IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

No. 24-2123(L)
Southwestern Electric Power Company; Utility Water Act Group,
Petitioners,

v.

United States Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,
Respondents,

Clean Water Action, Sierra Club, Waterkeeper Alliance, Inc., Natural Resources Defense Council, Environmental Integrity Project, PennEnvironment, Inc. and Prairie Rivers Network,
***Intervenor-Respondents*.**

No. 24-2225
State of West Virginia; State of Georgia; State of Arkansas; State of Idaho; State of Indiana; State of Iowa; State of Kansas; Commonwealth of Kentucky; State of Louisiana; State of Mississippi; State of Montana; State of Missouri; State of Nebraska; State of Ohio; State of Oklahoma; State of South Carolina; State of Tennessee; State of Texas; State of Utah; Commonwealth of Virginia; State of Wyoming; State of Alaska,
***Petitioners*,**

v.

United States Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,
***Respondents*,**

Clean Water Action, Sierra Club, Waterkeeper Alliance, Inc., Natural Resources Defense Council, Environmental Integrity Project, PennEnvironment, Inc. and Prairie Rivers Network,
***Intervenor-Respondents*.**

(*Additional Captions Listed on Following Pages*)

UTILITY AND STATE PETITIONERS' AND UTILITY INTERVENORS' MOTION TO EXTEND BRIEFING DEADLINES

No. 24-2215

City Utilities of Springfield, Missouri, by and through the Board of Public Utilities,

***Petitioner*,**

v.

United States Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,

***Respondents*,**

Clean Water Action, Sierra Club, Waterkeeper Alliance, Inc., Natural Resources Defense Council, Environmental Integrity Project, PennEnvironment, Inc. and Prairie Rivers Network,

***Intervenor-Respondents*.**

No. 24-2246

Clean Water Action, Environmental Integrity Project; Sierra Club; Diné Citizens Against Ruining Our Environment; Waterkeeper Alliance, Inc.; Natural Resources Defense Council, Inc.; PennEnvironment, Inc.; Prairie Rivers Network,

Petitioners,

v.

James Payne, Acting Administrator, United States Environmental Protection Agency; United States Environmental Protection Agency,

Respondents,

Southwestern Electric Power Company; NRG Texas Power, LLC; Utility Water Act Group,

***Intervenors*.**

No. 24-2255

Catawba Riverkeeper; Winyah Rivers Alliance,

***Petitioners*,**

v.

United States Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,

***Respondents*,**

Southwestern Electric Power Company; NRG Texas Power, LLC; Utility Water Act Group,

***Intervenors*.**

No. 24-2266
NRG Texas Power, LLC; Utility Water Act Group,
***Petitioners*,**
v.

United States Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,
***Respondents*,**

Clean Water Action, Sierra Club, Waterkeeper Alliance, Inc., Natural Resources Defense Council, Environmental Integrity Project, PennEnvironment, Inc. and Prairie Rivers Network,
***Intervenor-Respondents*.**

No. 24-2407
Center for Biological Diversity,
***Petitioner*,**
v.

United States Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,
***Respondents*,**

NRG Texas Power, LLC; Southwestern Electric Power Company; Utility Water Act Group,
***Intervenors*.**

No. 24-2494
America's Power,
***Petitioner*,**
v.

U.S. Environmental Protection Agency; James Payne, Acting Administrator, United States Environmental Protection Agency,
***Respondents*.**

Clean Water Action, Sierra Club; Waterkeeper Alliance, Inc.; Natural Resources Defense Council; Environmental Integrity Project; PennEnvironment, Inc.; Prairie Rivers Network,
***Intervenor-Respondents*.**

Petitioners in consolidated Case Nos. 24-2123 and 24-2266, each of whom is also an Intervenor-Respondent in Case Nos. 24-2246, 24-2255, and 24-2407, and Petitioners in Case Nos. 24-2215, 24-2225, and 24-2494 (Moving Parties) respectfully request that the Court extend remaining briefing deadlines by 28 days. Counsel for Moving Parties have conferred with counsel for all parties in these consolidated cases. Federal Respondents consent to the motion. Petitioners in cases 24-2246, 24-2255, and 24-2407 oppose the motion. In support, Moving Parties state as follows:

1. On January 20, 2025, President Trump signed an Executive Order entitled, "Unleashing American Energy" (the "EO").[1] The EO directs the "heads of all agencies," which would include Respondent EPA, to:

   a. "review all existing regulations, … and any other agency actions (collectively, agency actions) to identify those agency actions that impose an undue burden on the … use of domestic energy resources — with particular attention to … coal … ," EO § 3(a); and

   b. "[w]ithin 30 days of the date of this order" to "develop and begin implementing action plans to suspend, revise, or rescind all agency actions identified as unduly burdensome under subsection (a) of this

[1] https://www.whitehouse.gov/presidential-actions/2025/01/unleashing-american-energy/.

section, as expeditiously as possible and consistent with applicable law." *Id.* § 3(b).

2. The EO further directs agency heads to "notify the Attorney General of any steps taken pursuant to subsection (a) of this section so that the Attorney General may ...: (i) provide notice of this Executive Order and any such actions to any court with jurisdiction over pending litigation in which such actions may be relevant; and (ii) request that such court stay or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the administrative actions described in this order." *Id.* § 3(c).

3. Respondent EPA has represented to Moving Petitioners that it is still reviewing the Executive Order and has not yet determined its effect on this litigation, but in the meantime, it consents to the requested extension of time.

4. In the judgment of Moving Parties, there is at least a reasonable likelihood that EPA will, in fact, conclude that the ELG Rule,[2] which is the subject of the petitions for review in these consolidated cases, should be reconsidered and request that the Court hold this litigation in abeyance. The ELG Rule imposes "regulations" on "the use of domestic energy resources," in particular "coal," and

[2] Supplemental Effluent Limitations Guidelines and Standards for the Steam Electric Power Generating Point Source Category, 89 Fed. Reg. 40,198 (May 9, 2024).

thus falls within the category of actions EPA must review under the EO. And Moving Parties submit that the new administration may be persuaded that, as Moving Parties have argued, the burdens the ELG Rule imposes on the use of coal to generate electricity are "undue." *See, e.g.,* Opening Br. of Utility & State Pet'rs at 1–2, 9, 15, 18–19, 29, Entry ID 5455480. Moreover, both of the previous rules establishing effluent limitation guidelines for the steam electric power generating point source category have been reconsidered, and litigation challenging those rules held in abeyance, after a change in administration. Order, *Sw. Elec. Power Co. v. EPA*, No. 15-60821 (5th Cir. Aug. 22, 2017), Doc. No. 207-1; Order, *Sw. Elec. Power Co. v. EPA*, No. 15-60821 (5th Cir. Mar. 25, 2021) (per curiam), Doc. No. 333-2; Order, *Appalachian Voices v. EPA*, No. 20-2187(L) (4th Cir. Apr. 8, 2022), Doc. No. 83.

5. Under the current briefing schedule in these consolidated cases, Intervenors (including Moving Parties Southwestern Electric Power Company, Utility Water Act Group, and NRG Texas Power, LLC which have intervened in Nos. 24-2246, 24-2255, and 24-2407) must file intervenor briefs on or before January 31, 2025. Order at 4, Entry ID 5450788. And Petitioners in all cases must file Reply Briefs on or before February 21, 2025. *Id*. Each of these deadlines may pass before EPA can decide whether the ELG Rule should be reconsidered and before the Court can rule on any motion to hold the litigation in abeyance.

6. A 28-day extension of the remaining deadlines will hopefully allow time for EPA to complete the review mandated by the EO and determine appropriate next steps before further briefing is required in this case and thus avoid the burden on Intervenors and Petitioners of finalizing and filing briefs, as well as the associated burden on the Court's staff, should EPA decide to reconsider the Rule and seek to hold this case in abeyance.

For the foregoing reasons, Moving Petitioners respectfully request that the Court extend the deadline for Intervenor Briefs to February 28, 2025, and the deadline for Reply Briefs to March 21, 2025.

Dated: January 24, 2025

Respectfully submitted,

/s/ *George P. Sibley, III*
George P. Sibley, III
Hunton Andrews Kurth LLP
951 E. Byrd St.
Richmond, VA 23219
(804) 788-8716
gsibley@huntonak.com

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Andrew J. Turner
Brian R. Levey
Hunton Andrews Kurth LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037
(202) 955-1658
aturner@huntonak.com
blevey@huntonak.com

Counsel for Petitioners and Intervenors Southwestern Electric Power Company, NRG Texas, LLC, and Utility Water Act Group

PATRICK MORRISEY
ATTORNEY GENERAL
/s/ Michael R. Williams
Michael R. Williams
Solicitor General
Office of the Attorney General of West Virginia
State Capitol Complex
Building 1, Room E-26
Charleston, WV 25301
(304) 558-2021
michael.r.williams@wvago.gov
Counsel for Petitioner State of West Virginia

CHRISTOPHER M. CARR
ATTORNEY GENERAL
/s/ Stephen J. Petrany
Stephen J. Petrany
Solicitor General
Office of the Attorney General of Georgia
40 Capitol Square, SW
Atlanta, GA 30334
(404) 458-3408
spetrany@law.ga.gov
Counsel for Petitioner State of Georgia

TREG TAYLOR
ATTORNEY GENERAL
/s/ Thomas Mooney-Myers
Thomas Mooney-Myers
Assistant Attorney General
Alaska Department of Law
1031 W. 4th Ave., Ste. 200
Anchorage, AK 99501
(907) 269-5100
thomas.mooney-myers@alaska.gov
Counsel for Petitioner State of Alaska

TIM GRIFFIN
ATTORNEY GENERAL
/s/ Dylan Jacobs
Dylan Jacobs
Interim Solicitor General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, AR 72201
(501) 682-2007 (main)
Dylan.Jacobs@ArkansasAG.gov
Counsel for Petitioner State of Arkansas

RAÚL R. LABRADOR
ATTORNEY GENERAL
/s/ Alan M. Hurst
Alan M. Hurst
Solicitor General
Office of the Idaho Attorney General
P.O. Box 83720
Boise, ID 83720-0010
Tel: (208) 334-2400
Alan.Hurst@ag.idaho.gov
Counsel for Petitioner State of Idaho

THEODORE E. ROKITA
ATTORNEY GENERAL
/s/ James A. Barta
James A. Barta
Solicitor General
Office of the Attorney General of Indiana
302 W. Washington St.
Indianapolis, IN 46204
(317) 232-0709
James.Barta@atg.in.gov
Counsel for Petitioner State of Indiana

BRENNA BIRD
ATTORNEY GENERAL
/s/ Eric H. Wessan
Eric H. Wessan
Solicitor General
Office of the Attorney General of Iowa
1305 E. Walnut Street
Des Moines, IA 50319
(515) 823-9117
(515) 281-4209 (fax)
eric.wessan@ag.iowa.gov
Counsel for Petitioner State of Iowa

KRIS W. KOBACH
ATTORNEY GENERAL
/s/ Anthony J. Powell
Anthony J. Powell
Solicitor General
Abhishek S. Kambli
Deputy Attorney General
Office of the Kansas Attorney General
120 SW 10th Avenue, 2nd Floor
Topeka, Kansas 66612
Telephone: (785) 296-2215
Fax: (785) 296-3131
abhishek.kambli@ag.ks.gov
Counsel for Petitioner State of Kansas

RUSSELL COLEMAN
ATTORNEY GENERAL
/s/ Matthew F. Kuhn
Matthew F. Kuhn
Solicitor General
Jacob M. Abrahamson
Counsel for Special Litigation
Office of Kentucky Attorney General
700 Capital Avenue, Suite 118
Frankfort, KY 40601
(502) 696-5300
Matt.Kuhn@ky.gov
Jacob.Abrahamson@ky.gov
Counsel for Petitioner the Commonwealth of Kentucky

LIZ MURRILL
ATTORNEY GENERAL
/s/ J. Benjamin Aguiñaga
J. Benjamin Aguiñaga
Solicitor General
Louisiana Department of Justice
1885 N. Third Street
Baton Rouge, LA 70804
(225) 326-6766
aguinagaj@ag.louisiana.gov
Counsel for Petitioner State of Louisiana

LYNN FITCH
ATTORNEY GENERAL
/s/ Justin L. Matheny
Justin L. Matheny
Deputy Solicitor General
Office of the Mississippi Attorney General
P.O. Box 220
Jackson, MS 39205-0220
(601) 359-3825
justin.matheny@ago.ms.gov
Counsel for Petitioner State of Mississippi

AUSTIN KNUDSEN
ATTORNEY GENERAL
/s/ Christian B. Corrigan
Christian B. Corrigan
Solicitor General
Peter M. Torstensen, Jr.
Deputy Solicitor General
Montana Department of Justice
215 North Sanders
P.O. Box 201401
Helena, MT 59620-1401
(406) 444-2026
christian.corrigan@mt.gov
peter.torstensen@mt.gov
Counsel for Petitioner State of Montana

ANDREW BAILEY
ATTORNEY GENERAL
/s/ Joshua M. Divine
Joshua M. Divine
Solicitor General
Missouri Attorney General's Office
Post Office Box 899
Jefferson City, MO 65102
Tel. (573) 751-1800
Fax. (573) 751-0774
josh.divine@ago.mo.gov
Counsel for Petitioner State of Missouri

MICHAEL T.HILGERS
ATTORNEY GENERAL
/s/ Grant D. Strobl
Grant D. Strobl
Assistant Solicitor General
Office of the Attorney General of Nebraska
2115 State Capitol
Lincoln, NE 68509
(402) 471-2683
grant.stobl@nebraska.gov
Counsel for Petitioner State of Nebraska

DAVE YOST
ATTORNEY GENERAL
/s/ T. Elliot Gaiser
T. Elliot Gaiser
Solicitor General
Office of the Attorney General of Ohio
30 East Broad Street, 17th Floor
Columbus, OH 43215
(614) 466-8980
thomas.gaiser@
ohioattorneygeneral.gov
Counsel for Petitioner State of Ohio

GENTNER DRUMMOND
ATTORNEY GENERAL
/s/ Garry M. Gaskins, II
Garry M. Gaskins, II
Solicitor General
Jennifer L. Lewis
Deputy Attorney General
Office of the Attorney General of Oklahoma
313 NE Twenty-First St.
Oklahoma City, OK 73105
(405) 521-3921
garry.gaskins@oag.ok.gov
Counsel for Petitioner State of Oklahoma

Appellate Case: 24-2123 Page: 12 Date Filed: 01/24/2025 Entry ID: 5478448

ALAN WILSON
ATTORNEY GENERAL
/s/ Joseph D. Spate
Joseph D. Spate
Assistant Deputy Solicitor General
Office of the Attorney General of South Carolina
1000 Assembly Street
Columbia, SC 29201
(803) 734-3371
josephspate@scag.gov
Counsel for Petitioner State of South Carolina

JONATHAN SKRMETTI
ATTORNEY GENERAL AND REPORTER
J. Matthew Rice
Solicitor General
Whitney Hermandorfer
Director of Strategic Litigation
/s/ Virginia M. Adamson
Virginia M. Adamson
Counsel for Strategic Litigation & Assistant Attorney General
Office of the Attorney General and Reporter of Tennessee
P.O. Box 20207
Nashville, TN 37202-0207
(615) 741-7403
Matt.Rice@ag.tn.gov
Whitney.Hermandorfer@ag.tn.gov
Jenna.Adamson@ag.tn.gov
Counsel for Petitioner State of Tennessee

KEN PAXTON
ATTORNEY GENERAL
Brent Webster
First Assistant Attorney General
Ralph Molina
Deputy First Assistant Attorney General
James Lloyd
Deputy Attorney General for Civil Litigation
Kellie E. Billings-Ray
Chief, Environmental Protection Division
/s/ Wesley S. Williams
Wesley S. Williams
Assistant Attorney General
Office of the Attorney General of Texas
Environmental Protection Division
P.O. Box 12548, MC-066
Austin, Texas 78711-2548
(512) 463-2012 | Fax: (512) 320-0911
Wesley.Williams@oag.texas.gov
Counsel for Petitioner State of Texas

SEAN REYES
ATTORNEY GENERAL
/s/ Stanford E. Purser
Stanford E. Purser
Solicitor General
Office of the Utah Attorney General
160 E. 300 S., 5th Floor
Salt Lake City, Utah 84111
385-382-4334
spurser@agutah.gov
Counsel for Petitioner State of Utah

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JASON MIYARES
ATTORNEY GENERAL
/s/ Erika L. Maley
Erika L. Maley
Solicitor General
Kevin M. Gallagher
Principal Deputy Solicitor General
Brendan T. Chestnut
Deputy Solicitor General
Virginia Attorney General's Office
202 North 9th Street
Richmond, VA 23219
(804) 786-2071
emaley@oag.state.va.us
kgallagher@oag.state.va.us
bchestnut@oag.state.va.us
Counsel for Petitioner
Commonwealth of Virginia

BRIDGET HILL
ATTORNEY GENERAL
/s/ D. David DeWald
D. David DeWald
Deputy Attorney General
Office of the Attorney General of Wyoming
109 State Capitol
Cheyenne, WY 82002
(307) 777-7895
david.dewald@wyo.gov
Counsel for Petitioner State of Wyoming

/s/ Aimee Guzman Davenport
Aimee Guzman Davenport
STINSON LLP
230 W. McCarty Street
Jefferson City, MO 65101
(573) 636-6263
aimee.davenport@stinson.com

John McCaffrey
STINSON LLP
1775 Pennsylvania Avenue, NW
Suite 800
Washington, DC 20006
(202) 785-9100
john.mccaffrey@stinson.com
Counsel for Petitioner City Utilities
of Springfield

/s/ Allison D. Wood
Allison D. Wood
Makram B. Jaber
Aaron M. Flynn
MCGUIRE WOODS LLP
888 16th Street N.W., Suite 500
Black Lives Matter Plaza
Washington, DC 20006
(202) 857-1700
awood@mcguirewoods.com
mjaber@mcguirewoods.com
aflynn@mcguirewoods.com
Counsel for Petitioner America's Power

CERTIFICATE OF COMPLIANCE

This document complies with the word limit of Federal Rule of Appellate Procedure 27(d)(2) because, excluding the parts of the document exempted by Rule 32(f), it contains 780 words. This document complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) because it was prepared in a proportionately spaced typeface using Microsoft Word in Times New Roman fourteen-point font.

/s/ *George P. Sibley, III*
George P. Sibley, III

CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of January 2025, the foregoing was electronically filed with the Clerk of Court for the U.S. Court of Appeals for the Eighth Circuit by using the CM/ECF system. I further certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system.

/s/ *George P. Sibley, III*
George P. Sibley, III