

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

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

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

v.

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

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

**INDUSTRY/LABOR PETITIONERS' UNOPPOSED MOTION FOR
EXTENSION OF TIME TO FILE RESPONSES TO EPA'S
MOTION TO LIFT THE STAY**

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Dated: July 2, 2014

**UNOPPOSED MOTION FOR EXTENSION OF TIME TO FILE
OPPOSITION TO EPA’S MOTION TO LIFT THE STAY**

Luminant¹ and the parties listed at the end of this motion (collectively “Industry/Labor petitioners”), respectfully move for an extension for all parties to and including July 25, 2014, to respond to EPA’s motion to lift this Court’s stay of the Transport Rule.² Industry/Labor petitioners have consulted with counsel for the parties. State and local petitioners join this motion. EPA does not oppose the relief requested in this motion; the industry respondent-intervenors take no position on the motion and will not file a response; the public health and environmental group respondent-intervenors take no position on the motion and will not file a response; State respondent-intervenors take no position on the motion and will not file a response.

These consolidated cases involve petitions to review the Transport Rule that EPA promulgated under §110(a)(2)(D)(i)(I) of the Clean Air Act. *See* 76 FR 48208 (Aug. 8, 2011). The Transport Rule’s initial compliance date was January 1, 2012, but on December 30, 2011, this Court stayed the Rule “pending the court’s resolution of

¹ The Luminant petitioners in this proceeding are: Luminant Generation Company LLC, Sandow Power Company LLC, Big Brown Power Company LLC, Oak Grove Management Company LLC, Luminant Mining Company LLC, Big Brown Lignite Company LLC, Luminant Big Brown Mining Company LLC, Luminant Energy Company LLC and Luminant Holding Company LLC.

² Absent an extension, responses to EPA’s motion to lift the stay would be due on July 10, 2014.

these petitions for review.” Order at 2 (Doc. 1350421). On August 21, 2012, this Court vacated the Rule and ordered EPA to continue to administer the existing Clean Air Interstate Rule (“CAIR”). *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 (2014).

Critically, however, the Supreme Court expressly “agree[d]” with this Court’s holdings that “EPA cannot require a State to reduce its output of pollution by more than is necessary to achieve attainment in every downwind State or at odds with the one-percent threshold the Agency has set.” *Id.* Thus, the Supreme Court expressly left open on remand as-applied challenges to the Transport Rule based on EPA’s failure to adhere to the statutory limits on its authority. *Id.*; *see also id.* (an upwind State may maintain an as-applied challenge if it “has been forced to regulate emissions below the one-percent threshold or beyond the point necessary to bring all downwind States into attainment”).

Upon remand, this Court ordered the parties to file motions to govern future proceedings by July 3, 2014. EPA, however, filed a motion on June 26, 2014, asking this Court to lift its stay of the Transport Rule such that the Rule would go into effect on January 1, 2015.

Industry/Labor petitioners request additional time for all parties to file a response to EPA’s motion to lift the stay. First, this case involves dozens of parties,

and Industry/Labor petitioners need time to confer regarding the issues presented in EPA's motion. Second, Industry/Labor petitioners need additional time to consider the new factual material presented in EPA's motion as well as the process EPA is proposing to implement the Transport Rule. Although EPA could have provided regulated parties with advance notice of its intent to seek to put the Transport Rule in effect, counsel for EPA advised counsel for Luminant petitioners of EPA's intention to file the motion only the day before doing so, leaving little time to confer on the issues EPA has raised. Third, the time to file a response includes the July 4 holiday.

CONCLUSION

For these reasons, Industry/Labor petitioners request that the deadline for all parties to file a response to EPA's motion to lift the stay of the Transport Rule be extended to and including July 25, 2014.

Dated: July 2, 2014

Respectfully submitted,

/s/ Peter D. Keisler

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CERTIFICATE OF SERVICE

I hereby certify that on July 2, 2014, I caused the foregoing Motion for Extension of Time to be served on all registered counsel through the Court's CM/ECF system.

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