

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

STATE OF TEXAS, <i>et al.</i> ,)	
)	
Petitioners,)	
)	
v.)	Case No. 16-60118
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY and GINA)	
McCARTHY, Administrator, United States)	
Environmental Protection Agency,)	
)	
Respondents.)	

**PETITIONERS' AND PETITIONER-INTERVENORS'
JOINT NOTICE REGARDING STATUS OF SETTLEMENT
NEGOTIATIONS AND THEIR POSITION ON SUBSEQUENT
PROCEEDINGS IN THIS COURT**

Petitioners and Petitioner-Intervenors in these consolidated cases¹ respectfully submit this joint notice regarding the status of settlement negotiations and their

¹ This joint notice is filed by all Petitioners and Petitioner-Intervenors in these consolidated cases: Petitioners the State of Texas, the Texas Commission on Environmental Quality, and the Public Utility Commission of Texas; Petitioners Luminant Generation Company LLC, Big Brown Power Company LLC, Luminant Mining Company LLC, Big Brown Lignite Company LLC, and Luminant Big Brown Mining Company LLC; Petitioner the Utility Air Regulatory Group; Petitioner Southwestern Public Service Company; Petitioner Coletto Creek Power, LP; Petitioner NRG Texas Power LLC; Petitioner Nucor Corporation; Petitioner-Intervenors Balanced Energy for Texas and Texas Mining and Reclamation Association; Petitioner-Intervenors Texas Association of Business *et al.*; and Petitioner-Intervenor International Brotherhood of Electrical Workers Local Union 2337. A full listing of the parties joining this notice is set forth in the signature blocks for this joint notice.

position on subsequent proceedings in this Court. In accordance with this Court's order issued on August 19, 2016, all proceedings in this Court are stayed "to and including November 28, 2016." Doc. 00513645134 at 2. Petitioners and Petitioner-Intervenors hereby notify the Court that, despite good-faith settlement negotiations, a global resolution of this case has not been reached. Accordingly, Petitioners and Petitioner-Intervenors do not request a further stay of proceedings in this Court at this time for the purpose of settlement discussions.

For the reasons set forth in a published opinion of this Court, the Final Rule of the U.S. Environmental Protection Agency ("EPA") at issue in this case is stayed in its entirety "pending resolution of the petitions for review on the merits." *Texas v. EPA*, 829 F.3d 405, 411 (5th Cir. 2016). On Monday, November 21, 2016, counsel for EPA informed counsel for the other parties to the case that EPA intends to file a motion requesting that the Court, in lieu of proceeding with merits briefing in the case, vacate and remand for further agency proceedings EPA's State Implementation Plan disapproval decisions and Federal Implementation Plans promulgated by the Final Rule. Counsel for EPA did not provide a copy of EPA's motion to counsel for Petitioners and Petitioner-Intervenors prior to filing the motion. Petitioners and Petitioner-Intervenors *do not join* EPA's motion. Instead, once the motion is filed, they intend to review the motion, including the bases cited by EPA for its requested relief and any representations by EPA about its intentions regarding remand proceedings, and they intend to file a response or responses with the Court as

appropriate, including potentially a request for different relief. Thus, Petitioners and Petitioner-Intervenors respectfully request that the Court refrain from acting on EPA's motion until that motion has been fully briefed to the Motions Panel.

Dated: November 28, 2016

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that all counsel of record who have consented to electronic service are being served with a copy of this document via the Court's CM/ECF system on this 28th day of November, 2016.

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