



United States Government

NATIONAL LABOR RELATIONS BOARD

OFFICE OF THE GENERAL COUNSEL

Washington, D.C. 20570

VIA CM/ECF

April 1, 2016

Deborah S. Hunt, Clerk of Court
United States Court of Appeals for the Sixth Circuit
540 Potter Stewart U.S. Courthouse
100 E. Fifth Street
Cincinnati, OH 45202-3988

Re: *FirstEnergy Generation Corp v. NLRB*, 6th Cir. Case Nos. 15-1783, 15-1929 (Board Case No. 08-CA-099595)

Dear Ms. Hunt:

The NLRB submits this letter pursuant to Fed. R. App. P. 28(j).

In the NLRB's brief, we noted that the D.C. Circuit's opinion in *SW General v. NLRB*, 796 F.3d 67 (D.C. Cir. 2015), was the subject of a pending rehearing petition. We write to update the Court that on January 20, 2016, the D.C. Circuit denied the petition, with three judges dissenting from the denial of rehearing *en banc*. The government will be filing a petition for *certiorari* in *SW General*.

We also write to inform the Court that the Ninth Circuit recently issued an opinion in *Hooks v. Kitsap Tenant Support Services, Inc.*, 2016 WL 860335 (9th Cir. Mar. 7, 2016), which agreed with the D.C. Circuit's interpretation of the FVRA as expressed in *SW General*. *Kitsap's* FVRA analysis largely follows the D.C. Circuit's reasoning in *SW General*, and it thus fails for the reasons already

articulated in the NLRB's brief.

Very truly yours,

s/Linda Dreeben

Linda Dreeben

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Encl.

cc: all counsel (via CM/ECF)