IN THE UNITED STATES COURT OF APPEALS
FOR THE EIGHTH CIRCUIT

SOUTHWESTERN ELECTRIC POWER COMPANY, *et al.*	)	
Petitioners,	)	
v.	)	**No. 24-2123**
	)	**(and consolidated cases)**
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,	)	
Respondents,	)	
CLEAN WATER ACTION, *et al.*,	)	
Intervenors.	)	

CORRECTED PETITIONERS' REPLY IN SUPPORT OF MOTION FOR EXPANSION OF WORD LIMIT FOR REPLY IN SUPPORT OF STAY MOTION

The Court should grant Petitioners' request to expand the word limit of their stay reply to 5,200 words. Petitioners must respond to the multiple, complex arguments presented in the three separate response briefs. The combined 10,767 words used in those briefs dwarf the 2,600 words Petitioners would otherwise receive, giving the stay opponents an unfair advantage. *See* ECF No. 5427443.

This case is not just a run-of-the-mill one. *Contra* ECF No. 5428555 ("Resp.") at 1; ECF No. 5429167 ("Intervenor Resp.") at 2-3. The consolidated action consists of eight separate cases filed by dozens of petitioners challenging

different parts of a multifaceted, nationwide federal regulation that sets multiple requirements based on three separate technologies. The preamble alone spans over 100 pages of the Federal Register. 89 Fed. Reg. 40198 (May 9, 2024). And the record underlying the preamble covers many thousand more pages. In addition to the arguments in their briefs, the response briefs attach 23 exhibits in support of their arguments. Petitioners' reply must efficiently engage all these materials.

Respondents say Petitioners should not receive extra words because they were forced to devote much of their initial motion to background. Resp. at 2. But the long background *supports* an expansion. Petitioners needed to introduce the case's complex subject matter and regulatory scheme, so they were limited in the extent to which they could address their likelihood of success on the merits. That necessary groundwork freed Respondents, Intervenors, and Environmental Petitioners to focus their responses on counterarguments, spanning 40 pages. Replying to those counterarguments will require commensurate briefing (within half that space).

Respondents and Intervenors also insist their response briefs cover the same ground. Resp. at 2; Intervenor Resp. at 3-4. This begs the questions of the value of their briefs and their position to argue against a reply of half their words. In any event, Intervenors' long response—as well as the 16 exhibits it relies on—will demand space to address, if only to respond to the extensive appended materials.

Finally, Respondents and Intervenors question whether the federal rules support an expansion. Resp. at 2-3; Intervenor Resp. at 2-3. But a reply brief that is less than half the length of the cumulative words used in response briefs is *exactly* what the rules contemplate even in the usual case. Fed. R. App. P. 27(d)(2)(C). And again, this case is far from usual.

Petitioners respectfully request that the Court grant their requested expansion.

Dated: August 28, 2024

Respectfully submitted,

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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 403 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.

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CERTIFICATE OF SERVICE

I hereby certify that on this 28th day of August 2024, 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.

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