

ORAL ARGUMENT NOT YET SCHEDULED

No. 19-1140 (and consolidated cases)

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

AMERICAN LUNG ASSOCIATION, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petition for Review of Final Agency Action of the
United States Environmental Protection Agency
84 Fed. Reg. 32,520 (July 8, 2019)

**OPENING BRIEF OF PETITIONERS AMERICAN WIND
ENERGY ASSOCIATION, ADVANCED ENERGY
ECONOMY, AND SOLAR ENERGY INDUSTRIES
ASSOCIATION**

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**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED
CASES**

Pursuant to Circuit Rule 28(a)(1), Petitioners American Wind Energy Association, Advanced Energy Economy, and Solar Energy Industries Association state as follows:

Parties and Amici:

All parties, intervenors, and *amici* appearing in this case are listed in the Opening Brief for State and Municipal Petitioners.

Ruling Under Review:

The final agency action under review is the “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” 84 Fed. Reg. 32,520 (July 8, 2019).

Related Cases:

Petitioners adopt the statement of related cases set forth in the Opening Brief for State and Municipal Petitioners.

/s/ Gene Grace
Gene Grace

CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Petitioners American Wind Energy Association, Advanced Energy Economy, and Solar Energy Industries Association provide the following disclosure statements.

American Wind Energy Association (“AWEA”) is a non-profit trade association representing a broad range of entities with a common interest in encouraging the expansion and facilitation of wind energy resources in the United States.¹ AWEA does not have a parent corporation or issue stock, and no publicly held company has a ten percent or greater ownership interest in it.

Advanced Energy Economy (“AEE”) states that it is a non-profit trade association dedicated to making the energy we use secure, clean, and affordable. AEE does not have a parent corporation or issue stock,

¹ AWEA notes that while the views expressed in this brief represent the consensus position of its members, they are not necessarily shared by all its members (namely, Duke Energy and American Electric Power, who are members of an association that is an intervening party or are an intervening party in this proceeding on the side of the respondents, respectively).

and no publicly held company has a ten percent or greater ownership interest in it.

Solar Energy Industries Association (“SEIA”) states that it is a non-profit trade association that represents approximately 1,100 member companies, including installers, project developers, manufacturers, contractors, financiers and non-profits. SEIA does not have a parent corporation or issue stock, and no publicly held company has a ten percent or greater ownership interest in it.

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* Authorities upon which we chiefly rely are marked with asterisks.

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GLOSSARY

CAA	Clean Air Act
EPA	United States Environmental Protection Agency
RIA	Regulatory Impact Analysis
Rule	Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations, 84 Fed. Reg. 32,520 (July 8, 2019)

ORAL ARGUMENT NOT YET SCHEDULED

JURISDICTIONAL STATEMENT

This Court has exclusive jurisdiction over timely-filed petitions for review under Clean Air Act (“CAA”) section 307(b)(1), 42 U.S.C. § 7607(b)(1), and these petitions were timely.

STATEMENT OF THE ISSUES

(1) Whether the United States Environmental Protection Agency (“EPA”) acted unlawfully in determining that the CAA unambiguously prohibits the agency, in identifying the “best system of emission reduction,” from considering shifting generation to lower- or zero-emission resources.

(2) Whether EPA acted unlawfully in determining that emissions-reducing utilization is not a permissible component of a system of emission reduction under section 111 of the CAA.

STATUTES AND REGULATIONS

Applicable statutes and regulations are set forth in the Opening Brief for State and Municipal Petitioners.

STATEMENT OF THE CASE

Petitioners adopt the statement of the case set forth in the Opening Brief for State and Municipal Petitioners.

STANDARD OF REVIEW

Petitioners adopt the Standard of Review set forth in the Opening Brief for State and Municipal Petitioners.

SUMMARY OF ARGUMENT

There is a simple solution, already in widespread use, for reducing emissions from the power sector: run heavily-polluting resources less and less-polluting resources more. When electric utilities need to reduce emissions at the lowest cost, that is what they do—shift generation. As higher-polluting resources ramp down, cleaner resources ramp up or expand to meet regional energy needs. EPA’s Clean Power Plan identified this simple, proven system as the “best system of emission reduction” to reduce carbon pollution from existing power plants. Building on substantial record evidence of existing industry practices and market trends, the Clean Power Plan was designed to achieve significant emission reductions at the lowest possible cost to American consumers.

EPA has now dramatically changed course, contending that this widely-deployed, cost-effective, and readily-available system for reducing emissions is legally unavailable. Ignoring reams of substantial record evidence to the contrary, EPA has arrived at the startling legal

conclusion that the best system of emission reduction for fossil-fuel fired power plants is one that barely reduces emissions at all.

Nothing in the CAA's text precludes consideration of generation-shifting as part of the "best system." Instead of straining to read the CAA so as to narrow its options, EPA should have focused on the criteria that section 111 directs it to consider when identifying the "best system": emission reductions, costs, environmental and health impacts, and energy requirements. 42 U.S.C. §7411(a)(1).

Applying these criteria here leads to the inevitable conclusion that the "best" system must reflect the fact that power plants, unlike factories and other emitters, produce identical, fungible services and are readily (and routinely) substituted for one another. The Clean Power Plan's generation-shifting approach outperforms the Final Rule's, 84 Fed. Reg. 32,520 (July 8, 2019) ("Rule"), menu of heat-rate improvements under any reasonable weighing of the statutory factors.

Even accepting its strained statutory reinterpretation, under which the best system must be "put into operation at" a facility, and in which generation-shifting is purportedly precluded, 84 Fed. Reg. at 32,524, EPA erred when it failed to consider emissions-reducing utilization. Reducing

generation at covered sources to the extent feasible, considering the potential for substitute generation, is unquestionably a system that is put into operation *at* the covered source and that would achieve far greater reductions at reasonable cost. Thus, even if EPA's new statutory interpretation were correct, the Rule is unlawful.

STANDING

EPA's actions harm the Clean Energy Associations' and their members' interests—making energy in the United States clean, affordable, and reliable through deployment of advanced energy technologies produced, operated, and used by our members. Section 111 protects such interests, requiring EPA to consider reductions of harmful emissions, costs, energy requirements, and the potential to drive advances in pollution-reduction technologies. *See* 42 U.S.C. §7411(a)(1); *Sierra Club v. Costle*, 657 F.2d 298, 326, 346 (D.C. Cir. 1981). An order setting aside EPA's actions would redress petitioners' injuries.

Under the Clean Power Plan, States and regulated entities would have complied using advanced energy technologies and, in turn, clean energy supply would have increased and the costs to consumers would have continued to decline. The Clean Energy Associations therefore

intervened in support of EPA in litigation challenging the Clean Power Plan. *See* Final Br. of Clean Energy Ass'ns, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Apr. 22, 2016), ECF No. 1609958. The Rule repeals the Clean Power Plan and advances a new interpretation of the statute and a replacement rule that rule out use of clean generation to reduce emissions.

The Clean Energy Associations and their members “indisputably will be directly affected” by the Rule. *See Am. Library Ass'n v. FCC*, 401 F.3d 489, 491–92 (D.C. Cir. 2005); Addendum of Standing Declarations. On behalf of their members, *Hunt v. Wash. State Apple Adver. Comm'n*, 432 U.S. 333, 342–33 (1977), the Clean Energy Associations thus have Article III standing to challenge the Rule.

ARGUMENT

I. The CAA Supports a Reading of “Best System of Emission Reduction” that Encompasses Generation-Shifting.

EPA contends that the CAA unambiguously limits permissible systems “to measures that can be applied to and at the level of the individual source.” 84 Fed. Reg. at 32,527–29. EPA then concludes that this precludes it from considering the predominant approach the power sector uses to cost-effectively reduce carbon and other emissions. But the

“plain language” of the CAA provides no support for EPA’s exclusion of generation-shifting from the “best system,” *see* Power Co. Br. at 17–23; Env’tl. Br. at 14–19; States Br. at 36–37. The undisputed fact that generation-shifting best fulfills the plain language of the criteria in section 111—“emission reduction,” “cost,” “energy requirements,” and “adequately demonstrated,” 42 U.S.C. §7411(a)(1)—is yet further evidence that EPA’s repeal is unlawful.

First, a generation-shifting approach reduces orders of magnitude more pollution than the heat-rate improvements outlined in the Rule, and at reasonable cost. In 2015, EPA projected (using conservative assumptions) 2030 compliance costs between \$5.1 and \$8.4 billion—comparable to, or less than, past CAA regulations. Clean Power Plan Regulatory Impact Analysis (“RIA”) at 3-22; *see also* 80 Fed. Reg. 64,662, 64,749–50 (Oct. 23, 2015).

Since 2015, generation-shifting driven by market forces has achieved nearly an equivalent reduction in emissions—and falling costs have enabled much greater reductions. This is largely because natural gas-combined cycle, wind, and solar generators are currently the cheapest new sources of electricity in all counties in the lower 48 states.

See Levelized Cost of Electricity, Univ. of Texas Energy Inst. (2016), attachment to AEE Comments, EPA-HQ-OAR-2017-0355-24418 (JA__).

The record documents the potential for a conservatively updated Clean Power Plan to achieve a 48 percent reduction in power sector emissions below 2005 levels by 2030, at costs comparable to the original rule. See EDF Comments, EPA-HQ-OAR-2017-0355-20949 (JA__); AWEA-SEIA Comments, EPA-HQ-OAR-2017-0355-19911 (JA__). In 2018, the Energy Information Administration showed that a 68 percent reduction below 2005 power sector emission levels—more than twice the reduction anticipated under the Clean Power Plan—is achievable at reasonable cost. See EIA, Annual Energy Outlook 2018 (Feb. 6, 2018), att. 100 to EDF Comments, EPA-HQ-OAR-2017-0355-24423 (JA__). EIA’s 2020 Annual Report now shows that an *80 percent* reduction below 2005 levels is achievable at moderate cost. See EIA Annual Energy Outlook 2020, Reference Tables.

Second, the Clean Power Plan properly considered “energy requirements” in incorporating generation-shifting in its “best system,” 42 U.S.C. §7411(a)(1), and provided a flexible compliance framework that preserves grid reliability. See 80 Fed. Reg. at 64,778. Historical grid

performance and technical assessments in the record show generation-shifting “fit[s] easily within the capabilities and structure of the grid” and the flexibility inherent in the system would address any grid reliability concerns. Grid Experts Comments at 10, EPA-HQ-OAR-2017-0355-20922 (JA__). Further, natural gas-combined cycle, wind, and solar generation can provide a suite of essential grid reliability services. *See* AWEA-SEIA Comments at 45–47, EPA-HQ-OAR-2017-0355-24066 (JA__). Other advanced energy technologies, such as battery storage and solar inverters, can likewise provide important reliability services to the grid that enable further deployment of renewable generation. *See* AEE Comments at 26–27, EPA-HQ-OAR-2017-0355-23809 (JA__).

Finally, generation-shifting is plainly “adequately demonstrated.” As extensively documented in the Clean Power Plan record, it is both the core mechanism by which the power grid is operated and the predominant system used to limit carbon emissions from power plants. *See, e.g.*, 80 Fed. Reg. at 64,678, 64,724–25. Further, in the Clean Power Plan, EPA documented how individual sources could adopt the “best system” by adjusting generation, purchasing credits, or directly investing

in cleaner generation resources. *Id.* at 64,752; AEE Comments at 10–12, EPA-HQ-OAR-2017-0355-20863 (JA__).

Although the Clean Power Plan’s design considered the broader dynamics of the electric grid—as any “best system of emission reduction” that accounted for “energy requirements” must—all emission reductions would be achieved at regulated sources, through actions taken by those sources. As such, the Clean Power Plan applied and was implemented “to or at” the regulated sources, meeting even EPA’s strained new legal interpretation of the statute.

Third-party involvement in systems of emission reduction is also a common and necessary practice. All such systems—including systems EPA considers applicable “to or at” the source—rely on transactions with third-party entities, including the manufacturers, installers, and operators of pollution control devices. *See* AEE Comments at 9, EPA-HQ-OAR-2017-0355-20863 (JA__); AEE Comments at 23, EPA-HQ-OAR-2017-0355-23809 (JA__). Adjusting generation and buying credits from cleaner generation sources—or investing directly in cleaner generation—is not meaningfully different from these compliance approaches.

The Rule arbitrarily ignored the record supporting generation-shifting as a far superior system of emission reduction under these criteria—a record that makes clear the extent of EPA’s interpretive errors. EPA cannot simply choose to ignore a system that is so plainly superior under Congress’s express statutory requirements.

II. A System of Emissions-Reducing Utilization Fits Within EPA’s Unreasonably Narrow Interpretation.

EPA arbitrarily dismissed reduced utilization² of higher-emitting plants as an element of the “best system”—a measure that would achieve far greater emission reductions than the Rule, at lower cost.³ However, even if EPA’s new interpretation that the CAA prohibits the agency from relying on any measure of emission reduction other than those that can

² Under a reduced-utilization approach, EPA, applying the factors in section 111(a)(1), could have developed an emission limitation reflecting the amount of generation that regulated sources could reduce, taking into account the potential for the grid to provide cleaner replacement generation.

³ EPA rejected this approach in the Rule, contending that reduced utilization as a system of emission reduction would conflict with the definition of “standard of performance” as a “requirement of continuous emission reduction” in section 302(*l*). 42 U.S.C. § 7602(*l*); 84 Fed. Reg. at 32,531, 32,556. As noted in the brief for the Public Health and Environmental Petitioners at 39–40, this notion is plainly wrong; the Clean Energy Associations add further reasons, based on our practical experience, why EPA’s claim is erroneous.

be deployed “at or to” a particular source were correct (it is not), EPA should have considered emissions-reducing utilization as a component of a best system of emission reduction.

A system of emissions-reducing utilization satisfies EPA’s newfound statutory interpretation. *See* 84 Fed. Reg. at 32,525; States Br. at 59–60. It is a “system,” 84 Fed. Reg. at 32,524; it can be “put into use at the regulated building, structure, facility, or installation,” *id.*; it can be “achieved through process changes or operation changes” at the source, *id.* at 32,526; and it results in an emission limitation “broadly achievable” by the source, *id.* at 32,535.

Emissions-reducing utilization further comports with the express requirements of section 111. It is “adequately demonstrated,” as the power sector has a long history of meeting emission limitations through changes in utilization. *See* 80 Fed. Reg. at 64,780–81; EPA, Legal Memorandum Accompanying the Clean Power Plan at 72–81 (“Legal Memorandum”), (JA__). EPA has premised other pollution standards under the CAA on the potential for emissions-reducing utilization. EDF Comments at 7, EPA-HQ-OAR-2017-0355-24419 (JA__); Legal Memorandum at 82, 95–99 (JA__). It is also achievable by sources, which

can limit total generation time by communicating permit limitations to scheduling authorities or incorporating compliance costs into market bids. *See* 80 Fed. Reg. at 64,762, 64,781.

EPA has long recognized that reduced utilization will happen as a result of pollution standards—whether as the least-cost compliance mechanism or as the inevitable economic result of higher-emitting sources becoming more expensive when they invest in emissions-reducing measures. *See, e.g.*, EDF Comments at 19–20, EPA-HQ-OAR-2017-0355-24419 (JA__), citing EPA, RIA for the Final Mercury and Air Toxics Standards, at 3–14 (JA__). Even in the Rule, EPA notes that if it had not precluded compliance through reduced utilization, regulated sources would have chosen that method to achieve emission reductions. *See* 84 Fed. Reg. at 32,555.

Emissions-reducing utilization achieves very significant emission reductions at a reasonable cost, does not produce meaningful countervailing non-air-quality health and environmental impacts, and does not adversely affect energy requirements, satisfying the other section 111 criteria. 42 U.S.C. §7411(a)(1). Indeed, the overriding directive of section 111 is to abate the harms of dangerous air pollution,

see States Br. at 6; 42 U.S.C. §7411(b)(1), and the pollution reductions that emissions-reducing utilization can achieve are ten times higher than EPA's estimates of emission abatement under the Rule. Rule RIA at 3-11, Tbl. 3-3 (JA__). Emissions-reducing utilization is also highly cost-effective. See 80 Fed. Reg. at 64,664, 64,728; States Comments at 18, EPA-HQ-OAR-2017-0355-24817 (JA__).

Further, emissions-reducing utilization would not adversely affect “energy requirements,” since the amount of reduced utilization would reflect the potential for low- and zero-emitting resources to offset any decrease in generation from covered generating units—preserving grid functionality and reliability. AEE Comments at 27, EPA-HQ-OAR-2017-0355-23809 (JA__).

Section 111 is intended to drive technological innovation. See, e.g., *Sierra Club v. Costle*, 657 F.2d at 346 (“Our interpretation of section 111(a) . . . embraces consideration of technological innovation as part of that balance.”). In the Rule, EPA should have considered how an emission limitation reflecting emissions-reducing utilization would boost advanced energy technologies (e.g., energy storage and other emissions-reducing technologies).

In short, it was arbitrary and capricious, and unlawful, for EPA to exclude from consideration emissions-reducing utilization measures that under any reasonable weighing of the statutory criteria are clearly superior to the Rule's heat-rate improvements.

CONCLUSION

The petitions for review should be granted.

Dated: April 17, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to the Rule 32 of the Federal the Rules of Appellate Procedure and the Circuit the Rules of this Court, I hereby certify that the foregoing Brief of Petitioners Advanced Energy Economy, American Wind Energy Association, and Solar Energy Industries Association contains 2373 words as counted by the word-processing system used to prepare this brief. I further certify that the combined words of this brief and those filed by the other Coordinating Petitioners do not exceed the 32,000 word limit set by the Court in its January 31, 2020 Order (Document #1826621).

/s/ Gene Grace
Gene Grace

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of April 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users.

/s/ Gene Grace
Gene Grace

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No. 19-1140 (and consolidated cases)

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v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

On Petition for Review of Final Agency Action of the
United States Environmental Protection Agency
84 Fed. Reg. 32,520 (July 8, 2019)

**ADDENDUM OF STANDING DECLARATIONS
ACCOMPANYING INITIAL OPENING BRIEF OF
PETITIONERS AMERICAN WIND ENERGY
ASSOCIATION, ADVANCED ENERGY ECONOMY, AND
SOLAR ENERGY INDUSTRIES ASSOCIATION**

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**ORAL ARGUMENT NOT YET SCHEDULED
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American Lung Association, <i>et al.</i> ,)	
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<i>Respondents.</i>)	
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**DECLARATION OF ROBERT REDLINGER ON BEHALF OF
PETITIONERS AMERICAN WIND ENERGY ASSOCIATION,
ADVANCED ENERGY ECONOMY, AND THE SOLAR ENERGY
INDUSTRIES ASSOCIATION**

I, Robert Redlinger, declare as follows: I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

1. My name is Robert Redlinger, and I lead the Global Energy Team at Apple Inc., a California corporation (“Apple”).
2. Apple is a member of Advanced Energy Economy. Our membership in this organization serves to promote Apple’s interest in driving the development of new and cost-effective renewable energy generation resources.

3. Apple has been engaged on federal climate change policy and has demonstrated in numerous previous filings that action on climate change is crucial for the planet and for the long term health of our business.
4. Tackling climate change is one of the most pressing challenges that we collectively face. We believe we all have a role to play in combating the climate crisis. That is why Apple is committed to reducing our carbon footprint. We measure our carbon footprint thoughtfully, and address it across every aspect of our operations, from the materials we use in our products, to the electricity that powers our supply chain's manufacturing footprint and our direct operations and facilities. We undertake this work not only because it makes business sense for Apple, but it is what our customers, shareholders and stakeholders expect of us.
5. Apple powers 100% of its facilities worldwide with electricity generated from renewable sources.
6. We also sell the output of certain Apple-controlled generation assets through Apple Energy LLC back to the grid.
7. In the United States, Apple has worked to bring online 1.2 GW of renewable energy since 2012 for our data centers, retail stores and offices. Apple has operations in every grid area in the United States and has worked to increase renewable deployment in regulated and competitive market states.
8. Apple continues to invest in high-quality renewable energy projects and works with renewable energy developers and other energy off-takers to drive the

development of new renewable resources. We work with our supply chain

partners to help them do more to power their operations with renewable energy.

9. Apple has a strong interest in federal action on climate change such as the

Clean Power Plan, which would have resulted in shifting from higher-

emissions units to lower or non emitting technologies, leading to cost-

competitive renewable development.

10. In doing so, the Clean Power Plan played an important role in giving

developers, utilities, and financiers confidence to invest in renewable energy

and incentivizing utilities to provide corporate partners, like Apple, the

increasing supplies of renewable energy they seek.

11. In contrast to the Clean Power Plan, the Affordable Clean Energy (“ACE”)

Rule removes the requirements to consider a shift to clean energy in setting

emission reduction targets and compliance therewith and, in turn, fails to set

robust emission standards or incentivize renewables. We believe this will

reduce access to renewable sources and drive prices up.

12. Apple thus has a strong interest in preserving EPA’s authority under section

111(d) to limit existing power plants’ carbon dioxide emissions through the

shifting from fossil units to zero-emission resources, such as renewables. The

ACE Rule fails on all of these accounts.

13. A denial of the Clean Energy Associations petitions or implementation of the

ACE Rule will thus harm Apple.

I declare under penalty of perjury under the laws of the United States of America

Executed this 17 day of April, 2020, in San Francisco, CA

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

Robert Redlinger

Global Energy Team Lead

Apple Inc.

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UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

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)	
<i>Respondents.</i>)	
_____)	

DECLARATION OF STEVE CAMINATI

I, Steve Caminati, declare as follows:

- I submit this declaration in support of this Brief on behalf of the Petitioners American Wind Energy Association (“AWEA”), Advanced Energy Economy (“AEE”), and the Solar Energy Industries Association (“SEIA”), challenging the action by the United States Environmental Protection Agency (“EPA”) titled, Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions From Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing

Regulations, 84 Fed. Reg. 32,520 (July 8, 2019) (“Rule”).

2. I am Director of Strategic Engagement of Apex Clean Energy, Inc. (“Apex”). I manage governmental affairs and make corporate public policy decisions for this renewable energy company. Apex is a leading developer of wind and solar energy. Apex is a member of AWEA, AEE, and SEIA, serving on the board of both AWEA and AEE.
3. I have worked for over 12 years in the renewable energy industry.
4. My declaration is based on my direct experience as a professional responsible for the development of utility-scale wind and solar generation across the United States.
5. The purpose of my declaration is to provide information to the Court relating to the question of whether AWEA, AEE, and SEIA’s members will suffer harm absent a grant of their petition to the Court, and whether relief granted in this proceeding would redress that harm.
6. In repealing the Clean Power Plan and replacing it with the Rule, EPA discounted the practicability, cost-effectiveness, and reliability of widely-used emission-reduction measures the electric power sector employs, such as using zero-emission power generation from wind and solar to offset higher-emission fossil units.
7. Apex is committed to developing, financing, and bringing clean energy to

- market, while at the same time reducing carbon emissions and providing affordable and reliable service to customers.
8. Founded in 2009, Apex has been involved in every phase of renewable energy project realization, from origination and financing, to construction and asset management. Apex currently operates 2,867 megawatts of renewable energy projects, and manages 1,600 megawatts of renewable energy projects.
 9. To date, Apex has invested over \$7 billion in clean energy opportunities and has financed over 5,300 megawatts of renewable energy projects. In 2019, Apex led the renewable energy industry in transactions involving corporate purchasers, signing contracts for nearly 2 gigawatts of renewable energy to supply private sector buyers.
 10. The Clean Power Plan supported greater emission reductions from existing fossil power plants by, among other things, accounting for the ease of shifting from these higher-emissions units to renewable energy. This provided a clear regulatory path that Apex could integrate into future investment decisions. In contrast, the Rule reverses course and prohibits consideration of cleaner generation, and therefore creates regulatory uncertainty regarding shifting to renewables in both setting emission reduction targets and compliance therewith.

11. Apex thus has a strong interest in preserving EPA's authority under section 111(d) to limit existing power plants' carbon dioxide emissions through shifting from high-emission fossil-fueled units to zero-emission resources, such as renewables. By doing so, the Clean Power Plan played an important role in giving developers, utilities, and financiers greater confidence to invest in renewable energy, and provided more certainty to the electric sector from a planning perspective. The Rule fails on all these accounts.
12. For the foregoing reasons, a denial of the Petitioners' petition or implementation of EPA's Rule will thus harm Apex.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed this 15th day of April, 2020, in Washington, D.C.

A handwritten signature in black ink, appearing to read 'Steve Caminati', written over a horizontal line.

Steve Caminati
Apex Clean Energy, Inc.