

ORAL ARGUMENT NOT YET SCHEDULED**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

)	
State of West Virginia, <i>et al.</i>)	
)	
Petitioners,)	
)	
v.)	No. 15-1363 (consolidated with
)	15-1364, 15-1365, 15-1366, 15-
)	1367, 15-1368, 15-1370, 15-1371,
United States Environmental Protection)	15-1372, 15-1373, 15-1374, 15-
Agency, Regina McCarthy, Administrator,)	1375, 15-1376, 15-1377, 15-1378,
United States Environmental Protection)	15-1379, 15-1380, 15-1382, 15-
Agency,)	1383, 15-1386, 15-1393)
)	
Respondents.)	
)	
)	

**UNOPPOSED MOTION TO INTERVENE IN SUPPORT OF
RESPONDENTS BY SOLAR ENERGY INDUSTRIES ASSOCIATION**

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and D.C. Circuit Rules 15(b) and 27, Solar Energy Industries Association (“SEIA”) respectfully moves to intervene on behalf of Respondents Environmental Protection Agency (“EPA”) and Regina McCarthy in the above-captioned petition for review of EPA’s final rule entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (the “Final Rule”). *See* 80 Fed. Reg. 64662 (Oct. 23, 2015), Docket No. EPA-HQ-OAR-2013-0602. Pursuant to D.C. Circuit Rule 15(b), this motion constitutes a request to intervene in all petitions for review of the Final Rule.

Petitioners have authorized SEIA to state that they take no position on this motion at this time. Counsel for Respondents and Movant-Intervenors American Wind Energy Association, Advanced Energy Economy, American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club have indicated they consent to this motion.¹

INTRODUCTION AND BACKGROUND

EPA regulates emissions of air pollutants from existing sources through Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d). Under Section 111(d), EPA is required to promulgate regulations establishing a procedure similar to the State Implementation Plan process under Section 110 of the Act, 42 U.S.C. § 7410, under which each State must submit a plan that “establishes standards of performance for any existing source” of certain air pollutants. 42 U.S.C. § 7411(d)(1). “Standard of performance” is defined as a “standard for emissions of air pollutants which reflects the degree of emission limitation achievable through the application of the best

¹ Movant-intervenors have also consulted counsel for petitioners in the consolidated cases. Counsel for petitioners in numbers 15-1364, -1377, -1378, -1379, and -1393 and counsel for movant-intervenor Peabody Energy Corp. state that those parties have no objection to SEIA’s intervention. Counsel for petitioners in numbers 15-1365, -1367, -1368, -1370, -1371, -1373, -1374, -1376, -1380, -1382, -1383, and -1386 state that petitioners in those cases take no position on the motion. Counsel for petitioners in numbers 15-1366, -1372, and -1375 had not responded to SEIA’s consultation request at the time of this filing.

system of emission reduction which (taking into account the cost of achieving such reduction . . .) the Administrator determines has been adequately demonstrated.” 42 U.S.C. § 7411(a)(1).

This case concerns petitions for review of EPA’s Final Rule published on October 23, 2015 pursuant to Section 111(d), establishing final emission guidelines for States for plans to reduce greenhouse gas emissions from existing fossil fuel-fired electric generating units (“EGUs”). *See* 80 Fed. Reg. at 64662.

SEIA is a tax-exempt trade association pursuant to 26 U.S.C. § 501(c)(6) that represents nearly 1,000 member companies nationwide. Resch Decl. ¶¶ 2-3, Ex. 1. SEIA’s central goal since 1974 has been to promote the generation, distribution, and use of solar energy. *Id.* ¶¶ 2-3. SEIA represents the entire solar industry, including installers, project developers, manufacturers, contractors, financiers and non-profits. *Id.* ¶ 2. Its member companies develop, manufacture, finance, and build solar projects both domestically and abroad. *Id.* The solar industry employs more than 174,000 U.S. workers in 8,000 companies located in all 50 states. *Id.* ¶ 3. Solar energy accounted for 32% of all new U.S. electricity generation capacity in 2014 and approximately 40% of all new U.S. generating capacity added during the first half of 2015. *Id.* ¶ 3.

SEIA has a substantial interest in defending the Final Rule. If upheld, the Final Rule is predicted to increase the electricity generated by solar power by 20 gigawatts by 2030 compared to the base case without the Final Rule—an increase equal to

today's total installed capacity. *Id.* ¶ 7. States are anticipated to rely substantially on promotion of solar energy as a means to implement the Final Rule's emission guidelines. *Id.* ¶¶ 5-7. SEIA's member companies promote, manufacture, install, and support the development of solar energy, and, to the extent that State plans under Section 111(d) rely on solar energy to reduce emissions of carbon, will receive economic benefits from implementation of the Final Rule. *Id.* ¶ 7. A decision in favor of Petitioners in this case would harm the interests of SEIA and its member companies by jeopardizing or eliminating these economic benefits. *Id.* ¶ 8. The Court therefore should grant SEIA's motion to intervene in support of Respondents.

ARGUMENT

I. SEIA Is Entitled To Intervention

Federal Rule of Appellate Procedure 15(d) requires that a motion for leave to intervene in a proceeding seeking review of an agency order "must contain a concise statement of the interest of the moving party and the grounds for intervention." This Court has held that this rule "simply requires the intervenor to file a motion setting forth its interest and the grounds on which intervention is sought." *Synovus Fin. Corp. v. Bd. of Governors*, 952 F.2d 426, 433 (D.C. Cir. 1991).

This Court has also recognized that policies supporting district court intervention under Federal Rule of Civil Procedure 24, while not binding in matters concerning review of an agency order in the courts of appeals, "may" nonetheless inform the intervention inquiry on appeal. *Amalgamated Transit Union Int'l v. Donovan*,

771 F.2d 1551, 1553 n.3 (D.C. Cir. 1985). The requirements for intervention as of right under Rule 24(a)(2) are: (1) the application is timely; (2) the applicant claims an interest relating to the subject of the action; (3) disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest; and (4) existing parties may not adequately represent the applicant's interest. *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 731 (D.C. Cir. 2003); *see also Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 233 (D.C. Cir. 2003).

Some cases have suggested that Article III standing need not be established by a party seeking to intervene as a defendant or respondent. *See Roeder*, 333 F.3d at 233. Indeed, “Article III standing is not a threshold determination that courts normally make before allowing a defendant to enter a case.” *Crossroads Grassroots Policy Strategies v. Federal Election Comm’n*, 788 F.3d 312, 316 (D.C. Cir. 2015). But where a party seeks to intervene as a defendant—or by extension, a respondent—this Court has on occasion “required it to demonstrate Article III standing, reasoning that otherwise ‘any organization or individual with only a philosophic identification with a defendant—or a concern with a possible unfavorable precedent—could attempt to intervene and influence the course of litigation.’” *Id.* (quoting *Deutsche Bank Nat’l Trust Co. v. FDIC*, 717 F.3d 189, 195 (D.C. Cir. 2013) (Silberman, J., concurring)).

For the reasons explained below, the interests of SEIA and its member companies in promoting solar energy would be significantly affected if there were an

adverse decision in this matter. SEIA has standing to intervene as a respondent, and thus satisfies the requirements to intervene in this matter.

A. SEIA and its member companies have substantial interests in the litigation that will be impaired if petitioners prevail.

SEIA has a significant interest in protecting the interests of its members, which comprise a large portion of the solar energy industry, in the Final Rule. *See* Meehan Decl. ¶¶ 5-7, Ex. 2. In establishing emission guidelines and requiring States to limit greenhouse gas emissions from existing EGUs, EPA in the Final Rule “relies on the accelerating transition to cleaner power generation that is already well underway in the utility power sector.” 80 Fed. Reg. at 64663. Indeed, one of the three “building blocks” employed by EPA in establishing the “best system of emission reduction” pursuant to Section 111(d) is renewable electricity—“the extent to which generation at the affected EGUs can be replaced by using an expanded amount of zero-emitting renewable electricity (RE) generating capacity.” 80 Fed. Reg. at 64667. The potential for increased solar energy provides a substantial basis for this building block.

EPA estimates that implementation of the Final Rule would add 20 gigawatts of installed solar capacity for generation. Resch Decl. ¶ 7. EPA’s analysis for the Final Rule projects the States will rely substantially on realizing the benefits of increased solar power generation. State plans are thus expected to have direct economically beneficial effects on SEIA’s member companies. Meehan Decl. ¶ 10; Singh Decl. ¶ 10, Ex. 3. Increasing generation from solar energy would result in

increased jobs and growth for SEIA's member companies and for the solar industry at large. *Id.*

An adverse decision by this Court could require EPA to revise the Final Rule, harming the interests of SEIA and its member companies. Resch Decl. ¶ 8; Singh Decl. ¶ 11. Vacatur or remand of the Final Rule would at the very least delay its implementation, harming the economic benefits that would be provided to SEIA's member companies. Singh Decl. ¶ 11.

SEIA engaged with EPA throughout the development of the Final Rule. Resch Decl. ¶ 4; Meehan Decl. ¶ 7; Singh Decl. ¶ 7. In addition to in-person meetings, SEIA filed comments and exhibits totaling 166 pages in favor of the proposed rule, asserting generally that solar energy could meet energy demands and reduce carbon emissions from existing power plants, as would be required by the proposal. "Comments to the EPA and States on the Proposed Clean Power Plan Regulating Existing Power Plants Under Section 111(d) of the Clean Air Act," Docket Entry EPA-HQ-OAR-2013-0602-23091 (Dec. 1, 2014). These comments included updated solar market data regarding cost and penetration rates and specific recommendations regarding how Building Block 3 of the "best system of emission reduction" (renewable generation) could be improved. *See id.* at 11-58.

B. SEIA's interests are not adequately represented by any of the existing parties or prospective intervenors.

A party seeking intervenor status under Rule 24(a)(2) must show that the prospective intervenor's interests are not adequately represented. "This burden, however, is not onerous." *Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986). A proposed intervenor "need only show that representation of his interest may be inadequate." *Id.* (internal quotation marks omitted).

No existing party to this litigation adequately represents the interests of SEIA, the foremost nationwide trade association representing solar energy interests. Nor will any party adequately represent those interests in the future. Although movant-intervenors American Wind Energy Association (AWEA) and Advanced Energy Economy (AEE), like SEIA, represent renewable energy interests, neither entity is fit to assert the unique interests of the solar energy industry. *See* Motion of the American Wind Energy Association for Leave to Intervene in Support of Respondent (Oct. 26, 2015); Motion of Advanced Energy Economy for Leave to Intervene in Support of Respondents (Oct. 27, 2015). AWEA seeks to intervene to assert solely the interests of wind turbine manufacturers, project developers, and other members of the wind energy industry. AWEA Mtn. at 4-5. These interests do not overlap with SEIA's. 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.” AEE Mtn. at 5. The interests asserted by AEE, therefore, are much broader and more diverse than SEIA’s. These interests do not necessarily overlap with SEIA’s interests and may, in fact, be at odds. Similarly, movant-intervenors nonprofit environmental and public-health advocacy organizations seek to protect their members from the impacts of air pollution—interests that do not necessarily overlap with SEIA’s. Unopposed Motion of American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, and Sierra Club for Leave to Intervene in Support of Respondent (Oct. 27, 2015) at 3.

Nor does EPA adequately represent SEIA’s interests. Although EPA and SEIA share the objective of upholding the Final Rule, this Court has generally held that EPA is not suited to advance the “narrow interest” of businesses “at the expense of its representation of the general public interest.” *Dimond*, 792 F.2d at 192-93. Indeed, this Court has “often concluded that governmental entities do not adequately represent the interests of aspiring intervenors.” *Crossroads Grassroots*, 788 F.3d at 314 (internal quotation marks omitted). EPA has broader interests at stake, such as emphasizing fairness across States, ensuring significant environmental benefits at a reasonable cost, and other interests that do not necessarily converge with SEIA’s interests, as well as pursuing arguments to ensure that courts provide it with as much deference and flexibility in carrying out its statutory duties as possible. Given that the

interests of SEIA are both narrower and differently focused than EPA's interests, its participation in this case would "serve as a vigorous and helpful supplement to EPA's defense." *NRDC v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977); *see also Sierra Club v. EPA*, 358 F.3d 516, 518 (7th Cir. 2004) ("Courts value submissions ... to learn about facts and legal perspectives that the litigants have not adequately developed.").

C. SEIA has standing to intervene as a respondent.

Although this Court generally requires a party seeking to intervene as a defendant to demonstrate Article III standing, *Crossroads Grassroots*, 788 F.3d at 316, the Court has noted that any party that satisfies Federal Rule of Civil Procedure 24(a)—regarding intervention as of right in the district court—will also meet Article III's standing requirement. *Roeder*, 333 F.3d at 233. As noted above, SEIA has satisfied the standing for district court intervention as of right and, thus, has Article III standing to intervene in this matter. *See Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 342-43 (1977) (membership organization may have standing on behalf of its members).

D. This motion is timely.

Federal Rule of Appellate Procedure 15(d) requires a motion to intervene in a proceeding to be filed within 30 days after the petition for review is filed. In this case, the petition was filed on October 23, 2015. This motion was timely filed within 30 days of that date.

CONCLUSION

For the foregoing reasons, SEIA respectfully requests that this motion be granted and that SEIA be designated as an intervenor-respondent in the above-captioned proceedings and, pursuant to D.C. Circuit Rule 15(b), in any future petitions for review challenging the Final Rule.

Dated: Oct. 30, 2015

Respectfully submitted,

/s/ Richard Ayres

Richard Ayres (DC Bar No. 212621)

Jessica Olson (DC Bar No. 497560)

John Bernetich (DC Bar No. 1018769)

AYRES LAW GROUP LLP

1707 L Street, N.W., Suite 850

Washington, D.C. 20036

(202) 452-9200

ayresr@ayreslawgroup.com

olsonj@ayreslawgroup.com

bernetichj@ayreslawgroup.com

*Counsel for Solar Energy Industries
Association*

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, movant-intervenor Solar Energy Industries Association (“SEIA”) states that it is a trade association that represents approximately 1,100 member companies, including installers, project developers, manufacturers, contractors, financiers and non-profits. SEIA has no parent corporation and no publicly held company owns 10% or more of its stock.

CERTIFICATE OF PARTIES

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), the Petitioners in the above-captioned case are:

- 15-1363: States of West Virginia, Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, the Arizona Corporation Commission, the State of Louisiana Department of Environmental Quality, the State of North Carolina Department of Environmental Quality, and Attorney General Bill Schuette on behalf of the People of Michigan
- 15-1364: State of Oklahoma and Oklahoma Department of Environmental Quality
- 15-1365: International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO
- 15-1366: Murray Energy Corporation
- 15-1367: National Mining Association
- 15-1368: American Coalition for Clean Coal Electricity
- 15-1370: Utility Air Regulatory Group and American Public Power Association

- 15-1371: Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company
- 15-1372: CO2 Task Force of the Florida Electric Power Coordinating Group
- 15-1373: Montana-Dakota Utilities Co.
- 15-1374: Tri-State Generation and Transmission Association
- 15-1375: United Mine Workers of America
- 15-1376: National Rural Electric Cooperative Association, Arizona Electric Power Cooperative, Inc., Associated Electric Cooperative, Inc., Big Rivers Electric Corporation, Brazos Electric Power Cooperative, Inc., Buckeye Power, Inc., Central Montana Electric Power Cooperative, Central Power Electric Cooperative, Inc., Corn Belt Power Cooperative, Dairyland Power Cooperative, Deseret Generation & Transmission Co-operative, Inc., East Kentucky Power Cooperative, Inc., East River Electric Cooperative, Inc., East Texas Electric Cooperative, Inc., Georgia Transmission Corporation, Golden Spread Electric Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., Minnkota Power Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Northwest Iowa Power Cooperative, Oglethorpe Power Corporation, Powersouth Energy Cooperative, Prairie Power, Inc., Rushmore Electric Power Cooperative, Inc., Sam Rayburn G&T Electric

Cooperative, Inc., San Miguel Electric Cooperative, Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, South Texas Electric Cooperative, Inc., Southern Illinois Power Cooperative, Sunflower Electric Power Corporation, Tex-La Electric Cooperative of Texas, Inc., Upper Missouri G. & T. Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Western Farmers Electric Cooperative, and Wolverine Power Supply Cooperative, Inc.

- 15-1377: Westar Energy, Inc.
- 15-1378: NorthWestern Corporation
- 15-1379: National Association of Home Builders
- 15-1380: State of North Dakota
- 15-1382: Chamber of Commerce of the United States of America, National Association of Manufacturers, American Fuel & Petrochemical Manufacturers, National Federation of Independent Business, American Chemistry Council, American Coke and Coal Chemicals Institute, American Foundry Society, American Forest & Paper Association, American Iron & Steel Institute, American Wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and Portland Cement Association
- 15-1383: Association of American Railroads

- 15-1386: Luminant Generation Co., Oak Grove Management Co., Big Brown Power Co., Sandow Power Co., Big Brown Lignite Co., Luminant Mining Co., and Luminant Big Brown Mining Co.
- 15-1393: Basin Electric Power Cooperative, Inc.

Respondents are the United States Environmental Protection Agency and Regina A. McCarthy, Administrator of the United States Environmental Protection Agency.

Movant-intervenors are the American Wind Energy Association, Advanced Energy Economy, American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, Sierra Club, and Peabody Energy Corp.

MOTION TO INTERVENE BY SOLAR ENERGY
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EXHIBIT 1

industry in the U.S. is the source of more than 174,000 jobs, with 8,000 companies located in all 50 states. The U.S. solar industry grew by 53% from 2012 to 2013 and a further 35% in 2014. Solar accounted for 32% of all new generating capacity added to the U.S. grid in 2014, and roughly 40% of all new generating capacity added to the U.S. grid in the first half of 2015.

4. SEIA engages in pro-solar policy advocacy at the state and federal levels. One of SEIA's top priorities is supporting the Environmental Protection Agency (EPA) and states in implementation of the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Clean Power Plan"), the subject of this litigation. SEIA filed extensive public comments on the proposed rule.

5. EPA's Clean Power Plan recognizes and bolsters the current opportunity to reduce carbon emissions by transitioning the United States electric grid from a fossil fuel dominant fuel mix to a balanced energy portfolio that includes a higher penetration of renewable energy resources. The Clean Power Plan will require affected electric generating units (affected EGUs) within each state to reduce their carbon emissions, thus presenting the opportunity for utilities and states to shift towards sources, such as solar energy, that generate energy with little or no carbon emissions. The EPA has already recognized the importance of renewable energy and the role for renewable energy to play in this transition, and has included renewable energy as a part of the best system of emission reduction (BSER) that has been adequately demonstrated to reduce emissions from affected EGUs.

6. Solar energy measures are part of the BSER because solar energy is technologically feasible, available at a reasonable cost, reduces carbon emissions while providing other health and environmental benefits, and promotes technological development without negatively impacting the electric grid. Further, solar energy has been adequately demonstrated as owners of affected EGUs are shifting generation away from fossil fuels and turn

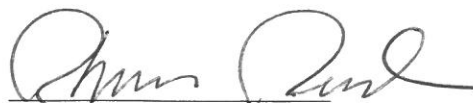
to solar for a source of clean dependable energy.

7. SEIA is deeply concerned about the outcome of this litigation and the impact that it could have on our members. According to EPA's own modeling data, the Clean Power Plan will spur the development of an additional 20 gigawatts of installed solar capacity in the U.S. by 2030, compared to the base case without the final rule—an increase equal to today's total installed capacity. If petitioners prevail in this case, a critical opportunity will be lost to rapidly grow the markets for the clean, affordable and reliable power source.

8. SEIA's member companies have made and continue to make substantial investments in developing solar projects in the residential, commercial, and utility scale solar markets across the United States. A decision remanding or vacating the final rule challenged here would have a significant effect on these and future planned investments.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed in Washington, D.C., on October 30, 2015.


Rhone Resch

MOTION TO INTERVENE BY SOLAR ENERGY
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EXHIBIT 2

Regional Transmission Organization (RTO) and federal levels, which includes advocating the adoption of policies that facilitate procurement from renewable energy resources and that enable construction and interconnection of utility-scale solar generating facilities.

4. First Solar is a leading global provider of comprehensive PV solar systems which use its advanced module and system technology. First Solar's integrated power plant solutions deliver an economically attractive alternative to fossil-fuel electricity generation today. From raw material sourcing through end-of-life module recycling, First Solar's renewable energy systems protect and enhance the environment.

First Solar is headquartered in Tempe, AZ with offices in Houston, TX and San Francisco, CA as well as elsewhere throughout the U.S. and around the world. First Solar has significant marketing, distribution, and manufacturing operations both within and outside the United States. Currently, First Solar manufactures solar modules in Perrysburg, Ohio, and Kulim, Malaysia. As of December 31, 2014, First Solar had approximately 6,060 full and part-time employees, including approximately 4,320 in module manufacturing positions and approximately 550 who work directly in First Solar's systems business.

5. First Solar was incorporated in February 2006. First Solar's common stock has been listed on the NASDAQ Global Select Market under the symbol "FSLR" since an initial public offering in November 2006. Since that time First Solar has expanded to become a leading solar manufacturer and installer, celebrating a major milestone in early 2015 as over 10 gigawatts of our modules have been installed globally. This achievement highlights First Solar's expanding global reach and the increasing demand for solar energy.

6. First Solar has been a member of SEIA since 2006. First Solar is a member of the SEIA Board of Directors, and First Solar serves on the executive committee of the Board. First Solar is active in numerous SEIA committees, including the Clean Power Plan Committee, the

State Policy Committee, the Federal Policy Committee and numerous State committees. I serve as Chair of the SEIA Clean Power Plan Committee as well as Chair of the SEIA Committee for the Southeastern U.S

7. First Solar engages in federal, state and local policy discussions that affect markets and access to markets of utility-scale solar generation. First Solar supports the Environmental Protection Agency (“EPA”) and its “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (the “Clean Power Plan”), which is the subject of this litigation. First Solar actively participated in drafting SEIA’s extensive public comments regarding the proposed Clean Power Plan rule.

8. EPA’s Clean Power Plan recognizes and builds on the nation’s current capability to reduce carbon emissions by transitioning the electric grid from a fossil fuel dominant fuel mix to a balanced energy portfolio that includes a higher percentage of renewable energy resources. The Clean Power Plan will require affected electric generating units (“EGUs”) within each state to reduce carbon emissions, thus presenting the opportunity for utilities and states to shift towards sources, such as solar energy, that generate energy with little or no carbon emissions. The EPA has already recognized the importance of renewable energy and the role for renewable energy to play in this transition, and has included renewable energy as a part of the best system of emission reduction (“BSER”) that has been adequately demonstrated to reduce emissions from affected EGUs.

9. Increased output from solar energy resources is part of the BSER because solar energy is technologically feasible, commercially available and carbon-free. It also provides other health and environmental benefits, and promotes technological development without negatively impacting the electric grid. Further, solar energy has been adequately demonstrated as many owners of affected EGUs are already shifting generation away from fossil fuels and

increasing reliance on solar generating capacity as a cost-effective and carbon free alternative.

10. As a provider of affordable, reliable, clean energy alternatives, First Solar expects that adoption and implementation of the Clean Power Plan rule will increase demand for First Solar's PV modules and integrated PV generating systems in the U.S. As a result, First Solar has a direct commercial interest in the outcome of this litigation and expects that its business will benefit directly from implementation of the Clean Power Plan Final Rule.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed this 27th day of October, 2015, in Austin, TX

A handwritten signature in black ink, appearing to read 'Colin Meehan', is written over a horizontal line.

Colin Meehan

MOTION TO INTERVENE BY SOLAR ENERGY
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15-1363

EXHIBIT 3

biogas projects in North America. EDF Renewable Energy is headquartered in San Diego, California with offices in Reston, Virginia; Minneapolis, Minnesota; Denver, Colorado; Oakland, California; Portland, Oregon; Tracy, California; Palm Springs, California; Charles City, Iowa; New York, New York; Montreal (Quebec), Canada; Toronto (Ontario), Canada; Mexico City, Mexico and other locations. The company has developed 6,500 Megawatts of renewable energy projects and employs 1,046 people throughout US, Canada and Mexico.

5. EDF Renewable Energy has 28 years of experience in renewable energy getting its start as an operations and maintenance company for the California wind industry. The Company was acquired in 2002 by SIIF Energies, which changed its name to EDF Energies Nouvelles in 2004. The Company began to develop solar energy projects in the US and Canada in 2008. Today the portfolio consists of 340 MWp¹ of development experience in solar.

6. EDF Renewable Energy has been a member of SEIA since 2009. EDF Renewable Energy personnel serve on the Board of SEIA and as Chair of SEIA's State Policy Committee.

7. EDF Renewable Energy engages in pro-solar policy advocacy at the state and federal levels. One of EDF Renewable Energy's priorities is supporting the Environmental Protection Agency (EPA) and states in implementation of the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" (the "Clean Power Plan"), the subject of this litigation. EDF Renewable Energy actively participated in the drafting of the extensive public comments filed by SEIA on the proposed rule.

8. EPA's Clean Power Plan recognizes and expands the current opportunity to reduce carbon emissions by transitioning the United States electric grid from a fossil fuel

¹ MWp is an abbreviation for megawatt peak, a unit of measure for the maximum output of electricity from a given electric generating facility.

dominant fuel mix to a balanced energy portfolio that includes a higher penetration of renewable energy resources. The Clean Power Plan will require states to adopt plans that will reduce the carbon emissions of electric generating units (affected EGUs) within each state, thus presenting the opportunity for energy providers to shift towards sources, such as solar energy, that generate energy with little or no carbon emissions. The EPA has already recognized the importance of renewable energy and the role for renewable energy to play in this transition, and has included renewable energy as a part of the best system of emission reduction (BSER) that has been adequately demonstrated to reduce emissions from affected EGUs.

9. Solar energy measures are part of the BSER because solar energy is technologically feasible, available at a reasonable cost, reduces carbon emissions while providing other health and environmental benefits, and promotes technological development without negatively impacting the electric grid. Further, solar energy has been adequately demonstrated as owners of affected EGUs are shifting generation away from fossil fuels and turn to solar for a source of clean dependable energy.

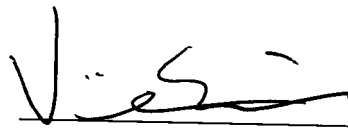
10. EDF Renewable Energy stands to receive significant economic benefits from the Clean Power Plan rule if states turn to renewable sources of electricity in response to the Clean Power Plan as widely anticipated. EDF Renewable Energy is deeply concerned about the outcome of this litigation and the impact that it could have on the company. According to EPA's own modeling data, the Clean Power Plan will spur the development of an additional 20 gigawatts of installed solar capacity in the U.S. by 2030, a doubling of what it is today. Thus, if petitioners prevail in this case the economic benefits to EDF Renewable Energy from the Clean Power Plan will be impaired or eliminated entirely.

11. EDF Renewable Energy has made and continues to make substantial investments in developing solar projects in the commercial and utility-scale solar markets across the United

States. EDF Renewable Energy has developed utility-scale projects in California, Oregon and Massachusetts, and commercial-scale projects in New Jersey, Hawaii, California, and Pennsylvania. A decision remanding or vacating the final rule challenged here could significantly affect these and future planned investments.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge, information, and belief.

Executed at Portland, Oregon, on October 27, 2015.


Virinder Singh

CERTIFICATE OF SERVICE

I hereby certify that the foregoing UNOPPOSED MOTION TO INTERVENE IN SUPPORT OF RESPONDENTS BY SOLAR ENERGY INDUSTRIES ASSOCIATION, associated declarations, Rule 26.1 Disclosure Statement, and CERTIFICATE OF PARTIES have been served upon counsel of record in Case No. 15-1363 and consolidated cases via the Court's ECF system this 30th day of October, 2015.

/s/ Jessica L. Olson

Jessica L. Olson

Ayres Law Group LLP