

ARGUED APRIL 13, 2012  
DECIDED AUGUST 21, 2012  
No. 11-1302 (and consolidated cases) (COMPLEX)

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**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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EME Homer City Generation, L.P., et al.  
*Petitioners,*

v.

United States Environmental Protection Agency, et al.,  
*Respondents,*

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On Petitions for Review of an Action of the  
United States Environmental Protection Agency

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**STATE AND LOCAL PETITIONERS' UNOPPOSED MOTION  
FOR EXTENSION OF TIME TO RESPOND TO  
MOTIONS TO LIFT THE STAY**

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Dated: July 17, 2014

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The State of Kansas and other State and Local Petitioners<sup>1</sup> (collectively “State and Local Petitioners”) respectfully move for an extension for all parties to and including July 31, 2014, to respond to (1) the motion to lift this Court’s stay of the Cross-State Air Pollution Rule (the “Transport Rule” or “Rule”) that respondent United States Environmental Protection Agency (“EPA”) filed on June 26, 2014 (Doc. No. 1499505)<sup>2</sup> and (2) the Motion for Alternative Relief filed by public health and environmental group respondent-intervenors on July 11, 2014 (Doc. No. 1502200).<sup>3</sup> State and Local Petitioners have consulted with counsel for the parties. Industry/Labor petitioners consent to this motion. EPA will not oppose the motion; the industry respondent-intervenors will not oppose the motion; the public health and environmental group respondent-intervenors take no position on the motion and will not file a response; State respondent-intervenors will not oppose the motion.

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<sup>1</sup> Besides the State of Kansas, the State and Local Petitioners submitting this motion include: the State of Alabama, State of Florida, State of Georgia, State of Indiana, State of Louisiana, Louisiana Public Service Commission, Louisiana Department of Environmental Quality, State of Michigan, Mississippi Public Service Commission, State of Nebraska, State of Ohio, State of Oklahoma, State of South Carolina, State of Texas, the Public Utility Commission of Texas, the Railroad Commission of Texas, the Texas Commission on Environmental Quality, the Texas General Land Office, the State of Wisconsin, and the City of Ames, Iowa.

<sup>2</sup> Absent an extension, responses to EPA’s motion to lift the stay would be due on July 25, 2014, pursuant to the Court’s Order of July 7, 2014 (Doc. No. 1501044), which granted an unopposed motion for an extension that Industry and Labor Petitioners filed on July 2, 2014 (Doc. No. 1500666).

<sup>3</sup> Absent an extension, responses to the Motion for Alternative Relief would be due on July 24, 2014, under the Federal Rules of Appellate Procedure.

These consolidated cases involve petitions to review the Transport Rule that EPA promulgated under section 110(a)(2)(D)(i)(I) of the Clean Air Act, 42 U.S.C. § 7410(a)(2)(D)(i)(I). 76 Fed. Reg. 48,208 (Aug. 8, 2011). The Transport Rule's initial compliance date was January 1, 2012. On December 30, 2011, this Court stayed the Rule "pending the court's resolution of these petitions for review." Order at 2 (Doc. No. 1350421). On August 21, 2012, this Court vacated the Rule and ordered EPA to continue to administer the existing Clean Air Interstate Rule. *See EME Homer City Generation, L.P. v. EPA*, 696 F.3d 7, 37-38 (D.C. Cir. 2012). On April 29, 2014, the Supreme Court reversed and remanded this Court's decision "for further proceedings consistent with this opinion." *EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584, 1610 (2014).

Upon remand, this Court ordered the parties to file motions to govern future proceedings by July 3, 2014, and a number of parties filed several motions to govern on that date.<sup>4</sup> EPA, however, filed a motion on June 26, 2014, asking this Court to lift its stay of the Transport Rule and to decide that Phase 1 of the Rule would go into effect on January 1, 2015, and that the more stringent Phase 2 would go into effect on January 1, 2017 (dates that reflect the two-year interval between the 2012 beginning date for Phase 1 and the 2014 beginning date for Phase 2 in the Rule as published in August 2011). The Court on July 7, 2014 (Doc. No. 1501044), granted Industry and

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<sup>4</sup> Responses to the motions to govern are due on July 17, 2014, and replies thereto by July 28, 2014.

Labor Petitioners' unopposed motion to extend to July 25, 2014, the date to respond to EPA's motion to lift the stay.

On July 11, 2014, public health and environmental group respondent-intervenors filed a response supporting EPA's request to lift the stay but combined with that response a Motion for Alternative Relief asking that the Court decide that Phase 2 of the Rule would take effect immediately, on January 1, 2015, rather than in 2017 as EPA's motion requests, and therefore that the Court should order Phase 1 deleted from the Rule altogether (Doc. No. 1502200).

State and Local Petitioners hereby request an extension, to and including July 31, 2014, for all parties to file responses to EPA's motion to lift the stay and to public health and environmental group respondent-intervenors' Motion for Alternative Relief. This extension would provide an additional six days (beyond the existing deadline of July 25, 2014) for responses to EPA's motion and an additional seven days (beyond the existing deadline of July 24, 2014) for responses to the respondent-intervenors' Motion for Alternative Relief.

This case involves dozens of parties, and the numerous State and Local Petitioners need time to confer regarding the issues presented in the Motion for Alternative Relief, which, together with the Declaration attached thereto, presents, *inter alia*, state- and facility-specific information, assumptions, and projections that State and Local Petitioners require additional time to review and assess. This extension will allow the parties to prepare, and the Court to review, responsive filings

that account for, and reflect coordination of, responses to the EPA motion and to the respondent-intervenors' Motion for Alternative Relief.

Accordingly, State and Local Petitioners respectfully request that the Court issue an order providing that all parties' responses to the EPA motion and to the respondent-intervenors' Motion for Alternative Relief be filed by July 31, 2014.

Dated: July 17, 2014

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that on this 17th day of July, 2014, I caused the foregoing State and Local Petitioners' Unopposed Motion for Extension of Time to Respond to Motions to Lift the Stay to be served on all registered counsel through the Court's CM/ECF system.

/s/ Jeffrey A. Chanay