No. 24A203

In the Supreme Court of the United States

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, ET AL.,
APPLICANTS,
v.
ENVIRONMENTAL PROTECTION AGENCY.

REPLY IN SUPPORT OF EMERGENCY APPLICATION FOR STAY

On Application For Stay To The
U.S. Court Of Appeals For The District of Columbia

To the Honorable John G. Roberts, Jr.,
Chief Justice of the United States and Circuit Justice for the United States
Court of Appeals for the District of Columbia Circuit

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INTRODUCTION

EPA's Response Brief hides behind a misreading of the Clean Air Act to avoid the fundamental flaws in the Final Rule. The statute requires EPA to demonstrate that its rule revisions are "necessary," but EPA asserts that the statute allows it to ignore its own analysis showing no human health risk worth regulating remains. The statute also requires EPA to identify "developments" to justify more stringent standards, but EPA claims unbounded authority to decide when a development occurs and then write standards that have nothing to do with that development at all. EPA's statutory interpretations would greatly expand the agency's power by nullifying the limiting language that Congress set forth in the statute. As a result, if the D.C. Circuit were to uphold the Final Rule, this Court would likely reverse.

Applicants have only begun bearing the immediate and harmful consequences of EPA's unlawful action. Applicants presented detailed declarations with their Stay Application establishing that, absent a stay of the Rule, they will suffer irreparable harms during the litigation, including steep and immediate expenditures on the engineering, design, permitting, procurement, sourcing, and installation of new equipment and processes that will be necessary to meet the Final Rule's three-year deadline. These costs cannot be recouped and will necessarily be passed to consumers, particularly in the vulnerable rural communities most dependent on the affected facilities.

EPA disregards the detailed monetary estimates, third-party verified feasibility analyses, and project timelines because they are more than EPA's

estimates, while claiming Applicants made no attempt to show immediate harm. Meanwhile, EPA retreats to a litany of undefined, illusory health benefits it claims this Rule will bestow on vulnerable communities, even though its own analysis shows the maximum risk to any individual is not just acceptable but essentially meaningless. The very communities that EPA seeks to protect will suffer grave economic harm as a result of this Rule, which burdens Applicant not-for-profit rural cooperatives and the coal mining companies that serve them. EPA's failure to grapple with the substance of these declarations confirms EPA has no meaningful answer. Given that EPA's own analysis shows that the Rule provides no benefits, the irreparable harm that will occur during litigation far outweighs EPA's interest in pressing forward to implement unnecessary and unlawful standards.

ARGUMENT

I. This Court Will Likely Grant Review And Reverse If The D.C. Circuit Upholds The Final Rule

A. Section 112(d)(6) Does Not Permit Revisions Without Considering The Lack Of Resulting Benefits

1. Section 112(d)(6) only permits EPA to promulgate MATS revisions as "necessary (taking into account developments in practices, processes, and control technologies)." App.102a–03a; 42 U.S.C. § 7412(d)(6). A revision under Section 112(d)(6) is only "necessary," App.102a–03a; 42 U.S.C. § 7412(d)(6), if the agency demonstrates that the revision will further the statute's public health objective, Rural Br.12–13. EPA failed to demonstrate that revising the MATS rule would benefit public health because its own risk assessment of hazardous air pollutants ("HAP") from electric utility steam generating units ("EGUs") shows not only an ample margin

of safety but a level of risk far below what Congress intended for EPA to regulate. *See* Rural Br.8. EPA compounded this error by failing to weigh the Final Rule's non-existent benefits against the massive costs it would impose. *See Michigan v. EPA*, 576 U.S. 743, 752–53 (2015); Rural Br.13–15.

2. EPA's response rests upon the agency's incorrect understanding of the term "necessary." Resp.14–20. EPA argues that the meaning of "necessary" is exclusively "tie[d]" to the parenthetical that follows. Resp.15; *see* App.102a–03a; 42 U.S.C. § 7412(d)(6). From this premise, EPA concludes that because the parenthetical only discusses "developments," the word "necessary" here directs the agency to "focus not on public-health concerns, but on intervening changes that may make stricter emission standards achievable." Resp.15–16. Further, the agency asserts that because the determination of what constitutes a "development" is a matter for its discretion, the agency's interpretation of "necessary" is, by extension, entitled to deference. Resp.15. EPA is wrong on every point.

First, EPA does not come close to rebutting the default rule that costs and benefits matter in agency rulemaking, including in determining whether a regulation is "necessary." App.102a–03a; 42 U.S.C. §7412(d)(6); *see* Rural Br.12–15. As this Court has held in the context of MATS, EPA must consider all the "advantages *and* [ ] disadvantages" and not "ignore cost" in reaching this determination. *Michigan*, 576 U.S. at 753. Indeed, *Michigan* expressly distinguished Section 112 on this basis from other portions of the Clean Air Act, where the statutory language *precluded* weighing of costs and benefits. *See id.* at 755 (distinguishing *Whitman v. Am.*

Trucking Ass'ns, 531 U.S. 457 (2001)). Here, that the statute directs EPA to consider "relevant developments" in technology does not suggest EPA should *ignore* the lack of benefits. Rather, EPA "must examine [all of] the relevant data" and "evidence before the agency" and cannot "entirely fail[ ] to consider an important aspect of the problem[.]" *Motor Vehicle Mfrs. Ass'n of U.S., Inc.*, 463 U.S. 29, 43 (1983).

Second, whether a regulation is "necessary" for the purposes of Section 112(d)(6) is determined by reference to the statutory scheme and the harms that Congress enacted the statute to address, and here the context supports the conclusion that it is not "necessary" to revise the MATS Rule. "[A] reasonable statutory interpretation must account for both 'the specific context in which . . . language is used'" and "'the broader context of the statute as a whole.'" *Util. Air Regul. Grp. v. EPA*, 573 U.S. 302, 321 (2014) (citation omitted). Here, EPA disregards its own prior interpretation of "necessary" in the specific context of MATS, which "found regulation 'necessary' because the imposition of the Act's other requirements did not *eliminate* these risks." *See Michigan*, 576 U.S. at 749.

EPA's response also fails to account for the statute's "broader context." *Util. Air Regul. Grp.*, 573 U.S. at 321. Whereas EPA claims to be following Congressional design by regulating without regard to risk, EPA ignores the step-wise Section 112 statutory regime to arrive at this conclusion. Applicants and EPA agree that "in establishing initial emission standards for a source category," Resp.16, Section 112(d)(2) authorizes EPA to "require the maximum degree of reduction in emissions . . . achievable," according to rote calculations that do not consider public

health risk. App.101a; 42 U.S.C. § 7412(d)(2). These initial standards are designed to ensure an industry meets a risk-blind floor level of performance reflecting the maximum achievable reductions by the industry at that time. But the reviews required under both Sections 112(f)(2) and Section 112(d)(6) set forth *subsequent steps* of the process to ensure the standards are protecting public health. *See* App.106a, 102a–103a; 42 U.S.C. §§ 7412(f)(2), 7412(d)(6). Nothing in the statute suggests EPA should ignore the results of its Section 112(f)(2) risk analysis in simultaneously deciding whether revisions are "necessary" under Section 112(d)(6).

EPA's own analogy illustrates the point: "When a law-firm partner hands her associate a draft brief" with the directive to "revise as necessary (taking into account the court's word limits)" or "revise as necessary (taking into account your fellow associates' comments)," Resp.15, the associate's task is to determine whether any revision is "necessary." EPA's view would suggest that, if the associate finds the brief relies on a D.C. Circuit decision that this Court has since reversed, the associate should ignore the error just because the brief is within the word limit. So too with the second hypothetical—EPA would have the associate ignore glaring typos just because they were not identified in comments of other associates.

Third, EPA mischaracterizes Applicants' argument regarding when it is "necessary" for EPA to revise emissions standards under Section 112(d)(6). *See* Resp.14, 19–20. EPA styles Applicants' argument as contending "that a revision of emission standards cannot be 'necessary' . . . unless revised standards are required to provide an ample margin of safety to protect public health." Resp.14. Not so.

EPA's definition of an "ample margin of safety" recognizes that some individuals will face a risk worth regulating—the idea is to minimize the number of individuals facing that acceptable but still relevant risk, while considering other factors. *Nat. Res. Def. Council v. EPA*, 529 F.3d 1077, 1082 (D.C. Cir. 2008). Here, there is far more than an ample margin of safety because even the maximum individual risk is *less* than a third of the 1-in-1 million threshold for *de*regulation. App.101a; 42 U.S.C. §7412 (c)(9)(B)(i); App.9a–11a; 89 Fed. Reg. at 38,516–18. Surely that is relevant information for considering whether more stringent standards are "necessary." Applicants do not contend that EPA should merge the reviews required in Sections 112(d)(6) and 112(f), but EPA must consider the results of its Section 112(f) finding to determine whether revisions are "necessary."

Fourth, EPA departs from its prior interpretations of what the statute requires. In past Section 112(d)(6) analyses, the agency considered public health risk as a factor in its decision. *See, e.g.,* 71 Fed. Reg. 76,606, 76,605–06 (Dec. 21, 2006); 71 Fed. Reg. 17,729, 17,731–32, 17,736 (Apr. 7, 2006); 72 Fed. Reg. 50,716, 50,730 (Sept. 4, 2007). EPA acknowledges that the agency "considered risks as a factor in some previous technology reviews," App.9a–11a; 89 Fed. Reg. at 38,525, but EPA never explains why this particular rulemaking warrants a different approach as compared to prior Section 112(d)(6) reviews in either the Final Rule itself or its response to comments on the Proposed Rule. *See id.*; *see also* EPA, *Summary of Public Comments and Responses on the April 24, 2023 Proposal–MATS Review of the Residual Risk and Technology Review* ("*Response to Comments*"), at 161–62 (April 24,

2023), EPA-HQ-OAR-2018-6922. As such, EPA fails to provide a reasoned explanation as to why it changed its interpretation of the statute in this rulemaking.

Finally, *Loper Bright Enterprises v. Raimondo,* 144 S. Ct. 2244 (2024), affords EPA's erroneous statutory analysis no deference. *Contra* Resp.15. The proper interpretation of "necessary" is "precisely the sort of interpretive issue[] arising in connection with a regulatory scheme" that "fall[s] more naturally into a judge's bailiwick' than an agency's." *Loper Bright*, 144 S. Ct. at 2267. What Congress meant by "necessary" and its parenthetical modifier in Section 112(d)(6), has nothing "to do with [the] agency's technical subject matter expertise." *Id.* Rather, the inquiry targets EPA's interpretation of what it must consider for its Section 112(d)(6) "necessary" evaluation. That "legal interpretation . . . has been, 'emphatically,' 'the province and duty of the judicial department' for at least 221 years." *Id.* at 2273.

B. EPA Violated The CAA By Revising MATS Without Any Interim "Developments"

1. EPA failed to justify its revision of the MATS standard because it did not identify any concrete and practical "*developments* in practices, processes, and control technologies," 42 U.S.C. § 7412(d)(6) (emphasis added); App.102a–03a, contrary to EPA's prior practice, *see* 76 Fed. Reg. 81,328, 81,341 (Dec. 27, 2011); *West Virginia v. EPA*, 597 U.S. 697, 708 (2022) (defining developments as "literal technology," facility "design" or "operation," or "way that employees perform their tasks"). Instead, the Final Rule impermissibly counted as "developments" updated emissions data and performance trends, along with technologies that EPA concedes have been in place since the original MATS Rule in 2012. Resp.21–22. Because EPA failed to identify

the requisite developments, this Court is likely to review and reverse any decision by the D.C. Circuit upholding the Final Rule.

The best reading of the term "developments" is the one Applicants articulated, informed by the statutory context. Rural Br.17–18; *see Coventry Health Care of Mo., Inc. v. Nevils*, 581 U.S. 87, 96 (2017). EPA must identify "developments" that are concrete and practical, because Congress's aim in Section 112 was to "direct[ ] the Agency to impose 'technology-based standard[s] for hazardous emissions,'" *West Virginia*, 597 U.S. at 708 (quoting *Alaska Dep't of Env't Conservation v. EPA*, 540 U.S. 461 (2004)), focusing on "the control technologies that are available to industrial entities" so that the "agency [can] . . . ensur[e] that regulated firms adopt the appropriate cleanup technology," *id.* (citation omitted). Section 112's "'technology-based' approach" contemplates both "literal technology" and "changes in the design and operation" of the facility or "in the way that employees perform their tasks." *Id.* (citation omitted). This reading is consistent with EPA's own prior interpretations of the term in the context of Section 112(d)(6). *See* 76 Fed. Reg. 81,328, 81,341 (Dec. 27, 2011).

2. EPA's response offers only part of the definition of "developments," the one that would give it the most authority. *Compare* Resp.21–22 (citing 4 *The Oxford English Dictionary ("OED")* 563–64 (2d ed. 1989) (capitalization omitted) ("a gradual unfolding," "evolution," "growth and unfolding" and a "gradual development," at definitions 1 through 4), *with OED* 563–64 (2d ed. 1989) (omitted definition 6) ("the *concrete result*" of "[t]he process or fact of developing" something (emphasis added)).

In any event, mature technologies, such as electrostatic precipitators ("ESPs"), fabric filters ("FFs"), or even brominated powdered activated carbon ("PAC") are not "gradually unfolding": Each was identified as a technology in the original MATS Rule and also evaluated in the 2020 Section 112(d)(6) review that found no technological developments. Rural Br.8–9; 85 Fed. Reg. 31,286, 31,318–19 (May 22, 2020) ("These existing air pollution control technologies that are currently in use are well-established and provide the capture efficiencies necessary for compliance with the MATS emission limits."); 77 Fed. Reg. 9,304, 9,331, 9,369, 9,485 (Feb. 16, 2012). Therefore, the agency's selective dictionary references fall far short of the "the best reading of" that term and are ill-suited to the situation at hand. *Loper Bright Enters.*, 144 S. Ct. at 2263.

EPA points to data to justify its standards, not any concrete "development." *See, e.g.*, App.15a; 89 Fed. Reg. at 38,522 (EPA identified one of the only "cognizable developments" as the "vast majority of coal-fired EGUs are reporting fPM emissions well below the revised fPM limit."); *see* App. 23a; 89 Fed. Reg. at 38,530. Of course, EPA had to put forward other arguments when the math did not work out. *See, e.g.,* EPA, *2024 Update to the 2023 Proposed Technology Review for the Coal- and Oil-Fired EGU Source Category Memorandum ("2024 Technical Memo")*, at 39 (January 2024), EPA-HQ-OAR-2018-0794-6919 (North Dakota lignite units average annually well above the new limitation (3.0 lb/Tbtu). EPA also claims incremental changes in technologies available since 2012 have enabled lower emissions. Yet EPA fails to identify these incremental changes with any specificity and fails to establish these

changes contributed to these claimed declines. Resp.22. Nor can they. The tried-and-true technologies installed for mercury and fPM are the same today as they were in 2012. Rural Br.20. EPA claims that the 2024 Final Rule identified developments that the 2020 analysis overlooked, Resp.22–23, but fails to name them. EPA's citations refer only to pages of the Final Rule discussing the performance data and industry trends that cannot constitute developments within the meaning of the statute. *See* Resp.23; Rural Br.18–19; App.23a; 89 Fed. Reg. at 38,530 (justifying a lower fPM standard based on trends of "the fleet [] achieving these performance levels at lower costs."). EPA had to flex its authority beyond that delegated by Congress to lower a vastly consequential emission standard, such as fPM, with a spreadsheet.

EPA also has no good answer for Applicants' argument that more durable filter bags used in fabric filter controls—the sole practical improvement identified anywhere in the Final Rule—cannot justify a rule revision. *See* App.14a; 89 Fed. Reg. at 38,521. Greater durability in filter bags cannot justify a more stringent standard because EPA does not account for malfunctions in designing its standards, meaning MATS already assumed the bags never break. 77 Fed. Reg. at 9,382 (explaining, in the original MATS rule, why malfunctions are not considered in setting standards); *see* Rural Br.19–20. EPA's inapposite response—concerning the margin of error targeted by facility operators in practice, Resp.22—misses the point. Since the *standard* is set assuming no malfunctions, an improvement reducing malfunctions cannot affect the *standard*.

C. The Final Rule Is Arbitrary And Capricious

EPA must "reasonably explain" its new emissions standards, *Ohio v. EPA*, 144 S. Ct. 2040, 2053 (2024) (citation omitted), use "logical and rational" processes in revising the MATS Rule, *Allentown Mack Sales*, *Sales & Serv., Inc. v. NLRB*, 522 U.S. 359, 374 (1998), and it cannot base its fPM and mercury analyses on unreliable and "faulty data," *Nat. Res. Def. Council v. EPA*, 529 F.3d 1077 (D.C. Cir. 2008); *see* Rural Br.20–24. Neither the fPM standard nor the mercury standard is reasonably explained or supported by logical and rational processes in the Final Rule. Moreover, neither cost analysis is viable. EPA's incomplete analyses and selective data show the agency's reasoning was arbitrary and capricious. *See Allentown*, 522 U.S. at 374.

The Final Rule's fPM analysis rests on a cherry-picked, best-of-the-best dataset, which contains multiple unexplained gaps and inconsistencies, fails to account for key variables in operational design and emissions performance, and grossly underestimates the Final Rule's compliance costs. *See* Rural Br.21–22. Using this substantially disputed analysis, EPA derives its mantra that "greater than 90%" of the industry can meet the new limits. App.40a; 89 Fed. Reg. at 38,547. However, EPA failed to reasonably explain the biased, selective data and flaws commenters identified in public comments. EPA, *Response to Comments*, at 24–25. EPA's mercury analysis is similarly flawed and not achievable by lignite units. *See* Rural Br.22–23; *contra* Resp.2 ("Applicants neither dispute [] achievability . . . .").

EPA broadly claims that all "lignite-fired plants can meet the revised 1.2 lb/Tbtu standard" without "significant additional capital investment," Resp.26, but that is also contrary to the administrative record. EPA asserts that the "sorbent

injection rate can easily be dialed up or down," Resp.34, but EPA has provided zero evidence to show this is even possible, or that units would be capable of doing so without malfunctioning. *See* Sargent & Lundy, "*Particulate & Mercury Control technology Evaluation & Risk Assessment for Proposed MATS Rule,*" at 11–12 (June 23, 2023), EPA-HQ-OAR-2018-0794-5978 ("Presently, there is not any publicly available information to determine if improvements [based on mercury control options] (individually or in combination) can achieve a Hg emission of 1.2 lb/TBtu or below on a lignite unit . . . . [A]dditional testing would be required to establish if it is feasible to achieve []")); App.348a–62a (McLennan Decl. Attachment A) (Sargent & Lundy, *Mercury Testing Results for the MATS Residual Risk and Technology Review*, at 3–5 (May 22, 2024) (same). EPA concludes that all units industry-wide will be able to achieve reductions "greater than 90 percent," App.40a; 89 Fed. Reg. at 38,547, based on the same data it relied on in its 2012 MATS Rule which in turn relies "[e]missions results from a single lignite unit," Rural Br.22–23. This selective "data from a single unit from a trade publication" does not support the proposition that the standard is achievable industry-wide" by all lignite units. *Id.* at 23.

EPA identified recent performance data from only one lignite unit that demonstrated average mercury reductions below the Final Rule's rate intermittently. Rural Br. 23. EPA holds out this one unit to show that the revised 1.2 lb/Tbtu emissions standard is achievable by all lignite units nationwide. App.33a; 89 Fed. Reg. at 38,540. However, this unit is unrepresentative of most units' capabilities as it is one of the newest units in the country and utilizes an unusual boiler technology

(circulating fluidized bed) that distinguishes it from most of the lignite fleet. Comment from Jason Bohrer, Lignite Energy Council ("LEC Comments"), at 8 (June 23, 2023), EPA-HQ-OAR-2018-0794-5957; 77 Fed. Reg. at 9,397. Applicants maintain that EPA has failed to "reasonably explain" how the Final Rule arrived at an identical numerical standard for lignite and non-lignite units, *Ohio*, 144 S. Ct. at 2053, and EPA offers no answer in response, s*ee* EPA, *2024 Technical Memo*, at 36 (offering only a generalized explanation to lower the mercury standard based on "available literature and other studies and available information").

The Final Rule's evaluation of compliance costs is also flawed because it assumed, without evidence, that lignite units will be able to achieve the Rule's new mercury limitation simply by adding more PAC and without making any equipment modifications. *See* Rural Br. 23–24. But EPA further errs in concluding that units will not need to expend significant capital investments to comply with the Final Rule based on the unsupported assumption that units can drive down emissions simply by using their existing activated carbon injection ("ACI") systems to inject more brominated PAC. *See* App.42a; 89 Fed. Reg. at 38,549. EPA itself admits that some units must make equipment modifications, but the final cost analysis only includes the increased cost of PAC. *Compare* EPA, *Response to Comments,* at 100 ("[S]ome modifications to existing [mercury] control technology may be needed to meet the revised emissions standard") *with* App.42a; 89 Fed. Reg. at 38,549 *and* EPA, *2024 Technical Memo*, at 41 (solely relying on additional sorbent cost). EPA presumes equipment can magically pump out PAC at rates that double or triple their designed

capacity. EPA fails to explain this substantial flaw and inconsistency with its own assumptions.

II. Considerations Of Irreparable Harms, The Equities, And The Public Interest All Warrant A Stay

A. Absent a stay from this Court, the Final Rule will impose enormous, unrecoverable compliance costs—costs that are already being felt and will continue as the industry initiates the engineering, design, permitting procurement, sourcing, and installation processes to meet the Final Rule's three-year deadline. Rural Br.25–27; App.302a–03a (McCollam Decl. ¶ 34); App.538–39a (Tschider Decl. ¶¶ 10–11, 13–14); App.191a (Friez Decl. ¶¶ 16–17); App.193a (Friez Decl. ¶ 23); App.528a–29a (Purvis Decl. ¶¶ 35–36); App.324a–28a (McLennan Decl. ¶¶ 32–39); App.329a–33a (McLennan Decl. ¶¶ 43–50); *see Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (monetary losses that "cannot be recouped" constitute "irreparable harm," including "nonrecoverable" compliance costs); *Ohio*, 144 S. Ct. at 2053.

These costs will be doubly, and immediately, born by the vulnerable communities served by coal-fired plants—first, in the form of higher electricity prices, *see* App.329a–30a (McLennan Decl. ¶ 43); App.149a (Bohrer Decl. ¶ 21); App.189a (Friez Decl. ¶ 10); App.304a–05a (McCollam Decl. ¶ 43; App.186a–87a (Friez Decl. ¶ 5); App.189a (Friez Decl. ¶ 10); App.514a–15a (Purvis Decl. ¶ 8); App.172a (Courter Decl. ¶ 42); App.337a–39a (McLennan Decl. ¶¶ 66–68), and second, through risky reductions in service reliability as plants come on- and off-line for testing and installation, *see* App.305a (McCollam Decl. ¶ 46). These cumulative burdens will force coal-fired generators to retire prematurely, swiftly shutting down the mines

that supply them—particularly in hard-hit North Dakota. App.157a–58a (Bridgeford Decl. ¶¶ 8–9). All of this far outweighs the non-existent benefits from EPA pressing forward with this Final Rule. Rural Br.30.

B. EPA offers no meaningful response to the harms that the Rule will impose absent a stay.

The agency first asserts that the "bulk" of power plants' costs will arise post-compliance. Resp.37, 38 n.10. But as Applicants showed through their detailed declarations, the pre-compliance steps that must begin immediately are cripplingly expensive. *See* Rural Br.24–26; *contra* Resp. 37–38 & n. 10. For example, FF installation time frames total 48 months, while an ESP rebuild project takes at least 36 months, not including supply chain delays or the dwindling number of experienced equipment installers for these project types. Sargent & Lundy, "*Particulate & Mercury Control technology Evaluation & Risk Assessment for Proposed MATS Rule,*" at 7 (attachment) (June 23, 2023), EPA-HQ-OAR-2018-0794-5978. As for mercury compliance, one operator reported that the testing alone to determine the feasibility of mercury reductions costs in excess of $600,000. App.335a–39a (McLennan Decl. ¶ 37). That same operator estimated it would cost more than $38 million to rebuild their existing ESP, without a guarantee of success—leaving replacement with an FF as its only option—a massive capital expenditure. App.335a–39a, 343a–44a (McLennan Decl. ¶ 29 & Table B). As Applicants made clear both in their declarations supporting their Application and in comments provided during the rulemaking process, EPA has drastically underestimated costs associated with pre-

compliance retrofits of ESP and mercury control systems. *See* Rural Br.35–37; Cichanowicz et al., *Technical Emissions Standards for Hazardous Air Pollution: Coal and Oil-fired Electric Utility Steam Generating Units Review of Residual Risk and Technology Review*, at 14–17 (June 19, 2023), EPA-HQ-OAR-2018-0794-5956; Sargent & Lundy, *Particulate & Mercury Control Technology Evaluation & Risk Assessment for Proposed MATS Rule Report*, at 3–7 (June 23, 2023), EPA-HQ-OAR-2018-0794-5978.

EPA also offers no response to the Final Rule's devastating and immediate impact on the vulnerable rural communities that Applicants' power generating members serve and Applicant's coal mines that serve those power generators. As Applicants have painstakingly documented, the compliance costs that Applicants' members will immediately incur—and in some cases are already incurring—will have a financial ripple effect leading directly to higher costs for ratepayers that cannot be recouped. *See* App.171a–72a (Courter Decl. ¶¶ 38, 42); App.514a, 525a (Purvis Decl. ¶¶ 8, 28); App.335a–39a (McLennan Decl. ¶¶ 63–68); App.303a (McCollam Decl. ¶ 35).

On the other end of the equitable balance, staying the Rule will harm no one. EPA asserts that a stay would harm "downwind States and tribal communities living near power plants." Resp.39. But the agency's own risk analysis shows the public receives *no* public health benefit from the Final Rule, so delaying its implementation cannot possibly cause damage, let alone in the immediate term. Rural Br.30.

CONCLUSION

This Court should stay the Final Rule pending judicial review.

Respectfully submitted,

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