

IN THE
SUPREME COURT OF THE UNITED STATES

STATE OF WEST VIRGINIA, *et al.*,
Applicants,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,
Respondents.

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

**MOTION ON BEHALF OF THE
LOUISIANA PUBLIC SERVICE COMMISSION, INTERVENOR,
TO LODGE EXCERPT FROM EPA REGULATORY IMPACT ANALYSIS, WHICH
PROJECTS THAT ONLY ONE COMBINED CYCLE NATURAL GAS
GENERATING UNIT WILL ADD EPA'S PRESCRIBED CARBON CAPTURE
SYSTEM BY 2045, AND INTEGRATED PLANNING MODEL SUMMARY
STATISTICS, WHICH PROJECT THAT NONE WILL BE CONSTRUCTED WITH
THE CARBON CAPTURE SYSTEM**

Kathryn Bowman
Executive Counsel
Louisiana Public Service Commission
Galvez Building - 12th Floor
602 N. Fifth Street
Baton Rouge, Louisiana 70802

Michael R. Fontham
Counsel of Record
Dana M. Shelton
Justin A. Swaim
Of
STONE PIGMAN WALTHER
WITTMANN L.L.C.
909 Poydras Street, Suite 3150
New Orleans, Louisiana 70112
Telephone: (504) 581-3200
MFontham@stonepigman.com

*Counsel for Intervenor, the Louisiana Public Service Commission,
in Support of Stay*

Additional Captions Listed on Following Page

NATIONAL RURAL ELECTRIC COOPERATIVE,
Applicant,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.,*
Respondents.

NATIONAL MINING ASSOCIATION, *et al.,*
Applicants,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.,*
Respondents.

NACCO NATURAL RESOURCES CORPORATION,
Applicant,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.,*
Respondents.

ELECTRIC GENERATORS FOR A SENSIBLE TRANSITION,
Applicant,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.,*
Respondents.

EDISON ELECTRIC INSTITUTE, *et al.,*
Applicants,
v.
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.,*
Respondents.

MOTION

1. Pursuant to Rule 21 of the Rules of this Court, the Louisiana Public Service Commission ("LPSC"), intervenor, hereby moves to lodge two documents alleged to support the EPA Rule ("Rule") subject to the application for a stay in this Court. The documents include: Attachment A, Part 3 of EPA's Regulatory Impact Analysis, and Attachment B, the 2023 EPA Integrated Planning Model Summary Run Results. The Regulatory Impact Analysis document is included in the Certified Index to the Record. *Regulatory Impact Analysis*, at 3-1 to 3-43 (Apr. 24, 2024), *available at* <https://www.regulations.gov/document/EPA-HQ-OAR-2023-0072-8913> (D.C. Circuit Record Doc. No. CI8913). The Integrated Planning Model Summary Run Results document is not included in the Certified Index and has not been lodged with the Court, but it is available on the EPA's website. *EPA IPM Summary Results*, <https://www.epa.gov/power-sector-modeling/results-using-2023-reference-case> (last visited Oct. 3, 2024) (file name "2023 Reference Case SSR").

The Regulatory Impact Analysis projects that only one 870 megawatt combined cycle natural gas unit with a Carbon Capture System ("CCS") will exist as of 2045. [Attach. A at 3-28, 3-32 tbl.3-14]. The Integrated Planning Model projects that zero combined cycle natural gas units will be added with CCS through 2055, the end of the projected period. [Attach. B, "NEW MODELED CAPACITY Table ("0" in red reflects rounding, so the results are 0-0.5 GW, or 0-499 MW reflecting a single smaller unit or partial flue stream)]. Both projections reflect similar results for coal units. The grounds for this motion are the following.

2. Because of time constraints and the EPA's voluminous record, the LPSC focused on the Rule itself in preparing its Brief Supporting Petitioners. But the discussion in the Rule does not mention the results "with CCS" of the EPA's projections, nor address them in the analyses of resource adequacy, the achievability of CCS, or the cost of adding CCS. For instance, the Rule states, based on the Integrated Planning Model, that "[n]ew combined cycle units are 20 GW by 2030," but does not disclose that "0" are projected with CCS. 89 Fed. Reg. at 40,005. The LPSC did not discover the results of the analyses until after its brief was filed. The LPSC believes it is essential that the Court understand that EPA's conclusions, particularly with regard to achievability and cost, were drawn based on projections that no significant generation will ever be added with carbon capture, transportation, and sequestration infrastructure.

3. The LPSC calls the Court's attention to Table 3-14 of the Regulatory Impact Statement, which projects that only one unit of combined cycle generation "CCS" will be added through 2045. [Attach. A at 3-31 – 3-32 (1 "GW" reflects 1000 MW after rounding)]. The Regulatory Impact Statement explains that "870 MW of [Natural Gas Combined Cycle units] install CCS in 2035." [*Id.* at 3-28]. The "1" GW does not change through 2045. Similarly, the projection for "Coal & CCS" anticipates that only one GW of coal capacity will have CCS by 2045. [*Id.* at 3-32]. Higher numbers in 2028-40 apparently reflect adding 40 percent natural gas co-firing, allowed for capacity that will be retired by 2039. The 2040 results include results for 2038-42. [*Id.* at 3-5 n.50].

4. Results from running the EPA's Integrated Planning Model are similar. [Attach. B]. The "2023 Reference Case" summary results show that *zero* combined cycle natural gas generating facilities will be added with CCS through 2055. [Attach. B, New Model Capacity ("Natural Gas"), line 2]. The results for natural gas units are depicted below.

NEW MODELED CAPACITY (Cumulative GW)	2028	2030	2035	2040	2045	2050	2055
* * *							
Natural Gas	26	34	34	75	141	261	339
CC without CCS	19	20	20	20	20	48	80
CC with CCS	0	0	0	0	0	0	0

The Integrated Planning Model also projects that *zero* coal units will be constructed through 2055 "with CCS." [*Id.*, Coal, line 3]. The results follow:

NEW MODELED CAPACITY (Cumulative GW)	2028	2030	2035	2040	2045	2050	2055
* * *							
Coal	0	0	0	0	0	0	0
Coal without CCS	0	0	0	0	0	0	0
IGCC without CCS	0	0	0	0	0	0	0
Coal with CCS	0	0	0	0	0	0	0

It also projects that only one gigawatt of coal capacity "with CCS" will exist in 2045, 2050, and 2055. [Total Capacity (Cumulative GW) Chart]. Although not addressed in the Rule, these projections are essential in evaluating the EPA's conclusions concerning the achievability and cost of CCS.

5. As stated in its Response, the LPSC is concerned that the EPA Rule will undermine resource adequacy by preventing the construction of new, combined cycle gas generators, the most efficient gas generation and the type most

added to the generation fleet in the last two decades. Although the Rule does not address the "with CCS" capacity projections, the projections confirm that EPA expects the Rule to prevent the construction of combined cycle units, force reliance on renewable generation with backup natural gas capacity running at inefficient levels. EPA expects the Rule to prevent reliance on coal capacity as well. The results establish that CCS is neither achievable nor affordable on a broad scale.

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Kathryn Bowman
General Counsel
Louisiana Public Service Commission
Galvez Building - 12th Floor
602 N. Fifth Street
Baton Rouge, Louisiana 70802
Telephone: (225) 342-9888

Respectfully submitted,

/s/ Michael R. Fontham

Michael R. Fontham

Counsel of Record

Dana M. Shelton

Justin A. Swaim

Of

STONE PIGMAN WALTHER WITTMANN L.L.C.

909 Poydras Street, Suite 3150

New Orleans, Louisiana 70112-4042

Telephone: (504) 581-3200

MFontham@stonepigman.com

*Counsel for Intervenor, the Louisiana Public Service Commission,
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RULE 33 CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with Rule 33. It contains 860 words and has been prepared using Microsoft Word in 12-point Century font.

/s/ Michael R. Fontham
Michael R. Fontham