierra Club, and others in support of EPA); *North Carolina v. EPA*, 531 F.3d 896, *modified on rehearing*, 550 F.3d 1176 (D.C. Cir. 2008) (EDF intervened in support of EPA); *Am. Corn Growers Ass'n v. EPA*, 291 F.3d 1 (D.C. Cir. 2002) (EDF and other environmental organizations intervened in support of EPA); *Michigan v. EPA*, 213 F.3d 663 (D.C. Cir. 2000) (NRDC intervened in support of EPA).

<sup>9</sup> *See, e.g., NRDC v. EPA*, 571 F.3d 1245 (D.C. Cir. 2009) (National Petrochemical and Refiners Association and other industry groups intervened in support of EPA); *Am. Farm Bureau Fed'n v. EPA*, 559 F.3d 512 (D.C. Cir. 2009) (industry groups intervened in support of EPA); *Sierra Club v. EPA*, 551 F.3d 1019 (D.C. Cir. 2008) (chemical industry groups intervened in support of EPA).

has determined, the accumulation of heat-trapping greenhouse gases in the atmosphere causes dangerous and harmful changes in the Earth's climate. *See* Endangerment Finding, 74 Fed. Reg. at 66,496. The United States has already started to experience the impacts of climate change. In upholding the Endangerment Finding against industry challenge, this Court held that EPA based its conclusion on "substantial record evidence" that "extreme weather events, changes in air quality, increases in food- and water-borne pathogens, and increases in temperatures are likely to have adverse health effects." *Coalition for Responsible Regulation*, 684 F.3d at 121.<sup>10</sup> Further, the Court concluded that "[the climate science record] supports EPA's conclusion that climate change endangers human welfare by creating risk to food production and agriculture, forestry, energy, infrastructure, ecosystems, and wildlife." *Id.* Current greenhouse gas emissions will continue to cause climate change long into the future due to the long atmospheric residence lifetime of several of these gases. 74 Fed. Reg. at 66,518-19. Consequently, any action to prevent EPA from regulating greenhouse gas emissions from existing power plants threatens to exacerbate the

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<sup>10</sup> The Supreme Court denied certiorari on all matters relating to the Endangerment Finding.

impacts of climate change in both the near and distant future. Fossil fuel-fired power plants emit nearly 40% of domestic carbon dioxide emissions.<sup>11</sup> The dangers posed by harmful climate impacts now and in the future require prompt and effective action by EPA to limit carbon pollution from existing power plants under section 111(d) of the Clean Air Act. EPA estimates that the proposed 111(d) rule will reduce carbon dioxide pollution by 26% from 2005 levels by 2020 and 30% by 2030. 79 Fed. Reg. at 34,931.

In addition to securing reductions in carbon pollution, the proposed 111(d) rule, if finalized, will have additional substantial public health benefits by reducing smog- and soot-forming pollutants such as sulfur dioxide, nitrogen oxides, and fine particulate matter. Cutting emissions of these co-pollutants emitted by power plants will lower the rates of asthma attacks, respiratory disease, heart attacks, and premature death that occur each year as a result of atmospheric smog and soot. EPA predicts that the section 111(d) rule will reduce nationwide emissions of sulfur dioxide and nitrogen oxides by hundreds

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<sup>11</sup> See EPA, *Inventory of U.S. Greenhouse Gas Emissions and Sinks: 1990-2012*, EPA 430-R-14-003 (Apr. 2015), at Table 2-1, available at <http://www.epa.gov/climatechange/Downloads/ghgemissions/US-GHG-Inventory-2014-Main-Text.pdf>.

of thousands of tons and fine particulate emissions by approximately 50-60 thousand tons.

Movants' members will benefit directly from limits on greenhouse gas emissions achieved through EPA's section 111(d) rule as well as from associated reductions of other harmful pollutants.<sup>12</sup> If petitioners succeed in thwarting EPA's efforts to regulate existing power plants under section 111(d), movants' members will be injured by both the local and the global harms caused by carbon dioxide and other pollutants emitted by those sources.<sup>13</sup>

**B. Movants Need Not Prove Standing, But if They Do Need To, It Is Adequately Demonstrated**

Fed. R. App. P. 15(d), which governs intervention in suits for review or enforcement of agency decisions, requires that a motion for intervention provide "a concise statement of the interest of the moving party and the grounds for intervention." Movants have satisfied that requirement, as demonstrated above—there is no additional requirement that a moving party demonstrate Article III standing.

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<sup>12</sup> See, e.g., Ex. 4, Decl. of Arthur P. Cooley ¶¶ 2-7; Ex. 5, Decl. of Joanne Pannone ¶¶ 5-20; Ex. 6, Decl. of Elizabeth Coplon, ¶¶ 3-6.

<sup>13</sup> See, e.g., Cooley Decl. ¶¶ 6-7; Pannone Decl. ¶¶ 17-20; Coplon Decl., ¶ 6.



Indeed, the Supreme Court has concluded that Article III standing requirements apply to those “who seek[] to initiate or continue proceedings in federal court,” not to those who *defend* against such proceedings. *Bond v. United States*, 131 S. Ct. 2355, 2361-62 (2011); *see also Ctr. for Individual Freedom v. Van Hollen*, 694 F.3d 108, 110 (D.C. Cir. 2012) (noting that standing was required for defendant-intervenor that sought to appeal where principal defendant had not appealed).<sup>14</sup> Here it is petitioners, not movants, who seek to invoke the Court’s Article III jurisdiction. Even if defendant-side standing were required here, EPA has such standing, and the Court need not address movants’ standing. *See McConnell v. FEC*, 540 U.S. 93, 233 (2003), *overruled on other grounds, Citizens United v. FEC*, 130 S. Ct. 876 (2010); *Comcast Corp. v. FCC*, 579 F.3d 1, 5-6 (D.C. Cir. 2009).

In any event, Movants’ interests satisfy both constitutional and prudential requirements for standing. The health, environmental, and procedural concerns described above that establish movants’ interest

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<sup>14</sup> Even before *Bond*, precedent requiring intervenors to demonstrate standing in some circumstances, *see, e.g., Rio Grande Pipeline Co. v. FERC*, 178 F.3d 533 (D.C. Cir. 1999), had been questioned by this Court. *See, e.g., Jones v. Prince George’s County*, 348 F.3d 1014, 1018 (D.C. Cir. 2003).

under Fed. R. App. P. 15(d) also establish their standing to sue under Article III of the Constitution. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555 (1992). For the same reasons, Movants fall squarely within the “zone of interests” protected or regulated by the relevant provisions of the Clean Air Act. *See Fed. Election Comm’n v. Akins*, 524 U.S. 11, 20 (1998).

Movants’ members use, own, and enjoy property and natural resources which are harmed by or are at risk of harm from global warming. *See supra*, notes 11-12. Harms to movants’ use and enjoyment of their property, as well as their interests in use and enjoyment of natural resources, are sufficient to establish injury. *See, e.g., Massachusetts*, 549 U.S. at 522; *Wyoming Outdoor Council v. U.S. Forest Serv.*, 165 F.3d 43, 51 (D.C. Cir. 1999).

Moreover, movants’ members are at risk of harm from the deleterious smog and soot pollution that will result if petitioners are successful and EPA’s 111(d) rule is legally invalidated. Some of these members live in close proximity to power plants, and are particularly at risk from the negative health and environmental impacts that result

from power plant emissions.<sup>15</sup> This Court has repeatedly held that environmental organizations have standing to sue in order to protect their members from atmospheric pollution. *See, e.g., NRDC v. EPA*, 755 F.3d 1010 (D.C. Cir. 2014); *Ass'n of Battery Recyclers, Inc. v. EPA*, 716 F.3d 667, 672-73 (D.C. Cir. 2013); *Sierra Club v. EPA*, 699 F.3d 530, 533 (D.C. Cir., 2012). Accordingly, even if movants were required to establish standing—which they are not—they would readily meet Article III's standards.

### **C. Movants Have Demonstrated the Necessary Interest and Should Be Granted Intervenor Status**

Movants satisfy the requirements for intervention. This case is governed by Fed. R. App. P. 15(d), which simply requires “a concise statement of the interest of the moving party and the grounds for intervention.” Movants are parties to the December 2010 settlement agreement that the petitioners invoke, and have strong interests in the completion of the rulemaking process leading to final section 111 regulations for existing power plants, and in minimizing the harm to their members from climate pollution and other harmful air pollution. If petitioners were to succeed in securing a court order striking down

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<sup>15</sup> *See, e.g., Pannone Decl.*, ¶¶5-6.

EPA's *proposed* section 111(d) rule, it would nullify movants' and their members' extensive participation in the administrative process and would halt EPA from establishing much-needed carbon dioxide emissions limits for existing fossil fuel-fired power plants. Unchecked, emissions of greenhouse gases from these sources (as well as emissions of additional co-occurring air pollutants) will damage the health and well-being of movants' members and damage resources and property these members use and enjoy. Finally, movants' timely participation will not delay the proceedings or prejudice any party.

### CONCLUSION

Sierra Club, NRDC and EDF should be granted leave to intervene in support of respondent.

Respectfully submitted,

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Dated: September 2, 2014

**CERTIFICATE OF SERVICE**

I hereby certify that the foregoing UNOPPOSED MOTION OF NATURAL RESOURCES DEFENSE COUNCIL, ENVIRONMENTAL DEFENSE FUND, AND SIERRA CLUB FOR LEAVE TO INTERVENE IN SUPPORT OF RESPONDENTS and RULE 26.1 DISCLOSURE STATEMENT was today served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Andres Restrepo  
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DATED: September 2, 2014

**ORAL ARGUMENT NOT YET SCHEDULED**

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

STATE OF WEST VIRGINIA, )  
STATE OF ALABAMA, STATE )  
OF INDIANA, STATE OF KANSAS, )  
COMMONWEALTH OF KENTUCKY,) )  
STATE OF LOUISIANA, STATE OF )  
NEBRASKA, STATE OF OHIO, )  
STATE OF OKLAHOMA, STATE OF )  
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UNITED STATES )  
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PROTECTION AGENCY )

Respondent. )  
\_\_\_\_\_ )

**RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, movants Natural Resources Defense Council, Environmental Defense Fund, and Sierra Club provide the following corporate disclosure statement:

The above-named movants are not-for-profit organizations focused on protection of the environment and conservation of natural resources. Movants do not have any outstanding shares or debt securities in the hands of the public nor any parent, subsidiary, or affiliates that have issued shares or debt securities to the public.

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*Counsel for Environmental Defense Fund*

Dated: September 2, 2014

## **Exhibit 1**

### Declaration of Mary Anne Hitt

**DECLARATION OF MARY ANNE HITT**

I, MARY ANNE HITT, declare under penalty of perjury that the following is true and correct and within my personal knowledge.

1. I am the Director of the Sierra Club's Beyond Coal Campaign, and have held this position since 2010. I joined the Sierra Club staff in 2008, as the Deputy Director of the Beyond Coal Campaign (I was also employed by Sierra Club for a short period prior to that). I have been a member of Sierra Club since March 2001.
2. I am familiar with Sierra Club's general goals, its projects, and its membership information, as well as its activities surrounding the settlement agreement that EPA reached in late 2010 with Sierra Club, NRDC, EDF, and a coalition of state and local governments.
3. Sierra Club's mission is "to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives."

4. While at the Sierra Club, I have worked on numerous matters involving federal air pollution regulations and rulemakings promulgated by the U.S. Environmental Protection Agency (EPA) under the Clean Air Act.
5. The Sierra Club was significantly involved in the regulatory and legal events that led to the decision authorizing EPA to regulate greenhouse gases. The Sierra Club, along with two other organizations, filed a lawsuit against EPA in 2002, requesting that the agency regulate greenhouse gases from motor vehicles. EPA settled that lawsuit and responded to the petition in 2003, stating that the agency lacked authority to regulate greenhouse gases under the Clean Air Act. The Sierra Club and numerous states and environmental organizations challenged that denial, ultimately leading to the Supreme Court ruling in *Massachusetts v. EPA*.
6. The Sierra Club has been advocating EPA regulation of greenhouse gases from power plants for many years. In 2003, Sierra Club filed a lawsuit to require EPA to update its new source performance standards (NSPS) for electric generating units under section 111 of the Clean Air Act. Pursuant to a settlement of that lawsuit, EPA revised the NSPS for electric generating units in 2006 but failed to include standards for greenhouse gas emissions. Consequently, the Sierra Club and numerous states and environmental

organizations challenged that rule. The D.C. Circuit Court of Appeals remanded the rule to EPA in light of the Supreme Court's decision in *Massachusetts v. EPA*.

7. In 2010, after EPA had failed to act on the remand order for three years, Sierra Club, along with NRDC and EDF, sent a demand letter to EPA which led to a negotiated settlement. EPA ultimately committed to proposing NSPS rules under section 111 for both new and existing power plants by September 2011.
8. Sierra Club and its members have an interest in ensuring that this settlement agreement is protected and to ensure that the petitioning states do not make headway in undermining the legal basis for EPA's proposed 111(d) carbon regulations.
9. Fossil fuel-fired power plants account for over one-third of total greenhouse gas emissions and are the largest stationary source of air pollution in the United States. They are also significant sources of harmful smog- and soot-forming pollutants, including sulfur dioxide, nitrogen oxides, and fine particulate matter, as well as hazardous air pollutants like mercury and hydrogen chloride. Measures that reduce greenhouse gas emissions from

fossil fuel-fired power plants have the co-benefit of reducing these other air pollutants as well.

10. The Sierra Club has members throughout the country who live in close proximity to fossil fuel-fired power plants and are harmed by the air pollution these plants emit. Sierra Club members are also harmed by the various effects of climate change that is caused by greenhouse gas emissions.
11. The Beyond Coal Campaign promotes the use of clean energy sources by encouraging utilities and power companies nationwide to retire existing coal-fired plants and switch to cleaner energy sources.

Dated this 2nd day of September, 2014.

*Mary Anne Hitt*

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Mary Anne Hitt

## **Exhibit 2**

### Declaration of Gina Trujillo

## DECLARATION OF GINA TRUJILLO

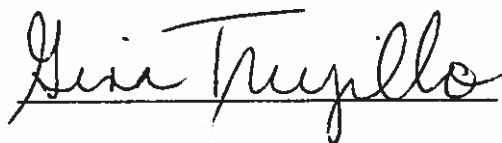
I, Gina Trujillo, declare as follows:

1. I am the director of direct mail fundraising at the Natural Resources Defense Council, Inc. ("NRDC"). I have been the director of direct mail fundraising for nine years.
2. My duties include supervising the preparation of materials that NRDC distributes to members and prospective members. Those materials describe NRDC and identify its mission.
3. NRDC is a membership organization incorporated under the laws of the State of New York. It is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.
4. NRDC's mission statement declares that "The Natural Resources Defense Council's purpose is to safeguard the Earth: its people, its plants and animals, and the natural systems on which all life depends." The mission statement goes on to declare that NRDC works "to restore the integrity of the elements that sustain life- air, land, and water- and to defend endangered natural places." NRDC's mission includes the prevention and mitigation of global warming in order to protect and maintain NRDC's members' use and enjoyment of natural resources threatened by global warming.
5. Through its Climate Center, NRDC pursues federal and state policies to curb the pollution that is causing global warming, including emissions of carbon dioxide and other greenhouse gases from the electricity sector, which is responsible for approximately forty percent of global warming pollution in the United States.
6. When an individual becomes a member of NRDC, his or her current residential address is recorded in NRDC's membership database. When a member renews his or her membership or otherwise makes a contribution to NRDC, the database entry reflecting the member's residential address is verified or updated.
7. NRDC currently has more than 300,000 members. There are NRDC members residing in each of the fifty United States and in the District of Columbia.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.



Executed on September 2, 2014.

A handwritten signature in black ink that reads "Gina Trujillo". The signature is written in a cursive style and is positioned above a solid horizontal line.

Gina Trujillo

## **Exhibit 3**

### Declaration of John Stith

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**DECLARATION OF JOHN STITH**

I, John Stith, declare as follows:

1. I am the Senior Manager of Database Marketing at Environmental Defense Fund. I have managed Environmental Defense Fund's membership database since October 2005.

2. My duties include maintaining an accurate list of members. My colleagues and I provide information to members, acknowledge gifts and volunteer actions, and manage the organization's member databases. My work requires that I be familiar with Environmental Defense Fund's purpose, structure, and activities.

3. Environmental Defense Fund is a membership organization incorporated under the laws of the State of New York, and is recognized as a not-for-profit corporation under section 501(c)(3) of the United States Internal Revenue Code.

4. The mission of Environmental Defense Fund is to rely on science, economics, and law to protect and restore the quality of air, water, and other natural resources. Environmental Defense Fund employs more than 150 scientists, economists, engineers, business school graduates, and attorneys to help solve

challenging environmental problems in a scientifically sound and cost-effective way. Environmental Defense Fund is committed to “Finding the Ways that Work.”

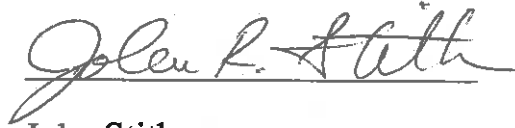
5. Through its long-standing work to protect human health and the environment from air pollution, Environmental Defense Fund is pursuing initiatives at the state, national, and international levels designed to reduce emissions of greenhouse gases responsible for global warming from major sources, including power plants.

6. When an individual becomes a member of Environmental Defense Fund, his or her current residential address is recorded in the organization's membership database, which EDF maintains in the regular course of business. The database entry reflecting a member's residential address is shown to members for verification as a routine part of EDF's membership communications, and address changes provided by members are regularly applied to EDF's database. I obtained the information below from this database.

7. Environmental Defense Fund members have a strong interest in protecting human health and the environment from air pollution, including greenhouse gas emissions from power plants. Environmental Defense Fund currently has over 325,000 members in the United States, including members residing in each of the 50 states and the District of Columbia.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in Washington, D.C. on August 29, 2014.

A handwritten signature in cursive script, appearing to read "John R. Stith", written over a horizontal line.

John Stith

## **Exhibit 4**

Declaration of Arthur P. Cooley

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

**DECLARATION OF ARTHUR P. COOLEY**

I, Arthur P. Cooley, declare as follows:

1. I am a member of Environmental Defense Fund (“EDF”) and have been a board member since its founding by myself and several other scientists on Long Island, New York, in 1967. I reside at 6320 Avenida Cresta, La Jolla, California 92037, having moved here from Long Island, New York in 2003. I have a graduate degree in biology from Cornell University, am retired as a high school biology teacher, and have served for 20 years as a Naturalist and Expedition Leader for Lindblad Expeditions, an organization that offers small-ship expedition cruises that give passengers the opportunity to encounter some of the world’s most pristine places with the experts who know them best. As a naturalist and expedition leader, I have taught guests about the natural world and have coordinated our guests’ outdoor activities. Through this process I have traveled to all seven continents and learned a great deal about the birds, whales, geology, and other natural phenomena in these areas.

2. There is broad scientific consensus that human-induced global warming is happening at an accelerating pace. I have reviewed and understand the scientific

evidence documenting the current and predicted impacts of global warming in California and other locations including rising sea levels, higher temperatures, increased storm intensities, other extreme weather events such as drought and prolonged heat waves, deteriorating air quality such as worsening ground-level ozone concentrations, and changes in precipitation and snowfall patterns resulting in diminished fresh water supplies. Recent evidence also suggests that global warming may be reaching what scientific experts refer to as a tipping point where its impacts can reinforce each other, producing more severe impacts than linear models predict and accelerating the pace and severity of the adverse impacts. The fossil fuel power plants in the United States are the single largest source of greenhouse gas emissions in the nation and one of the largest in the world. Based on scientific reports and articles that I have read, I believe that, if greenhouse gas emissions from fossil fuel power plants throughout the United States are not reduced, the impacts of global warming will be increasingly injurious to me.

3. I live in La Jolla, California, one block from the ocean in a house that my wife and I own. The ability to live so close to the ocean and the beach was a significant reason why I chose this residence and it features prominently as a factor in the economic value of my property. I routinely visit the ocean where I walk along the beach, and intend to continue to do so. I also visit, examine, and



immensely enjoy the biology and ecology of the ocean shore and have a significant recreational, aesthetic, and personal connection to this particular area of the ocean and beach that I regularly visit, and intend to continue to do so. I would not be able to continue to enjoy my property and my current recreational activities as I can now if the sea level continues to rise and the current beach changes or disappears. Indeed, there is documented sea level rise in San Diego Harbor and other low lying beaches close to my house, and the beach on which I take frequent walks is now completely inundated in high surf and high tide conditions. If greenhouse gas emissions continue unabated, it appears likely that I will lose access to this beach or will be required to end or curtail my regular enjoyment of the beach due to its impairment.

4. As a biologist who studies nature, I must spend extensive time outside, along the coast and the beach, to carry out my work. As a naturalist for Lindblad Expeditions, my duties include teaching guests about many different types of wildlife including, birds, whales, and dolphins, and also educating guests about the geology of the areas we visit. As an Expedition Leader, I coordinate all the activities of the guests, which include landings, zodiac cruises, lectures, arrivals, and departures, much of which involves enjoyment, observation, or use of natural areas. I also spend additional time outside because of my deep appreciation

for and interest in nature. I am very concerned about the adverse impact of global warming on the wildlife, resources, and ecosystems that I study and routinely visit. If global warming causes adverse impacts to these natural systems, as is occurring now and will likely continue to occur, I expect to be personally harmed by being unable to observe these systems free of such impacts. Global warming is adversely impacting the natural systems that I value, including the oceans. For example, ocean acidification threatens to upset the ocean's delicate balance of marine life by harming those organisms that rely upon calcium carbonate to build their shells. This will negatively impact both far-away coral reefs as well as sensitive organisms in the tidal pools that I regularly visit with my grandchildren. These impacts will worsen unless greenhouse gas emissions are reduced.

5. In addition, I am also very concerned about the adverse impact of air pollution, including greenhouse gas emissions, on my health and well-being and that of my family. My wife is affected by poor air quality and takes appropriate medicines to reduce that effect, and that impact, in turn, affects me – for example, in requiring me to change my personal recreational or work activities to assist her or help her avoid impacts, and because of the emotional harm I experience when her health is threatened by poor air quality. During high ozone days, I avoid strenuous exertion and significantly limit my time spent outside working and

enjoying nature, in order to protect my health as well. I must take similar measures to protect my health during unusually hot days or during high pollution episodes due to wildfires. Because global warming is likely to lead to worsening ground-level ozone concentrations and increases in heat waves, wildfires and droughts, I will likely have to curtail my outdoor activities to an even greater extent if global warming is not abated

6. Based on my knowledge of the Environmental Protection Agency's proposed carbon pollution standards for existing fossil fuel power plants, I expect that the final standards for existing power plants will achieve significant reductions of carbon dioxide emissions from the power sector. I anticipate that the reduction of carbon dioxide emissions from fossil fuel power plants will contribute significantly to global efforts to slow the consequences of greenhouse gas induced climate change, such as the sea level rises that affect the value of my home. I expect that the standards will also result in the reduction of other harmful air pollutants emitted by fossil fuel-fired power plants. I anticipate that the reduction of carbon dioxide emissions and other harmful air pollutants will help to improve the poor air quality that negatively affects the health of my wife, and that prevents me from being outside during days when the air quality is especially poor.

7. I am concerned that any delay in implementing the carbon pollution standards for existing fossil fuel-fired power plants will prolong and exacerbate the threats to my health, welfare, property, and recreational interests resulting both from climate change and from the presence of harmful co-pollutants emitted by fossil fuel-fired power plants affecting the air quality in the places where I live, work, and recreate. I strongly support the efforts of the Environmental Defense Fund to ensure that the proposed carbon pollution standards for power plants are finalized.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed in La Jolla, California on August 29, 2014.

/s/ Arthur P. Cooley

Arthur P. Cooley

## **Exhibit 5**

### Declaration of Joanne Pannone

**DECLARATION OF JOANNE PANNONE**

I, Joanne Pannone, declare as follows:

1. My name is Joanne Pannone. I am over 18 years of age and competent to give this declaration. All information herein is based on my own personal knowledge unless otherwise indicated.
2. I live in Mercer County, New Jersey. My current address is 215 Meadowbrook Road, Robbinsville, New Jersey 08691. I have lived at this address for 27 years.
3. I am a member of the Sierra Club. I joined the Sierra Club in November 2008. I joined the Sierra Club to help bring awareness to environmental problems such as Marcellus Shale fracking and the air and water quality impacts from nuclear and coal-fired power plants in my area.
4. The Sierra Club is a nationwide non-profit environmental membership organization, which has its purpose to explore, enjoy, and protect the wild places of the earth; to practice and promote the responsible use of the earth's ecosystems and resources; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives.
5. I live approximately 13 miles from PSEG's Mercer Generating Station, a coal-fired power plant located on the Delaware River.

6. I have two grandchildren, aged 9 and 11, and I frequently babysit them while their parents work. My grandchildren spend large portions of the summer with me and I love to spend time outdoors. Both of my grandchildren suffer from asthma. I also live with my mother, who is a non-smoker and suffers from chronic obstructive pulmonary disease (COPD).
7. I am a Wildlife Conservation Corps Volunteer. I have an interest in birds, fish, wildlife and the outdoors. I am also a beekeeper, and have kept bees on my property for the past five years. I also volunteered for six years at the New Jersey Division of Fish and Wildlife's Pequest Trout Hatchery and Natural Resource Education Center, where I taught school-aged children how to fish.
8. I enjoy paddling trips on the Delaware River and overnight camping trips near the river with friends. I am a member of Delaware Riverkeeper Network, an organization dedicated to raising public awareness and protecting the river's watershed. I am also a member of the Society for the Education of American Sailors (SEAS) and enjoying sailing on the Navesink River in Monmouth County.
9. I also frequently take beach trips with my grandchildren to Barnegat Bay in Ocean County. During the summer, we go to the beach as often as three times a month. We also visit the area during winter months to see the seals in Sandy Hook that migrate from the North.

10. I am aware that coal-fired power plants, such as the Mercer Generating Station, emit sulfur dioxide and particulate matter pollution that are linked to heart problems, bronchitis cases and asthma episodes.

11. I believe that sulfur dioxide and particulate matter pollution from the coal-fired Mercer Generating Station harms me and my family. As an example, I have taken my grandchildren to the Pequest Center twice. On both occasions, we had to leave when one of my grandchildren began to have signs of an impending asthma attack—reddening eyes and difficulty breathing. I worry about the negative impacts of continued exposure to this pollution on my health, and the health of my grandchildren, mother, and community.

12. I also understand that fossil fuel-fired power plants emit nearly 40% of domestic carbon dioxide emissions, making them the largest single source category of greenhouse gas pollution that drives climate change.

13. I am concerned about the impacts of climate change on my family and community, and public health and the environment. I understand that climate change is increasing the intensity and frequency of extreme weather events. I am aware that increased coastal storms and storm surges due to sea level rise (also attributable to climate change) are expected to cause increased drowning and other public health impacts. I understand that children and the elderly are among the most vulnerable to these climate-related health effects.



14. The state of New Jersey is already coping with the negative effects of climate change. I live in the Assunpink Creek watershed. In the late 1960s, the state built a number of dams to prevent flooding in Trenton and the surrounding area. During Hurricane Irene, the dams failed to prevent flooding of the Delaware River and other waterways. Nearby farmlands and tree stands were greatly harmed, residents of Mercer County faced power and water shortages, while some were forced to evacuate their homes. Hurricane Sandy also took a toll on the Trenton area, with fires, power outages, and tree loss. My property sits across the street from preserved open space, and we lost a lot of trees during these storms, including some that fell into my driveway. These extreme weather events are scary experiences and cause me to fear for the safety of my family and community. I also still suffer aesthetic harm from the tree loss in my neighborhood.

15. I am concerned that sea level rise and future extreme weather events will further harm coastal communities that are still recovering from the devastating impacts of Hurricane Sandy. I also worry that these events will prevent me from visiting the coastal areas where I enjoy recreating with my family.

16. I am also concerned about the impacts of climate change on wildlife, particularly on the bees I keep on my property. I am aware that extreme temperatures attributable to climate change jeopardize the livelihood of bee

populations. I am also aware that warmer climates are causing an increase in pests and pesticide use, which pose a serious risk to bees and their habitat. I am concerned that extreme weather events are harming bee populations. For example, some of the trees lost near my house in the wake of the hurricanes were swamp maples—the earliest trees to bud in the area, located along the bees' route from their hives to my property.

17. I understand that the U.S. Environmental Protection Agency (EPA) has proposed a new rule, under section 111(d) of the Clean Air Act, to significantly limit the amount of carbon dioxide pollution from existing fossil fuel-fired power plants. I understand that reducing carbon dioxide emissions will help prevent extreme temperatures and weather events attributable to climate change, improving conditions for my family, communities (both inland and on the coast), wildlife and the environment.

18. In addition, I understand that the proposed 111(d) carbon rule will have substantial public health co-benefits by reducing smog- and soot-forming pollutants such as sulfur dioxide, nitrogen oxides, and fine particulate matter from these power plants. I am aware that EPA predicts that the 111(d) carbon rule will substantially reduce these emissions nationwide. I understand that cutting emissions of these pollutants will lower the rates of asthma attack, respiratory disease, heart attack, and premature death that occur each year as a

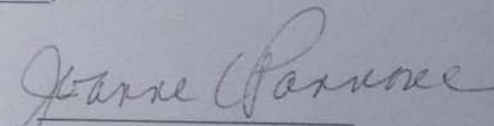
result of atmospheric smog and soot. I believe that this reduction in air pollution will help to protect my health, and the health of my grandchildren, mother, and community. It will also allow me to continue recreating in the area with my friends and family.

19. If the proposed 111(d) carbon rule is finalized and implemented, I will benefit from the new pollution standards. The rule will reduce emissions of greenhouse gases, as well as particulate matter, sulfur dioxide, and nitrogen oxides, helping to protect my health, my family's health, public health and the environment.

20. I am aware that a group of states have initiated a lawsuit in hopes of stopping EPA from issuing the 111(d) carbon rule. I am also aware that Sierra Club is seeking to intervene in that lawsuit in support of EPA. If the states are successful in their efforts, and EPA's efforts to reduce power plant emissions are hindered or delayed, my family and I will be injured. I therefore support Sierra Club's efforts to intervene in this lawsuit.

I certify, under penalty of perjury under the laws of the United States of America, that the foregoing is true and correct.

Executed on August 29, 2014.

  
\_\_\_\_\_  
Joanne Pannone

## **Exhibit 6**

### Declaration of Elizabeth Coplon

## DECLARATION OF ELIZABETH COPLON

I, Elizabeth Coplon, hereby declare as follows under penalty of perjury:

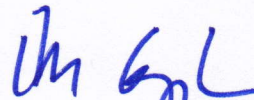
1. I am currently a member of the Natural Resources Defense Council (“NRDC”) and have been since 1995.
2. I support NRDC’s efforts to stop global warming and reduce its impacts. I believe that global warming poses a significant threat to the wellbeing of humans, wildlife, and the natural environment, and that we have a responsibility to maintain the environment to the best of our ability.
3. I live in Malibu, California. My home is located on a piece of property that abuts the Pacific Ocean.
4. I am concerned about the effects that global warming will have on my property and community. It is well-known that global warming will cause a significant rise in sea levels, resulting in increased storm-surge damage and shoreline erosion. My property could be eroded and my home destroyed if sea level rise caused increased erosion of the shoreline. In addition, increased storm-surges could flood my home. Erosion of nearby beaches would also deprive me of recreational opportunities and likely affect the value of my home.
5. I am also concerned about the quality of the air in the Los Angeles area. I understand that global warming could worsen ozone conditions and other air quality problems. In addition, air quality has been extremely bad

during wildfires, which are expected to occur more frequently as a result of global warming.

6. I believe that the regulation of greenhouse gas emissions from power plants and other sources will help prevent global warming, and avoid or lessen sea level rise and other problems associated with global warming. This will protect the economic value of my property and preserve the characteristics that led me to live here.

I declare under the penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed in Malibu, California on August 31, 2014.



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Elizabeth Coplon