

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

NATIONAL MINING ASSOCIATION and)	
AMERICA’S POWER,)	
)	
Petitioners,)	
)	
v.)	Case No. 24-1124
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY and MICHAEL S.)	
REGAN, in his official capacity as)	
Administrator of the United States)	
Environmental Protection Agency,)	
)	
Respondents.)	
)	

**DECLARATION OF MICHELLE BLOODWORTH IN
SUPPORT OF MOTION TO STAY FINAL RULE**

I, Michelle Bloodworth, declare as follows:

1. My name is Michelle Bloodworth. I am the President and CEO of America’s Power. I make this declaration in support of America’s Power’s motion to stay the U.S. Environmental Protection Agency’s (EPA) Final Rule titled “New Source Performance Standards: Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule.”¹ I am over the age of eighteen and have personal knowledge of the facts set forth

¹ 89 *Fed. Reg.* 39,798 (May 9, 2024).

below. I have been employed by America's Power since 2017 and have been in the energy industry for more than three decades. Prior to working at America's Power, I held positions at the Midcontinent Independent System Operator, America's Natural Gas Alliance, Energen/Alabama Gas, and Southern Company Services. I hold a bachelor's degree in mechanical engineering from Auburn University.

2. America's Power is the only national trade organization whose sole mission is to advocate on behalf of coal-fired electricity and the supply chain that supports the nation's coal fleet. America's Power represents its members before Congress, the Executive Branch, state legislatures, state and federal regulatory bodies, the courts, and the press. Our membership is composed of electricity generators, coal producers, transportation companies, and equipment manufacturers.

3. America's Power embraces an all-the-above energy strategy because each electricity resource, including coal, has its own advantages and disadvantages. Collectively, the electricity generator members of America's Power own and operate a diverse portfolio of resources that includes coal, natural gas, renewables, nuclear, and other resources. In addition, five members are pursuing or are developing carbon capture and storage (CCS) projects. One of these, Project Tundra in North Dakota, is the world's largest CCS project.

4. The nation's fleet of more than 400 coal-fired generating units is spread across 42 states. The coal fleet provides affordable, dependable, dispatchable, and fuel-secure electricity on a 24/7 basis. In 2023, coal supplied approximately 17 percent of electricity generated in the United States.² For perspective, coal provided at least half the electricity in five states and 20 percent or more of the electricity in 18 states.³ Almost 429 million tons of coal

² U. S. Energy Info. Admin., *Monthly Energy Review* at tbl 7.2b (April 2024), available at https://www.eia.gov/totalenergy/data/monthly/pdf/sec7_6.pdf.

³ EIA, Form-923, 860 and 930 Data, <https://www.eia.gov/electricity/data/browser/>.

(bituminous, subbituminous, and lignite) were combusted in 2023 to generate this electricity.⁴

5. I am familiar with the preparation and submission of comments by America's Power on EPA's Proposed Rule and the impacts the Final Rule will have on America's Power members.⁵ I have reviewed the declarations of Seth Schwartz, Managing Director of Energy Ventures Analysis, Inc.; Robert McLennan, President and Chief Executive Officer, Minnkota Power Cooperative; Gavin McCollam, Senior Vice President and Chief Operating Officer, Basin Electric Power Cooperative; Marc Hathhorn, President U.S. Operations for Peabody Energy Company; Matthew Babcock, Vice President Sales & Marketing for Navajo Transitional Energy Company; Adam D. Anderson, CEO/General Manager, Western Fuels Association; Robert Braithwaite, Jr., Senior Vice President Marketing and Sales, CONSOL Energy Inc.; and Randy Short, President and CEO, Prairie State Generating Company.

6. In its most basic terms, the Final Rule offers three no-win compliance choices for coal units. The first is to commit to shut down before January 1, 2032. (Technically, EPA exempts these units from the rule, even though the exemption is premised on a commitment to cease operating.) The second is to co-fire a mixture of 60 percent coal and 40 percent natural gas before January 1, 2030, operate for nine more years, and then retire before January 1, 2039. (EPA refers to these gas co-firing units as comprising a "medium term" subcategory under the rule.) The third is to install CCS that will achieve a 90 percent reduction in carbon dioxide (CO₂) emissions before January 1, 2032. (EPA refers to these units as comprising a "long term" subcategory under the rule.)

⁴ EIA, *Annual Energy Outlook 2023*, *supra*.

⁵ See Comment from Michelle Bloodworth, America's Power (Aug. 8, 2023), Doc. ID No. EPA-HQ-OAR-2023-0072-0656 (comments on Proposed Rule); Comment from Michelle Bloodworth, America's Power (Dec. 20, 2023), Doc. ID No. EPA-HQ-OAR-2023-0072-8175 (same).

7. The Final Rule allows coal units to operate until January 1, 2039, if they can co-fire 40 percent natural gas before 2030. This compliance option is not available to many coal units due to prohibitive costs and the lack of sufficient infrastructure. Co-firing with natural gas requires coal units to be located near natural gas transmission pipelines that have sufficient capacity available to supply the new demand for gas. The construction of lateral natural gas supply lines from the transmission pipeline to the power plant can cost upwards of \$100 million and require years to design, site, permit, secure rights of way, and construct.⁶ Additionally, the coal boiler would require retrofitting. The costs of these pipelines and boiler retrofits cannot be recovered by January 1, 2039.

8. While promising, CCS has not been technically or economically demonstrated on a commercial scale. Therefore, CCS cannot serve as the basis for the best system of emissions reduction under the Final Rule. Only two coal power plants currently have carbon capture technology, and neither the Petra Nova nor Boundary Dam projects have demonstrated a full-scale commercial application of post-combustion CCS. The construction of a CCS project for a single coal unit can cost upwards of \$2 billion.⁷ In addition to the exorbitant capital costs, the operation of CCS equipment consumes 25 percent or more (parasitic load) of the coal unit's electricity.

9. These no-win compliance choices will force the premature shutdown of most, if not all, coal units and, thus, deprive the nation's electricity system and electricity consumers of the attributes that coal provides. These attributes include essential reliability services (voltage control, frequency support, and ramping capability) as well as a high accredited capacity value, fuel security, fuel diversity, grid resilience, and optionality. These attributes cannot be provided by wind and solar facilities that are expected to replace retiring coal units.

⁶ Declaration of Randy Short, President and CEO, Prairie State Generating Company (Apr. 30, 2024).

⁷ *Ibid.*

10. Currently, the U.S. coal fleet totals approximately 180,000 megawatts (MW) of electric generating capacity. EPA projects that, under the Final Rule, 73,000 MW of coal will remain by 2030 and only 19,000 MW will remain by 2035.⁸ By its own estimates, EPA projects that the Final Rule will cause the near-term retirement of 11 coal units (plus one coal-fired industrial boiler) totaling almost 7,000 MW.⁹

11. Because the Final Rule will drastically reduce, if not eliminate, coal-fired generation and because the members of America’s Power operate or support the operation of coal-fired generation targeted by the Final Rule, our members will suffer irreparable harms during the pendency of litigation.

12. States must submit compliance plans to EPA by mid-2026. These plans must include legally binding commitments to retire before January 1, 2032; co-fire with natural gas before January 1, 2030; or install CCS and build its supporting infrastructure before January 1, 2032. In order to meet the plan submittal deadline of mid-2026 and the compliance deadlines in the Final Rule, electricity generators must begin “immediately” to undertake and complete a wide range of activities and projects entailing costs that are “not recoverable.”¹⁰ EPA itself acknowledges that “feasibility work” to comply with the rule must begin in June 2024.¹¹ These activities entail expenditures that cannot be recouped if the Final Rule is overturned by the court.

13. Examples of these activities include, but are not limited to, planning, designing, permitting, siting, engineering, and constructing gas pipelines; capital expenditures to modify boilers for gas co-firing; design and modeling studies for

⁸ See EPA, Regulatory Impact Analysis for the New Source Performance Standards for Greenhouse Gas Emissions from New, Modified, and Reconstructed Fossil Fuel-Fired Electric Generating Units; Emission Guidelines for Greenhouse Gas Emissions from Existing Fossil Fuel-Fired Electric Generating Units; and Repeal of the Affordable Clean Energy Rule (Apr. 2024) (hereinafter “RIA”).

⁹ Declaration of Seth Schwartz, Managing Director, Energy Ventures Analysis, Inc. (May 24, 2024).

¹⁰ See, e.g., Declaration of Robert McLennan, President and Chief Executive Officer, Minnkota Power Cooperative (May 10, 2024); Declaration of Gavin McCollam, Senior Vice President and Chief Operating Officer, Basin Electric Power Cooperative (May 10, 2024).

¹¹ See 89 *Fed. Reg.* at 39,874.

new CCS projects; re-engineering, conducting new studies, incurring additional project development costs, and obtaining environmental permits and other authorizations for existing CCS projects; planning studies for new electric transmission; and substantial capital expenditures to start building new electric generating capacity to replace retiring coal capacity. Other consequences of the rule include stranded costs once binding commitments are made to retire coal units. One rural electric cooperative estimated a rate increase of 44 percent if it was required to expense the remaining book value of only one retiring coal unit.¹² Also, rating agencies might lower credit ratings, and lenders might increase borrowing costs because of the financial obligations caused by the rule.

14. The reduction in coal demand will have a direct and immediate negative impact on the profitability, investments, and operations of coal producers who will be forced to reduce production, lay off employees, and forego capital investments that are necessary to support their future operations.

15. Under the rule, coal consumption by the electric sector will drop by 17 million tons in 2028.¹³ These projections by EPA reflect the real purpose of the rule, which is to cause coal retirements and ultimately eliminate the use of coal to generate electricity. These figures also show the immediate impact of the rule on coal producers. For example, the approximate value of 17 million tons of coal in 2028 could be somewhere in the range of \$750 million in lost revenue.¹⁴ EPA's own analysis also shows that the rule will cause the premature closure of 12 coal units (11 electric generating units plus one coal-fired industrial boiler) before 2028, as reflected in EPA's projections of coal consumption.¹⁵

¹² Declaration of Craig Grooms, Chief Operating Officer, Buckeye Power, Inc. (May 9, 2024), attached as Exhibit G to Motion for Stay of EPA's Final Rule, *NRECA v. EPA*, No.24-1122 (D.C. Cir. filed May 13, 2024).

¹³ See Declaration of Seth Schwartz, Managing Director, Energy Ventures Analysis, Inc. (May 24, 2024).

¹⁴ The RIA shows projected coal consumption by the electric sector. The estimated value of 17 million tons of coal is based on EIA's average coal sales prices for 2022: \$97.96/ton for bituminous, \$16.55/ton for subbituminous, and \$21.79/ ton for lignite. EIA, Coal Explained (last updated Apr. 17, 2024), <https://www.eia.gov/energyexplained/coal/prices-and-outlook.php>.

¹⁵ Declaration of Seth Schwartz, Managing Director, Energy Ventures Analysis, Inc. (May 24, 2024).

16. The projected reduction in coal demand will have a direct and immediate negative impact on the profitability, investments, and operations of coal producers who will be forced to respond immediately by reducing production, laying off employees, and foregoing capital investments that are necessary to support their future operations. Absent a stay, these impacts will occur long before the Court can rule on the validity of the rule and cannot be reversed (or cannot be reversed without substantial non-recoverable costs) if the rule is overturned.

17. The premature closure of coal plants will exacerbate the prospect of near-term electricity shortages and other reliability problems. The Federal Energy Regulatory Commission (FERC), North American Electric Reliability Corporation (NERC), and electricity grid operators have warned that substantial coal retirements could cause electricity shortages across broad geographic regions of the U.S., especially during extreme weather. Further, the rapid pace of coal plant retirements is especially alarming because the Final Rule favors increased reliance on intermittent resources (wind and solar) that are not yet able to provide the same attributes that coal provides.

18. An unprecedented increase in demand for electricity is occurring because of data centers to support artificial intelligence; manufacturing of solar panels, electric car batteries, and computer chips; charging electric vehicles; and powering new energy facilities such as green hydrogen plants. Extreme weather is also driving up peak demand growth in some regions of the U.S. One report forecasts that the rate of growth in electricity demand will double over the next five years.¹⁶ This increase is creating challenges in supplying enough electricity to meet this demand. In fact, utilities have deferred the retirement of some 14,000 MW of coal-fired generation, in large part, to meet the increasing demand

¹⁶ John D. Wilson & Zach Zimmerman, Grid Strategies, *The Era of Flat Power Demand is Over* (Dec. 2023), <https://gridstrategiesllc.com/wp-content/uploads/2023/12/National-Load-Growth-Report-2023.pdf>.

for electricity. The forced retirement of more coal units will do nothing but increase this challenge.

19. PJM Interconnection LLC (PJM) is a regional transmission organization that operates the electricity grid across all or parts of 13 states and the District of Columbia and serves 65 million people. PJM’s statement about the Final Rule indicated, among other things, that, “We are seeing vastly increased [electricity] demand ... The future demand for electricity cannot be met simply through renewables ... Yet in the very years when we are projecting significant increases in the demand for electricity, the Final Rule may work to drive premature retirement of coal units that provide essential reliability services”¹⁷

20. The Midwest Independent System Operator (MISO) is a regional transmission organization that manages the flow of high-voltage electricity across 15 U.S. states and Manitoba, Canada. According to MISO, “There are urgent and complex challenges to electric system reliability in the MISO region and elsewhere. This is not just MISO’s view; it is a well-documented conclusion throughout the electric industry ... Many dispatchable resources that provide critical reliability attributes are retiring prematurely due to environmental regulations and clean-energy policies.”¹⁸ Coal units represent most of the retiring dispatchable resources that MISO is referring to.

21. The Southwest Power Pool (SPP) is a regional transmission organization responsible for ensuring a reliable supply of electricity for 18 million people in 14 central and western states. SPP has expressed concerns about the reliability impacts of the Final Rule: “[W]e fear that the EPA rule will induce or impose actions that conflict with [our] duty [to keep the lights on]. At the

¹⁷ PJM, *Statement on the Newly Issued EPA Greenhouse Gas and Related Regulations* (May 8, 2024), <https://www.pjm.com/-/media/about-pjm/newsroom/2024-releases/20240508-pjm-statement-on-the-newly-issued-epa-greenhouse-gas-and-related-regulations.ashx>.

¹⁸ MISO, *Response to the Reliability Imperative* (last updated Feb. 2024), <https://cdn.misoenergy.org/2024%20Reliability%20Imperative%20report%20Feb.%2021%20Final504018.pdf?v=20240221104216>.

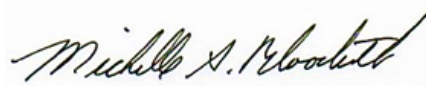
minimum, it presents serious complications for SPP and our members that may be insurmountable.”¹⁹

22. Based on my experience and the experience of members of America’s Power, I agree with the concerns expressed by FERC, NERC, PJM, MISO, and SPP.

23. If challenges to the rule prevail, a stay would prevent these irreparable harms during judicial review.

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

Executed on May 24, 2024, in Arlington, Virginia.



Michelle Bloodworth

¹⁹ Southwest Power Pool, *EPA Rule Could Severely Impact Nation’s Efforts Toward Energy Production, Reliability* (May 20, 2024), <https://www.spp.org/news-list/epa-rule-could-severely-impact-nation-s-efforts-toward-energy-production-reliability/>; Southwest Power Pool, *Statement on the Recent Greenhouse Gas Emissions Rule* (May 20, 2024), <https://www.spp.org/documents/71677/spp%20statement%20on%20epa%20final%20ghg%20rule%20202405020.pdf>.