

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

STATE OF WEST VIRGINIA, et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and
REGINA A. MCCARTHY, Administrator,
U.S. Environmental Protection Agency,

Respondents.

Case No. 15-1363

On Petition for Review from
the Environmental Protection
Agency

**MOTION OF ADVANCED ENERGY ECONOMY FOR LEAVE
TO INTERVENE IN SUPPORT OF RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and D.C. Circuit Rule 15(d), Advanced Energy Economy (AEE) moves to intervene in support of Respondents the United States Environmental Protection Agency and Regina A. McCarthy, EPA Administrator (collectively, EPA) in the above-captioned case. AEE is a national organization of businesses dedicated to making the energy we use secure, clean, and affordable. AEE and its State and regional partner organizations, which are active in 27 States, represent more than 1,000 companies

and organizations that span the advanced energy industry and its value chains. AEE's mission is to promote the rapid growth of advanced energy companies. Accordingly, AEE and its members have a significant interest in the outcome of this litigation.¹

INTRODUCTION

Petitioners challenge the EPA's final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,661 (Oct. 23, 2015)—the "Clean Power Plan." Petitioners also seek to stay implementation of the Clean Power Plan pending this Court's review.

Promulgated pursuant to Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), the Clean Power Plan establishes guidelines for States in developing plans to reduce carbon dioxide (CO₂) emissions from existing fossil-fuel-fired power plants. See *Massachusetts v. EPA*, 549 U.S. 497, 528 (2007) (holding that the Clean Air Act authorizes the EPA to regulate CO₂ emissions as air pollutants). The Clean Power Plan sets CO₂-emission performance standards for two

¹ Pursuant to D.C. Circuit Rule 15(b), this motion constitutes a motion to intervene in all petitions for review of the agency action. AEE sought consent to its intervention from Petitioners in this case and from Petitioners in the other cases challenging the agency action on review. Petitioners in Nos. 15-1364, 15-1377, 15-1378, and 15-1379 have stated that they do not oppose AEE's intervention. Petitioners in Nos. 15-1363, 15-1367, 15-1368, 15-1370, 15-1371, 15-1376, 15-1380, 15-1382, 15-1383, and 15-1386 have stated that they take no position on AEE's intervention at this time. Respondents consent to AEE's intervention.

subcategories of power plants: fossil-fuel-fired electric steam generating units (principally, coal- and oil-fired power plants), and natural-gas-fired combined cycle (NGCC) generating units. See 80 Fed. Reg. at 64,663. States may submit plans to the EPA that will achieve those emission performance standards (or State-specific performance standards also established by the Clean Power Plan).

In establishing emission performance standards, the EPA determined the degree of emission limitation “achievable through the application of the best system of emission reduction” available, as required by the Clean Air Act. See 42 U.S.C. § 7411(a). In particular, the EPA determined that the best system of emission reduction consists of three “building blocks” or strategies that States may use to reduce CO₂ emissions: (1) increasing the efficiency of existing coal-fired power plants (80 Fed. Reg. at 64,787); (2) increasing electricity generation from lower-emitting NGCC plants, while decreasing electricity generation from higher-emitting fossil-steam-power plants (*id.* at 64,795); and (3) increasing electricity generation from zero-emitting renewable energy sources such as wind and solar power, while reducing generation from fossil steam and NGCC power plants (*id.* at 64,803). Thus, while States are not required to implement any particular method to meet the State’s emission goals—States can use all or none of the “building blocks,” along with other emission-reduction strategies—the Clean Power Plan contemplates increased electricity generation from low- and zero-emitting sources.

States that develop their own compliance plans do not need to submit even their initial proposals to the EPA until September 2016, and they do not need to submit complete plans to the EPA until September 2018—nearly three years from now. See 80 Fed. Reg. at 64,664. If a State does not elect to submit its own plan, or if the EPA does not approve a State’s plan, the EPA will establish a plan for that State. *Id.* at 64,702. In all cases, the Clean Power Plan’s emission performance standards will not begin to go into effect until 2022, and affected power plants will not need to meet final emission standards until 2030. *Id.* at 64,669.

The Clean Power Plan was published in the Federal Register on October 23, 2015. That same day, Petitioners filed their petition for review and motion to stay implementation of the regulations.

STATEMENT OF INTERESTS AND GROUNDS FOR INTERVENTION

“Intervention in this court is governed by Fed. R. App. P. 15(d).” *Process Gas Consumers Group v. FERC*, 912 F.2d 511, 515 (D.C. Cir. 1990). “Rule 15(d) simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought.” *Synovus Financial Corp. v. Board of Governors of Federal Reserve System*, 952 F.2d 426, 433 (D.C. Cir. 1991); see also 28 U.S.C. § 2348 (providing that any association “whose interests are affected

by the order of the agency, may intervene in any proceeding to review the order”). AEE readily satisfies these requirements.²

First, AEE and its members will benefit directly from the Clean Power Plan. AEE’s members include providers of a broad range of advanced energy products and services, including products and services related to natural gas, wind, solar, and nuclear power; energy efficiency technologies; smart grid technologies; and advanced transportation systems. See AEE Decl. (Ex. A) ¶ 2. AEE members include, for example, a publicly traded company that manufactures microinverters, which convert power from solar panels so that solar energy can be integrated into the electricity grid (Enphase Energy, Inc. Decl. (Ex. B) ¶ 2); a publicly traded utility-scale solar plant developer (First Solar, Inc. Decl. (Ex. C) ¶ 3); a multinational company that provides advanced metering and intelligent-energy management products and other smart grid services (Landys+Gyr Decl. (Ex. D) ¶ 3); a residential energy-efficiency company (Next Step Living Decl. (Ex. E) ¶ 1); and a publicly traded electricity-generation project developer that focuses on natural gas and wind-powered generation (Competitive Power Ventures, Inc. Decl. (Ex. F) ¶ 1).

As noted, the Clean Power Plan contemplates that States and existing sources will reduce CO₂ emissions, at least in part, by promoting increased

² In addition, AEE’s motion is timely under Rule 15(d), which requires that motions to intervene be filed “within 30 days after the petition for review is filed.”

electricity generation from low- and zero-emitting sources and by promoting actions that reduce the amount of electricity that needs to be generated. Because AEE's members are directly involved in low- and zero-emission power generation and the provision of technologies and services that reduce energy demand, they stand to benefit substantially from an increase in demand for clean-power sources and energy efficiency. AEE anticipates that States and regulated entities will increasingly employ advanced energy products and services to fulfill compliance obligations under the Clean Power Plan. As such, AEE and its members have a significant interest in ensuring that the Clean Power Plan is upheld by this Court.

Second, AEE holds an interest in the litigation because it participated extensively in the Clean Power Plan regulatory proceedings. Before the EPA published the proposed Clean Power Plan rule, see 79 Fed. Reg. 34,830 (June 18, 2014), AEE submitted to the agency its *Recommendations on EPA's Forthcoming Proposal To Reduce Carbon Emissions from Existing Power Plants* (May 5, 2014). See AEE Decl. ¶ 6. And after the EPA published its proposed rule, AEE participated extensively in the notice-and-comment process. First, on November 5, 2014, AEE submitted to the agency its initial set of "Comments on the Clean Power Plan," Docket ID No. EPA-HQ-OAR-2013-0602. Then, on December 1, 2014, AEE submitted its "Supplemental Comments on the Clean Power Plan,"

Docket ID No. EPA-HQ-OAR-2013-0602. All told, AEE submitted more than 100 pages of detailed comments on the proposed rule. See AEE Decl. ¶ 7.

In addition to submitting formal comments to the EPA, AEE also prepared and commissioned several analyses of the proposed Clean Power Plan rule and related issues. See AEE Decl. ¶ 8 (listing analyses). The final Clean Power Plan cites several of these analyses. For example, the Clean Power Plan recognizes that an AEE-commissioned study found that “many flexible options [are] available to states under the rule to mitigate reliability risks.” 80 Fed. Reg. at 64,880. The Clean Power Plan also cites another AEE-commissioned report that presents a “case study for how to effectively integrate a large number of [renewable energy sources] into the electric grid.” *Id.* And the Legal Memorandum accompanying the Clean Power Plan quotes at length from an AEE report entitled “Markets Drive Innovation.” EPA, Legal Memorandum Accompanying Clean Power Plan for Certain Issue, at 129-131, <http://epa.gov/airquality/cpp/cpp-legal-memo.pdf>. That report examines the history of analogous EPA regulations and concludes that market-based mechanisms for compliance are likely to develop under the Clean Power Plan, which will make a wide array of cost-effective compliance options available. AEE’s extensive participation in the regulatory process also supports its participation as intervenor in this action.

Finally, to the extent that standing is required for an intervenor-defendant, AEE has such standing because the interests at stake in this litigation are germane to AEE’s core purpose—promoting the growth of advanced energy—and therefore AEE and its members will be substantially injured if this Court vacates the Clean Power Plan. See generally *Natural Resources Defense Council v. EPA*, 755 F.3d 1010, 1016, 410 (D.C. Cir. 2014).³ As noted, the Clean Power Plan contemplates that States and power plants will reduce CO₂ emissions by increasing generation from low- and zero-emitting power sources such as natural gas, wind, and solar power. And, as also noted above, AEE’s members include companies that provide products and services that support the generation and distribution of electricity from low- and zero-emitting sources and that improve energy efficiency. AEE’s members therefore stand to benefit from the implementation of the Clean Power Plan, which “will accelerate the growth of markets for advanced energy technologies and services” provided by AEE’s members. AEE Decl. ¶ 10.

Conversely, AEE and its members will be significantly harmed if the incentives created by the Clean Power Plan—and the increased demand for

³ Article III’s standing requirements apply to “[o]ne who seeks to initiate or continue proceedings in federal court,” but does not limit those—like AEE—who seek to defend against such proceedings. *Bond v. United States*, 131 S. Ct. 2355, 2361 (2011); see also *Comcast Corp. v. FCC*, 579 F.3d 1, 6 (D.C. Cir. 2009) (“[I]f one party has standing in an action, a court need not reach the issue of the standing of other parties when it makes no difference to the merits of the case.”) (internal quotation marks omitted).

advanced energy products and services—do not come to pass. See, *e.g.*, *Sabre, Inc. v. Dep’t of Transp.*, 429 F.3d 1113, 1119 (D.C. Cir. 2005) (economic injury sufficient to constitute standing); *Com. of Pa. v. ICC*, 561 F.2d 278, 283 (D.C. Cir. 1977) (standing where agency action would create “new markets” and result in “diversion of business”).

For example, Jason Simon, Director of Policy Strategy at Enphase Energy, Inc., states in his declaration that, if the Clean Power Plan is not implemented, “market penetration of advanced energy technologies may be more gradual and modernization of the electricity system may be less efficient [and] more costly.” Enphase Decl. ¶ 8. Colin Meehan, Director of Regulatory and Public Affairs at First Solar, Inc., states in his declaration that “First Solar expects that its business will benefit directly from implementation of the Clean Power Plan Final Rule and will be harmed if the Final Rule is not implemented.” First Solar Decl. ¶ 7. Todd Horsman, Vice President of Regulatory and Delivery at Landis+Gyr, states in his declaration that failure to implement the Clean Power Plan would “hinder [Landis+Gyr’s] ability to continue to expand in the North American market place.” Landis+Gyr Decl. ¶ 8. And Geoff Chapin, CEO of Next Step Living, states in his declaration that the company’s “ability to invest in jobs . . . and attract investment to support these [energy-efficiency] actions would be significantly reduced by . . . lack of implementation of the Rule.” Next Step Living Decl. ¶ 5.

In sum, AEE's members operate in nearly all aspects of the interconnected electricity system, and the Clean Power Plan will accelerate the growth of markets for the advanced energy services provided by AEE's members. AEE and its members are therefore directly affected by the Clean Power Plan—and will be significantly harmed if Petitioners succeed in their challenge.

CONCLUSION

For the reasons stated above, AEE requests that the Court grant its motion for leave to intervene in this proceeding in support of Respondents.

Dated: October 27, 2015

Respectfully submitted.

/s/ Lawrence S. Robbins

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RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Circuit Rule 26.1, AEE states that it is a not-for-profit trade association dedicated to making the energy we use secure, clean, and affordable. AEE does not have any parent companies or issue stock, and no publicly held company has a 10% or greater ownership interest in AEE.

CERTIFICATE OF COMPLIANCE

This motion complies with the page-limit requirements of Fed. R. App. P. 27(d)(2) because it does not exceed 20 pages. This motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in a proportionally spaced typeface using Microsoft Word 2010 in 14 Point Times New Roman.

Dated: October 27, 2015

/s/ Lawrence S. Robbins

Lawrence S. Robbins

CERTIFICATE OF SERVICE

I hereby certify that on October 27, 2015, I electronically filed the foregoing motion by using the appellate CM/ECF system, which will send notice of such filing to all registered counsel.

/s/ Lawrence S. Robbins

Lawrence S. Robbins

EXHIBIT A

DECLARATION OF MALCOLM WOOLF
ON BEHALF OF ADVANCED ENERGY ECONOMY

I, Malcolm Woolf, do hereby declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge, information, and belief:

1. I am Senior Vice President for Policy and Government Affairs at Advanced Energy Economy (AEE). My duties at AEE include overseeing the organization's public policy efforts in connection with federal and state regulatory initiatives, outside of California. I am submitting this Declaration in support of AEE's Motion to Intervene in support of respondent the U.S. Environmental Protection Agency (EPA) in *State of West Virginia, et al. v. EPA*, No. 15-1363 (Oct. 23, 2015).

2. AEE is a national organization of businesses dedicated to making the energy we use secure, clean, and affordable. AEE and its state and regional partner organizations, which are active in 27 states, represent more than 1,000 companies and organizations that span the advanced energy industry and its value chains. Technology areas represented include energy efficiency, demand response, natural gas, wind, solar, smart grid, nuclear power, and advanced transportation systems. Together, these technologies and services make up the "advanced energy" sector, which represents the future of the electricity system. These technologies did not exist when the electricity system was developed early in the 20th century, but now are well established in the marketplace and provide significant benefit to consumers while improving the performance of the energy system.

3. AEE's mission is to transform public policy to enable rapid growth of advanced energy companies. AEE promotes the interests of its members by engaging in legislative and regulatory policy advocacy at the federal and state levels.

4. AEE's members operate in nearly all aspects of the United States' inter-connected electricity system. For instance, AEE has member companies that *produce and supply* electricity from natural gas, solar and wind projects and enable customers to produce electricity themselves; *improve the efficiency* of energy use by customers; utilize technology to *create a dynamic and efficient system for distributing electricity* from suppliers to customers; *engage consumers* to manage electricity demand; provide consumers with technologies to *increase their control* over energy; *manufacture equipment* used throughout the electricity supply chain; and are large *consumers* of electricity.

5. Consistent with its mission of promoting the growth of advanced energy companies, AEE supports EPA's Final Rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,661 (Oct. 23, 2015) (the "Clean Power Plan Final Rule"), and believes that it provides an historic opportunity to modernize the United States' electric power system. The Clean Power Plan Final Rule will accelerate existing trends in the energy markets and provide the electric power system with a clear, long-term market signal that will drive critical investments in advanced energy to improve efficiency, reliability and resiliency, while creating more value for consumers and the economy as a whole, while also reducing carbon pollution emissions.

6. AEE participated extensively in the notice-and-comment process on the Proposed Rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 79 Fed. Reg. 34,830 (Jun. 18, 2014) ("Proposed Rule"). In fact, AEE was actively involved before EPA issued the Proposed Rule, filing a document entitled "Recommendations on EPA's Forthcoming Proposal To Reduce Carbon Emissions from Existing Power Plants" with EPA on May 5, 2014.

7. After the Proposed Rule was released, AEE issued two sets of comments: On November 5, 2014, AEE submitted “Comments on the Clean Power Plan,” Docket ID No. EPA-HQ-OAR-2013-0602. On December 1, 2014, AEE submitted “Supplemental Comments on the Clean Power Plan,” Docket ID No. EPA-HQ-OAR-2013-0602. All told, AEE submitted more than 100 pages of detailed comments on the Proposed Rule.

8. In addition to submitting formal comments to the EPA, AEE also prepared and commissioned several analyses on the Proposed Rule and related issues. Specifically, AEE and the affiliated AEE Institute, a 501(c)(3) charitable organization with a mission of raising awareness of the public benefits and opportunities of advanced energy, commissioned the following analyses:

- *Advanced Energy Technologies for Greenhouse Gas Reduction: 40 Solutions for Cutting Carbon from Electricity Generation.* See <http://info.aee.net/epa-advanced-energy-tech-report>.
- *NERC’s Clean Power Plan ‘Phase I’ Reliability Assessment: A Critique.* See <http://info.aee.net/nerc-cpp-phase1-critique>.
- *EPA’s Clean Power Plan and Reliability: Assessing NERC’s Initial Reliability Review.* See <http://info.aee.net/brattle-reliability-report>.
- *Competitiveness of Renewable Energy and Energy Efficiency in U.S. Markets.* See <http://info.aee.net/competitiveness-of-renewable-energy-and-energy-efficiency-in-us>.
- *Integrating Renewable Energy into the Electricity Grid.* See <http://info.aee.net/integrating-renewable-energy-into-the-electricity-grid>.

- *Impacts of the Clean Power Plan on U.S. Natural Gas Markets and Pipeline Infrastructure.* See <http://info.aee.net/impacts-of-clean-power-plan-on-us-natural-gas>.
- *Markets Drive Innovation: Why history shows that Clean Power Plan will stimulate a robust industry response.* See <http://info.aee.net/market-response-to-epa-clean-power-plan>.
- *Design Principles for a Rate-Based Federal Plan Under EPA's Clean Power Plan.* See <http://info.aee.net/rate-based-federal-plan-under-clean-power-plan>.
- *Assessing Virginia's Energy Future: Employment Impacts of Clean Power Plan Compliance Scenarios.* See <http://info.aee.net/virginia-energy-future>.
- *AEE's State Tool for Electricity Emissions Reduction (STEER) and Michigan State Tool for Electricity Emissions Reduction (STEER).* See <http://info.aee.net/steer> and <http://info.aee.net/steer-michigan>.

9. The Clean Power Plan Final Rule cites several of these analyses. For example, the Clean Power Plan Final Rule cites (80 Fed. Reg. at 64,880) an AEE Institute-commissioned study conducted by the Brattle Group that, as the Final Rule states, shows that States have flexibility under their State plans to mitigate the reliability concerns raised by the North American Electric Reliability Corporation. See <http://info.aee.net/brattle-reliability-report>. The Clean Power Plan Final Rule also cites (80 Fed. Reg. at 64,880) another report commissioned by the AEE Institute highlighting how a grid operator, the Electric Reliability Council of Texas (ERCOT), and integrated utility Xcel Energy of Colorado, are successfully integrating a high and increasing share of electric power from variable renewable resources. See <http://info.aee.net/integrating-renewable-energy-into-the-electricity-grid>. And the Legal

Memorandum accompanying the Clean Power Plan Final Rule quotes at length from an AEE Institute report entitled “Markets Drive Innovation.” See Legal Memo at 129-131, *available at* <http://epa.gov/airquality/cpp/cpp-legal-memo.pdf>. This report, which is also cited in the Clean Power Plan Final Rule itself (80 Fed. Reg. at 64,732), examines the history of analogous EPA regulations and concludes that market-based mechanisms for compliance are likely to develop under the Clean Power Plan, which will lead industry to make a wide array of cost-effective compliance options available. Historical experience with analogous regulations indicates that this industry response to market-based mechanisms will lead to compliance that is faster and lower cost than originally anticipated. See <http://info.aee.net/hubfs/PDF/AEEI-Market-Response-Report.pdf?t=1436575590466>.

10. The Clean Power Plan Final Rule will accelerate the growth of markets for advanced energy technologies and services. Based on the application of the Best System of Emission Reductions (BSER), the Final Rule establishes carbon dioxide emission targets for States and their existing fossil-fuel-fired electric generating units (EGUs). The Final Rule allows States and EGUs to use a wide range of advanced energy resources to achieve the required emission reductions, including wind power, solar power, natural gas power, end use energy efficiency, nuclear power, and transmission and distribution efficiency. These advanced energy technologies not only provide cost-effective emission reductions but also provide capabilities that will help modernize the electricity system to provide better resiliency and reliability, diversity, cost effectiveness and economic opportunity. Given these benefits, States and EGUs will have a strong incentive to utilize advanced energy resources.

11. By accelerating the deployment of advanced energy technologies, the Clean Power Plan Final Rule will accelerate the country’s transition from an electric power system

built for the early 20th century to a more dynamic advanced energy system suitable for the 21st century, with increased resiliency and flexibility in the electrical system, more choice to consumers, and lower long-term costs. This transformation has been underway for years and is driven by technology advances and consumer demands.

12. The Clean Power Plan Final Rule directly benefits AEE and its members. AEE's member companies develop and deploy the advanced energy technologies and services that will be used for compliance with the Final Rule, and therefore will benefit directly from the accompanying accelerated use of these resources. Based on AEE's internal calculations, AEE estimates that the Clean Power Plan could support roughly \$20 billion per year in additional advanced energy market activity through 2030.

13. A delay or invalidation of the Clean Power Plan Final Rule, in contrast, would directly harm AEE and its members. Delay in implementation of the Clean Power Plan Final Rule would remove substantial opportunity from the advanced energy industry.

Dated: October 26, 2015

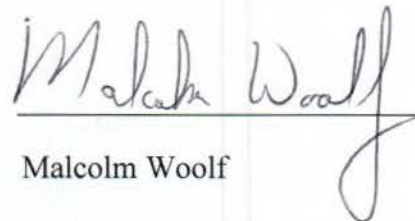

Malcolm Woolf

EXHIBIT B

DECLARATION OF JASON SIMON
ON BEHALF OF ENPHASE ENERGY, INC.

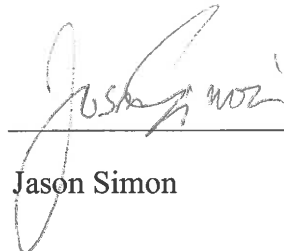
I, Jason Simon, do hereby declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge, information, and belief:

1. I am the Director of Policy Strategy at Enphase Energy, Inc. (“Enphase Energy”).
2. Among other things, Enphase Energy designs and manufactures micro solar inverters, known as “microinverters,” which convert power from solar panels into alternating current that can be integrated into the electricity grid.
3. My duties at Enphase Energy include developing and recommending federal and state policies that further the adoption of advanced energy technologies in a cost-effective and reliable manner that is fair to all stakeholders.
4. Our mission at Enphase Energy is to drive the consumer adoption of advanced energy technologies that lower energy bills, decrease greenhouse gas (GHG) emissions, and provide grid-reliability services to utilities. The technology that we develop and sell in over 80 countries supports a growing employment base of both green-collar and white-collar jobs. Our product is good for the environment, the grid, and the U.S. economy.
5. Enphase Energy is a member of Advanced Energy Economy (“AEE”), an association of a growing base of national and international companies that develop and promote technologies for the 21st century electricity grid, including several Fortune 10 companies.
6. As a technology provider that sells energy management systems using renewable technologies that provide cost-effective grid reliability services, Enphase has demonstrated that grid reliability does not need to be compromised as renewable penetration increases, if the proper technologies are utilized.

7. Enphase supports the implementation of the Clean Power Plan and believes that all States could be successful in meeting their compliance requirements, given the level of flexibility allowed in developing tailored GHG reduction programs using both “Emissions Standards” and “State Measures” plans. The Clean Power Plan also encourages a regional approach to GHG reduction through the allowance of emissions-trading programs that lessens compliance costs while ensuring reliability. Furthermore, the EPA has provided a safety valve for participants that are challenged to meet GHG reduction goals, as well as the potential to revise plans in the event of unanticipated reliability challenges. In other words, the EPA has accommodated States with a level of flexibility that ensures reliability will not suffer and enough compliance options to provide for cost-effective outcomes.

8. Implementation of the Clean Power Plan will incentivize utilities across the United States to procure advanced energy technologies that are both clean and improve grid reliability. Enphase Energy combines solar, energy management, and storage into a simple solution that is clean, reliable, and cost-effective. Accordingly, Enphase Energy expects that its business and ratepayers will benefit directly from implementation of the Clean Power Plan. If the Clean Power Plan is not implemented, market penetration of advanced energy technologies may be more gradual and modernization of the electricity system may be less efficient, more costly, and disadvantages to ratepayers.

Dated: October 23, 2015



Jason Simon

EXHIBIT C

DECLARATION OF COLIN MEEHAN ON BEHALF OF FIRST SOLAR, INC.

I, Colin Meehan, do hereby declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge, information, and belief:

1. I am the Director of Regulatory and Public Affairs at First Solar, Inc. (“First Solar”). I submit this declaration in support of proposed defendant-intervenor Advanced Energy Economy’s (“AEE’s”) motion to intervene in support of Respondent EPA in *State of West Virginia, et al. v. EPA*, No. 15-1363 (Oct. 23, 2015).

2. My duties at First Solar include managing local, state and federal regulatory matters that may impact our business. This includes, but is not limited to, understanding and providing input on policies and regulations that impact the economics of wholesale power markets, as well as the ability to construct and interconnect utility-scale solar power projects and utility procurement of solar and other generation resources.

3. First Solar is the largest U.S.-based solar module manufacturer, and the largest solar power plant developer in the world. First Solar currently maintains the largest fleet of large-scale solar plants globally. As a solar developer, installer and operator, First Solar focuses primarily on utility-scale energy production to drive down the cost of solar electricity. First Solar manufactures advanced, thin-film photovoltaic (“PV”) modules with a meaningful energy yield advantage over conventional crystalline silicon technologies. As a result, First Solar’s industry partners are increasingly deploying our products in distributed generation, community solar, PV hybrid, and microgrid solutions. First Solar provides the leading eco-efficient PV energy technology, producing more energy at a competitive cost and with the smallest life-cycle environmental impacts of conventional PV modules. With over 100 million modules installed worldwide installed as of 2015 – providing more than 10 gigawatts of clean power – First Solar

has a proven record of delivering cost-effective, safe and reliable solar solutions, while maintaining a strong commitment to environmental stewardship.

4. First Solar is a member of AEE. First Solar's goal to expand its business in the U.S. through opportunities to develop, construct and operate utility-scale solar power plants aligns well with AEE's goal of expanding business opportunities for providers of advanced energy, including renewable energy.

5. First Solar has been involved in the administrative proceedings regarding the Clean Power Plan since the EPA's publication of the Proposed Rule in 2014. First Solar participated in the comment drafting and review process with AEE, as well as with several other organizations of which First Solar is a member. As an AEE member, First Solar provided substantive feedback to the AEE comment process, and First Solar supported AEE's comments to the EPA on the Proposed Rule on behalf of AEE's members. Additionally, through its membership in regional organizations, First Solar participated in comment and testimony led by state regulators and legislators who prepared their own comments on the Proposed Rule. First Solar has prepared analyses of the EPA's Proposed and Final Rule for the Clean Power Plan for its own planning purposes, as well as for presentation to state regulators and legislators, and industry stakeholders.

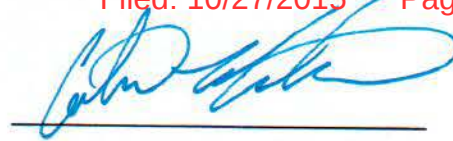
6. First Solar supports the Clean Power Plan Final Rule and its implementation by the EPA and state regulators. Based on First Solar's analysis, the Final Rule builds on EPA's existing model of coordinating with state regulators to reduce the emission of air pollutants from Electric Generating Units ("EGUs"). Based on First Solar's analysis, the Final Rule permits regulated entities to achieve prescribed emission rates by shifting generation to existing, lower-emission technologies and new renewable power plants.

7. As a manufacturer of solar photovoltaic panels, and as a developer, installer and operator of utility-scale solar PV facilities, First Solar anticipates assisting regulators and utilities meet the standards established by the Final Rule. First Solar provides utility-scale electric generation that emits no carbon dioxide at the source of generation. In addition, First Solar's facilities are cost-competitive with fossil-fueled technologies (including natural gas combined-cycle units, single-cycle natural gas peaking units and coal-fired electric generation units). In particular, the Energy Information Administration estimates that the marginal cost to produce energy from a conventional coal, conventional gas-fired combined cycle, or conventional gas-fired combustion turbine is \$95.1 per MWh, \$75.2 per MWh, and \$141.5 per MWh, respectively.¹ However, First Solar has developed new solar PV projects that can provide power at prices under \$40 per MWh in certain regions.² First Solar provides a cost-effective, clean energy alternative to EGU technologies that generate significantly higher carbon dioxide emissions. As such, First Solar expects that its business will benefit directly from implementation of the Clean Power Plan Final Rule and will be harmed if the Final Rule is not implemented.

¹ Energy Information Administration: "Levelized Cost and Levelized Avoided Cost of New Generation Resources in the Annual Energy Outlook 2015" Table 1.

² See, e.g., Christopher Martin, Buffett Scores Cheapest Electricity Rate With Nevada Solar Farms, Bloomberg Business (July 7, 2015), available at <http://www.bloomberg.com/news/articles/2015-07-07/buffett-scores-cheapest-electricity-rate-with-nevada-solar-farms>.

DATED : October 23, 2015



Colin Meehan

EXHIBIT D

DECLARATION OF TODD HORSMAN

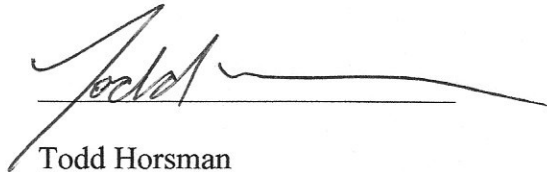
I, Todd Horsman, do hereby declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge, information, and belief:

1. I am the Vice President of Regulatory and Delivery.
2. My duties include guiding our position in the North American market for energy related technology solutions and services.
3. Landis+Gyr supplies solutions to the energy sector to enable integration of clean power while ensuring reliability and resilience of the electricity grid for consumers. Specifically, Landis+Gyr provides advanced metering and intelligent-energy management products and other “smart grid” technologies and services.
4. Landis+Gyr is a member of Advanced Energy Economy (“AEE”) and supports AEE’s efforts to spur the growth of advanced energy companies and expand awareness of new energy technologies and the benefit these technologies provide to the electricity grid and to consumers.
5. Landis+Gyr actively participated in the writing and review of AEE’s comments on the EPA’s Proposed Clean Power Plan Rule.
6. Landis+Gyr supports the Final Clean Power Plan Rule and its goal of reducing carbon dioxide emissions. The Final Clean Power Plan Rule, which represents a continuation of the United States’ efforts to be a global leader in climate-change solutions, supports the expansion of renewable generation in partnership with demand-side resources to provide consumers with reliable clean power.
7. Landis+Gyr manufactures and provides technology solutions that directly support the Final Clean Power Plan. Our solutions include demand-side management for load and

voltage control, sensors and storage. Landis+Gyr also provides analytics for managing load on the electricity grid with renewable generation. We believe that the Clean Power Plan Final Rule has the potential to drive significant expansion in energy efficiency and renewable energy across the states. Since Landis+Gyr provides technologies that support the growth of both renewable energy and energy efficiency, the regulations represents a key growth opportunity for the company.

8. A delay in the Rule would hinder our ability to continue to expand in the North American market place for our solutions and services.

DATED : October 23, 2015



Todd Horsman

EXHIBIT E

Declaration of Geoff Chapin, on behalf of Next Step Living

I, Geoff Chapin, do hereby declare under penalty of perjury that the following statements are true and accurate to the best of my knowledge, information, and belief:

1. I am CEO and founder of Next Step Living, a leading residential energy efficiency and renewables company that partners with more than 400 municipalities, civic organizations, contractors and leading corporations to deliver energy-efficient and environmentally friendly solutions to its customers. Those solutions include home energy assessments, efficient heating and cooling, and access to solar solutions (rooftop or community), among other things. I submit this declaration in support of proposed defendant-intervenor Advanced Energy Economy's ("AEE") motion to intervene in *State of West Virginia, et al. v. EPA*, No. 15-1363 (Oct. 23, 2015).

2. My responsibilities at Next Step Living include setting and executing overall strategic direction for the company, managing relationships with the Board and investors, recruiting and overseeing our executive team, and representing Next Step Living in partnerships and policy efforts important for addressing the carbon pollution problem and achieving our mission.

3. Next Step Living is a member of AEE, and our mission of helping people spend less money and energy to be comfortable at home aligns closely with the goals and mission of AEE. We have been involved in several aspects of the Clean Power Plan ("CPP") development and response, providing comments and perspective on AEE's contributions to the development of the Rule, and recently, speaking with energy policy leaders from over 40 states about implications and opportunities for economic growth, job creation, and positive impact from developing effective state level plans.

4. From my perspective, the Clean Power Plan Final Rule has significant potential to drive growth in innovative energy efficiency offerings, especially in states that have the furthest to go to achieve their CPP goals. Energy efficiency, appropriately measured and verified, could be provided by Next Step Living and other efficiency companies on a competitive basis, offering a price per unit of

compliance that competes cost effectively and at scale with other action options states may consider. Energy efficiency has this potential for impact regardless of whether CO2 emission targets chosen by states are mass based or MWh based. While this requires states to take the necessary steps to measure and verify energy efficiency savings in a way that meets EPA standards, such standards are increasingly well established and Next Step Living, AEE, and others in the energy efficiency space stand ready to help develop standardized approaches for states to include quickly and easily in their compliance plans. I expect that the market for Next Step Living's services will expand under the Clean Power Plan, and therefore Next Step Living will benefit directly from the Final Rule.

5. Delay, uncertainty, or invalidation of the Clean Power Plan Final Rule would have a significantly negative impact on companies such as Next Step Living. We would have less stability and predictability about the business landscape in which we operate and about the value of services we provide to states and related entities. As such, our ability to invest in jobs, provide savings and comfort benefits for residents in local communities across the regions in which we operate, and attract investment to support these actions would be significantly reduced by uncertainty, delay, or lack of implementation of the Rule.

DATED: October 23, 2015



Geoff Chapin
CEO and Founder, Next Step Living

EXHIBIT F

**DECLARATION OF JONATHAN C. ODELL ON BEHALF OF COMPETITIVE
POWER VENTURES, INC.**

I, Jonathan C. Odell, do hereby declare that the following statements are true and accurate to the best of my knowledge, information, and belief:

1. I am Senior Vice President and General Counsel at Competitive Power Ventures, Inc. ("CPV"). CPV is a competitive power generation developer, owner and asset manager that focuses primarily on new combined-cycle natural gas power generation and onshore wind generation.

2. CPV has been a member of the Advanced Energy Economy ("AEE") for two years. Through its policy initiatives, AEE supports CPV's efforts to improve the way Americans use electricity through innovative technologies that create reliable energy for consumers while having a minimal impact on the environment.

3. CPV supports initiatives that seek to reduce carbon dioxide emissions from the power generation sector and to modernize the U.S. electric power system. CPV believes that the Clean Power Plan will drive much-needed investment in the U.S. electric power system by allowing states to determine the best path to meet their emissions targets. CPV believes that many of those paths will inevitably require new low-carbon or zero-emission generation development to either replace retiring plants or contribute to the state's offset regime. It is CPV's belief that these investments will result in a power system that is cleaner, more efficient and environmentally sustainable.

CPV believes that these lower emissions goals are attainable, and states should take advantage of the opportunity to work together or create their own road map to achieve them. However, it is also important to recognize that, in CPV's view, states need the tools to achieve their goals, which goes well beyond plan development and must include the ability to execute

those plans. Specifically, CPV anticipates that states will be more likely to achieve their Clean Power Plan goals at reasonable costs by utilizing a combination of traditional regulated utility builds and long-term power purchase agreements with non-utility generators

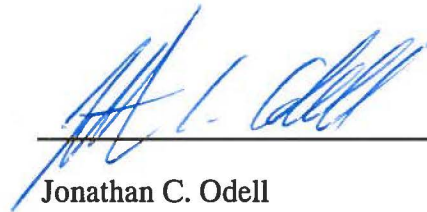
4. The Clean Power Plan directly affects CPV in several ways. First, CPV owns, develops, and manages combined-cycle natural gas and wind power generation facilities. Such facilities are directly regulated by the Clean Power Plan, which sets carbon dioxide emission standards for natural-gas-fired power plants. CPV, therefore, has a direct interest in the implementation of the Clean Power Plan. By setting carbon dioxide emissions standards, CPV believes the Clean Power Plan promotes the use and development of clean-power sources.

5. CPV supports the Clean Power Plan's objective of improving air quality and spurring the U.S. power system toward a more innovative and efficient state. Furthermore, CPV views this as an opportunity to help states identify ways to meet emissions goals while simultaneously ensuring reliability and resource adequacy through renewable and combined-cycle natural gas power generation development. CPV has invested significant time and resources in analyzing the impact of the Clean Power Plan on each individual state. With CPV's proven power generation development expertise, CPV will stand to benefit from the need for new development and would like to partner with those states to facilitate the optimal solutions for complying with the rule.

6. CPV believes that delay or failure to implement the Clean Power Plan would slow progress in improving the U.S. power system and the impact that it currently has on the environment. It appears that many states are already taking significant measures to reduce emissions individually and regionally; other states need assistance understanding the blueprint for how to follow suit. It is CPV's belief that it is incumbent on those of us within the clean

energy industry to help the states understand the rule and maximize their opportunities within the framework of the Clean Power Plan. CPV looks forward to being a part of that effort.

Dated: October 27, 2015



Jonathan C. Odell