

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

NORTHWESTERN CORPORATION, d/b/a NORTHWESTERN ENERGY)	
)	
Petitioner,)	
)	No. 15-1378
v.)	(Consolidated, Lead Case
)	No. 15-1363)
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and)	
GINA MCCARTHY, Administrator, United States Environmental Protection Agency)	
)	
Respondents.)	

**NORTHWESTERN CORPORATION’S MOTION FOR LEAVE TO FILE A
SUPPLEMENTAL DECLARATION IN SUPPORT OF MOTION OF
UTILITY AND ALLIED PETITIONERS FOR STAY OF RULE**

Pursuant to Fed. R. App. P. 27, Fed. R. App. P. 18, and the inherent equitable authority of the federal courts of appeals, Petitioner NorthWestern Corporation d/b/a NorthWestern Energy (“NorthWestern”) respectfully moves the U.S. Court of Appeals for the District of Columbia Circuit (“Court of Appeals” or the “Court”) to grant leave for NorthWestern to file a supplemental declaration to the Motion of Utility and Allied Petitioners for Stay (“Utility Motion for Stay” or “stay motion”), filed on October 23, 2015.

The Utility Motion for Stay seeks a stay of the U.S. Environmental Protection Agency's ("EPA") final Rule setting limits for carbon dioxide ("CO₂") emissions from existing fossil fuel-fired power plants (the "Final Rule").¹ NorthWestern submits the supplemental declaration by John Hines and Michael Cashell (the "Hines-Cashell Declaration" or "Declaration") to support the Utility Motion for Stay. The Declaration establishes immediate and irreparable harm to NorthWestern, one of the movants, from the Final Rule. *See* Exhibit 1 — Hines-Cashell Decl.

NorthWestern requests that the Court of Appeals exercise its discretion to allow the supplemental filing of documents in support of motions. Granting NorthWestern's request will benefit the Court by providing a more complete record for ruling on the Utility Motion for Stay and serve the interest of justice by allowing a full account of the irreparable harms that will be caused by the Final Rule. The Hines-Cashell Declaration offers unique facts and analyses for the record and lays out harms from the Final Rule that are specific to NorthWestern, the State of Montana, and the City of Colstrip that are not addressed in declarations filed by other allied petitioners on the Utility Motion for Stay. The Declaration includes detailed analyses of the impacts of the Final Rule on the company's rate-payers and the overall health and welfare of the communities served by

¹ Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units. 80 Fed. Reg. 64,662 (Oct. 23, 2015).

NorthWestern.

Granting NorthWestern's request to file the Hines-Cashell Declaration also will promote judicial efficiency. NorthWestern could have waited until requisite studies were completed to file an individual motion to stay and the Hines-Cashell Declaration. This would have resulted in redundant pleadings and presentations of the Final Rule's fundamental legal flaws. To ensure swift and efficient resolution of the stay motion and avoid repetitious filings, NorthWestern elected to join the Utility Motion to Stay and subsequently file this request to supplement the motion as soon as possible. Further, NorthWestern is filing the Hines-Cashell Declaration within the time frame the Court has established for filing additional motions for stay, which otherwise could include such declarations.

In exercising its discretion, NorthWestern urges the Court to consider the length and complexity of the Final Rule and the challenges facing NorthWestern. NorthWestern began conducting extensive and complex analyses of the Final Rule shortly after EPA issued the 1,500 page pre-publication version of the Rule, and lengthy technical support documents, on August 3, 2015. The Final Rule imposes an emissions reduction target for the State of Montana (where the Colstrip power plant, in which NorthWestern has an interest, is located) that is significantly more stringent than the State target that was set in the proposed rule. *See* 79 Fed. Reg. 34,829 (June 18, 2014). As a result of this drastic increase — *the steepest for any*

state — NorthWestern was compelled to start many of its system-wide analyses from scratch. These analyses included projections of the impacts of the Final Rule on the company's future total portfolio (*e.g.*, the potential to replace lost coal generation with natural gas and renewable energy generation and the associated transmission requirements) and the effect of these projections on NorthWestern and the communities it serves. Hines-Cashell Decl. ¶¶ 40-63.

Additionally, NorthWestern has been awaiting the results of an update to a 2010 study by Professors at the University of Montana on the impacts of the Colstrip power plant to state, regional, and local economies. This update was commissioned by NorthWestern soon after the Final Rule was issued and not completed until Tuesday, November 3, 2015. The updated study's findings enhanced NorthWestern's understanding of the Final Rule's harm to NorthWestern's customers in Montana and the City of Colstrip and informed critical aspects of the Hines-Cashell Declaration. *See, e.g.*, Hines-Cashell Decl. ¶¶ 54-65. For this reason, the Hines-Cashell Declaration could not be finalized before the study was completed and, thus, could not be filed on October 23, 2015 with the Utility Motion for Stay.

For the foregoing reasons, NorthWestern respectfully requests that the Court of Appeals grant leave to file the enclosed declaration of John Hines and Michael Cashell to support the Utility Motion for Stay.

November 5, 2015

Respectfully submitted,

/s/ William M. Bumpers

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CERTIFICATE OF SERVICE

I hereby certify that, on this 5th day of November, 2015, I caused the foregoing Motion for Leave to File Supplemental Declaration in Support of Motion of Utility and Allied Petitioners for Stay of Rule to be served on counsel of record in this case by means of the Court's CM/ECF system.

/s/ Megan H. Berge

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