IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION

STATE OF TEXAS, et al.,

Plaintiffs,

v.

BLACKROCK, INC., et al.,

Defendants.

Civil Action No. 6:24-cv-00437-JDK

PLAINTIFFS RESPONSE TO DEFENDANTS'
MOTION FOR PARTIAL JUDGMENT ON THE PLEADINGS

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INTRODUCTION

As the Court well knows, the Plaintiff States have brought this action to seek to combat the actions taken by the Defendants to suppress the production of coal by the coal producers in which they are major shareholders. Those actions have artificially decreased the supply and increased the cost of coal, to the benefit of Defendants but the detriment of the electricity markets and consumers in the Plaintiff States. Defendants responded to the complaint with motions to dismiss, and this Court denied those motions in large part. *See* Am. Compl., ECF 50 (Jan. 16, 2025); Op. & Order re Mot. to Dismiss, ECF 113 (Aug. 1, 2025). The Court granted the motion only with respect to state consumer-protection claims asserted by Louisiana and Nebraska, thereby allowing the case to move forward with respect to the Sherman Act, Clayton Act, state antitrust, and state consumer protection claims asserted by the Plaintiff States. Plaintiffs then amended the complaint to "add factual allegations setting forth the economic harms suffered by the State of Iowa and to clarify the statutory bases for Iowa's claims for relief." Mot. to file Second Am. Compl., ECF 144 at 1 (Jan. 5, 2026).

Defendants (minus Vanguard, which has been dismissed following a settlement with the Plaintiff States), have now moved for partial judgment on the pleadings. The motion (1) seeks dismissal of Plaintiffs' *parens patriae* claims for damages on behalf of power purchasers for want of antitrust standing; (2) argues that Plaintiffs cannot seek relief on behalf of coal buyers as *parens patriae*; (3) contends that Iowa cannot seek civil penalties under its antitrust laws; and (4) requests that the consumer protection claims of Louisiana and Nebraska be treated as dismissed. Plaintiffs do not contest the second and fourth points at this time. They do, however, dispute the first and third, and the motion for judgment on the pleadings should be denied in those respects.

Defendants' first argument is largely academic. Defendants primarily argue that Plaintiffs cannot get antitrust damages under federal law or under several States' laws based on the Supreme

Court's decision in *Illinois Brick*. But, as Plaintiffs' initial disclosures have indicated, only Iowa and Nebraska are seeking antitrust damages, and they are doing so under the laws of those States. Defendants have conceded that *Illinois Brick* does not block those claims. *See* Joint Mot. for Partial Judg. on Pleadings, ECF 152 at 2 (Mar. 16, 2026). Therefore, *Illinois Brick* is no obstacle to the antitrust damages claims Plaintiffs are asserting. Defendants' other antitrust standing arguments also lack merit.

Defendants' second argument also misses the mark, as Iowa and Nebraska are not seeking relief on behalf of direct buyers of coal.

Defendants' third argument lacks merit, as Iowa does not bar the civil penalties that the State is seeking.

Finally, Plaintiffs agree that Louisiana's and Nebraska's consumer protection claims should be treated as dismissed. As indicated, Plaintiffs included those in the Second Amended Complaint solely "to avoid any waiver of the right to appeal the dismissal." ECF 145 at 107, nn.204, 205 (Jan. 5, 2026).

For these reasons, Defendants' motion for judgment on the pleadings should be denied to the extent it engages with claims Plaintiff States are asserting.

SUMMARY OF ARGUMENT

Plaintiff States dispute two categories of arguments that Defendants have raised. But before turning to address the merits of Defendants' specific arguments, Plaintiff States need to correct an apparent misapprehension regarding the specific relief being sought by each of the Plaintiff States. As Plaintiffs made clear in the initial disclosures they provided to Defendants, only the States of Iowa and Nebraska are seeking to recover *parens patriae* damages on behalf of indirect purchasers, and they are doing so specifically under their State antitrust laws. None of the Plaintiff States are

seeking *parens patriae* damages on behalf of indirect purchasers under Section 4C of the Clayton Act. Defendants' argument that Plaintiffs lack standing to seek damages as *parens patriae* on behalf of indirect purchasers, therefore, concerns only state law claims asserted by the States of Iowa and Nebraska.

Turning to the merits, Defendants have asserted four bases for finding that Plaintiff States lack standing to bring their antitrust damages claims, but all lack merit. First, Iowa and Nebraska have satisfied the prudential antitrust standing requirements applicable to their state law *parens patriae* claims for damages on behalf of State residents who paid the higher prices for electricity as a consequence of Defendants' scheme. Contrary to Defendants' first argument, even if the allegations of the complaint did not suffice to bring this case under the ownership or control exception to *Illinois Brick*, both Iowa and Nebraska have rejected *Illinois Brick* as a matter of State law, as Defendants concede.

Second, particularly at the pleading stage, Plaintiffs have sufficiently demonstrated that they will be able to establish the damages that resulted from Plaintiffs' output reduction scheme. Using the extensive and granular data published by the U.S. Energy Information Administration, Plaintiffs States and their experts will have the resources to: (1) establish that Defendants' output reduction scheme had a discernible and measurable impact on the price of coal; (2) establish the amount of coal used during the relevant period to generate electric power at each generation unit at each facility in each of the Plaintiff States and the amount of the overcharge paid by those utilities for that coal; and (3) establish the amount by which the price paid by consumers for electricity exceeded the amount they would have paid had the output of coal not been restrained. Third-party discovery can provide additional information. At a minimum, this is not a question fit for resolution on a motion for judgment on the pleadings.

Third, that Defendants do not themselves buy or sell thermal coal if anything bolsters Plaintiffs' standing arguments. This is, admittedly, an atypical conspiracy to restrain trade. But the fact that Defendants are not themselves directly engaged in the line of commerce that they have conspired to restrain makes it unlikely that any competitor will bring suit to remedy that violation. Given the peculiar nature of Defendants' misconduct, a *parens patriae* action brought by the States is an ideal vehicle for enforcing the antitrust laws and the States are the parties who are best situated to detect and seek to remedy those violations.

Fourth, Plaintiffs' claims cannot be dismissed based on the test for determining whether a private party is best situated "to perform the office of a private attorney general" that the Supreme Court established in set forth in *Associated General Contractors of California, Inc. v. California State Council of Carpenters*, 459 U.S. 519, 542 (1983) ("AGC"). This prudential standing analysis applies, however, when courts must determine whether a private party is best situated to act as a private attorney general; it is not a tool for blocking a State Attorney General from performing his or her statutory duty to enforce the State's antitrust laws and has no application to the State law claims asserted.

Finally, Defendants' argument that they cannot be subjected to civil penalties under Iowa's antitrust laws because they do not sell the commodity that they have conspired to reduce the output of rests upon a selective and unreasonable reading of the Iowa Competition Law and should be rejected.

LEGAL STANDARD

Rule 12(c) states that "[a]fter the pleadings are closed—but early enough not to delay trial—a party may move for judgment on the pleadings." FED. R. CIV. P. 12(c). "The standard for dismissal under Rule 12(c) is the same as that for dismissal for failure to state a claim under Rule 12(b)(6)." *Johnson v. Johnson*, 385 F.3d 503, 528 (5th Cir. 2004) (citing *Great Plains Trust Co. v.*

Morgan Stanley Dean Witter & Co., 313 F.3d 305, 313 n.8 (5th Cir. 2002)). "Thus, the 'inquiry focuses on the allegations in the pleadings' and not on whether the 'plaintiff actually has sufficient evidence to succeed on the merits.' " *Ackerson v. Bean Dredging, LLC*, 589 F.3d 196, 209 (5th Cir. 2009) (quoting *Ferrer v. Chevron Corp.*, 484 F.3d 776, 782 (5th Cir. 2007)). Accordingly, as with a motion to dismiss pursuant to Rule 12(b)(6), a motion for judgment on the pleadings "is viewed with disfavor and is rarely granted." *Kaiser Aluminum & Chem. Sales v. Avondale Shipyards, Inc.*, 677 F.2d 1045, 1050 (5th Cir. 1982) (quoting 58 WRIGHT & MILLER'S FEDERAL PRACTICE AND PROCEDURE § 1357 (4th ed.)). And the Court must accept as true all well pleaded, non-conclusory allegations in the complaint and liberally construe the complaint in favor of the plaintiff. *Id.*

ARGUMENT

I. Iowa and Nebraska Have Antitrust Standing To Pursue Their *Parens Patriae* Claims for Damages on Behalf of Power Purchasers.

Iowa and Nebraska have standing to pursue their *parens patriae* claims for damages on behalf of the consumers of electricity in those States. Because none of the Plaintiff States are pursuing *parens patriae* damages under Section 4C of the Clayton, and because both Iowa and Nebraska have declined to follow *Illinois Brick* in their respective State antitrust laws, there are no claims to which Defendants' argument that *Illinois Brick* prohibits plaintiffs seeking damages for power purchasers would apply. That Defendants are not producers or consumers of coal bolsters the case for finding that the Iowa and Nebraska Attorneys General are best situated to bring this action. Finally, while State Attorneys General are not required to satisfy the multi-factor analysis used to determine which private plaintiff is best suited to perform the role of a private attorney general when they bring suit under their own State laws, Iowa and Nebraska would easily satisfy the AGC analysis regardless.

A. Both Iowa and Nebraska Have Rejected the *Illinois Brick* Doctrine.

Plaintiffs are not asserting any claims for damages to which Defendants' argument that the *Illinois Brick* doctrine would prohibit an action for damages on behalf of the consumers of electricity because their injuries are indirect would apply. Both Iowa and Nebraska have rejected application of *Illinois Brick* to claims asserted under their respective State antitrust laws. *See Comes v. Microsoft Corp.*, 646 N.W.2d 440, 448 (Iowa 2002) (stating that the "Iowa legislature intended indirect purchasers to have standing under the Iowa Competition Law"); NEB. REV. STAT. § 59-821 ("Any person who is injured in his or her business or property by any other person or persons by a violation of sections 59-801 to 59-831, *whether such injured person dealt directly or indirectly with the defendant*, may bring a civil action in the district court in the county in which the defendant or defendants reside or are found, without respect to the amount in controversy, and shall recover actual damages or liquidated damages in an amount which bears a reasonable relation to the actual damages which have been sustained and which damages are not susceptible of measurement by ordinary pecuniary standards and the costs of suit, including a reasonable attorney's fee." (emphasis added)). Indeed, Defendants concede that *Illinois Brick* does not bar these claims. *See* ECF 152 at 2.

B. Iowa and Nebraska Have Established Their Antitrust Standing To Seek Damages.

In addition to their *Illinois Brick* argument, Defendants make several arguments that the Iowa and Nebraska Attorneys General lack standing to pursue their *parens patriae* claims for damages on behalf of the consumers of electricity in their States. These arguments fail for the reasons set forth below.

1. Plaintiff States Will Be Able To Establish The Effect Of Defendants' Output Reduction Conspiracy On Consumer Electricity Prices.

Plaintiff States have alleged that Defendants coerced the Coal Companies to reduce their output of the thermal and SPRB coal that is used to generate electricity, thereby increasing the price of that coal and of the electricity it is used to generate. Contrary to Defendants' argument, *id.* at 7–10, there is nothing inherently speculative about the effect that their conspiracy had on the price of either coal or the electricity it is used to generate.

First, Defendants have "overlook[ed] the possibility that [Plaintiffs] could have retained an expert to opine on the issue of reduced output." *First Data Merchant Services Corp. v. SecurityMetrics, Inc.*, 672 F. App'x 229, 238 n.8 (4th Cir. 2016). And experts routinely analyze the relevant markets and isolate the impact that an output reduction scheme has had on output and price across those markets. *See, e.g., In re Processed Egg Prods. Antitrust Litig.*, 206 F. Supp. 3d 1033, 1052 (E.D. Pa. 2016); *In re Linerboard Antitrust Litig.*, 497 F. Supp. 2d 666, 674–75 (E.D. Pa. 2007). Plaintiffs intend to offer such expert testimony to establish that Defendants' conspiracy resulted in a reduction in the output of coal and that this resulted in an increase in the price of coal and of electricity that can be traced and quantified with the requisite degree of precision.

Of course, "[e]xpert testimony is useful as a guide to interpreting market facts, but it is not a substitute for them." *Brooke Grp. Ltd. v. Brown & Williamson Tobacco Corp.*, 509 U.S. 209, 242 (1993). There is no shortage of data, however, establishing the "market facts" on coal production, consumption, and price in the domestic market. The U.S. Energy Information Administration publishes data on coal production, consumption, and price, both annually and quarterly that is granular, detailed, and comprehensive. *See Coal: Analysis & Projections*, EIA, https://perma.cc/E2HF-PV4U. Third-party discovery also may be sought from the Coal

Companies. The fruits of this third-party discovery could only add to the already adequate data published by the federal government.

The data regarding the generation of electric power is equally comprehensive and more than suffice to permit tracing the impact that increases in the price of coal have on the price of electricity. Defendants "presage" that "causation and damages problems" will defeat antitrust standing, ECF 152 at 8, that it will be impossible to determine the effect that the increased price of coal had on the price of electricity, given 'the elusive nature of electrons,'" *id.* at 7, and impossible to "determine whether any given consumer's electricity was coal-derived in the first place." *Id.* Their argument flies in the face of the readily available and comprehensive data regarding domestic electric generation facilities. *See Electricity: Analysis & Projections*, EIA, https://perma.cc/9SRJ-E249. These EIA reports detail the electricity that is being generated and the fuel that is being consumed at each generation unit at each generation facility in the United States. These reports break out not only the amounts of each type of coal being consumed by each generation unit each month, but the cost being paid each month for the coal being consumed at each facility.

Contrary to Defendants' bald assertions, therefore, Plaintiffs anticipate that they will be able to establish precisely the amount that the price paid for electric power by each States' consumers incorporated the supra-competitive prices for coal that resulted from Defendants' output reduction conspiracy. Indeed, if there are any industries in which the effects of an output reduction conspiracy could be traced and quantified, they would be the coal and electric power generation industries.

Even if damages were not readily ascertainable and precisely quantifiable in this case, it is well established that in output reduction and price-fixing cases "causation of injury may be found

as a matter of just and reasonable inference from proof of defendants' wrongful acts and their tendency to injure plaintiffs, and from evidence of change in prices not shown to be attributable to other causes." *In re Indus. Silicon Antitrust Litig.*, No. 95-2104, 1998 WL 1031507, at *4 (W.D. Pa. Oct. 13, 1998) (quoting *In re Aluminum Phosphide Antitrust Litig.*, 893 F.Supp. 1497, 1499 (D. Kan. 1995)). In these cases, "the actual amount of damages may result from a 'reasonable estimate, as long as the jury verdict is not the product of speculation or guess work.' " *In re Lower Lake Erie Iron Ore Antitrust Litig.*, 998 F.2d 1144, 1176 (3rd Cir. 1993) (quoting *MCI Commc'ns Corp. v. Am. Tel. & Tel. Co.*, 708 F.2d 1081, 1161 (7th Cir. 1983)). A plaintiff's " 'burden of proving the fact of damage ... is satisfied by its proof of some damage flowing from the unlawful conspiracy; inquiry beyond this minimum point goes only to the amount and not the fact of damage. It is enough that the illegality is shown to be a material cause of the injury; a plaintiff need not exhaust all possible alternative sources of injury....' " *Danny Kresky Enters. Corp. v. Magid*, 716 F.2d 206, 209–10 (3d Cir. 1983) (quoting *Zenith Radio Corp. v. Hazeltine*, 395 U.S. 100, 114 n.9 (1968)).

2. That Defendants Do Not Sell Coal Bolsters Plaintiffs' Antitrust Standing.

Defendants next argue that Plaintiffs lack antitrust standing to pursue claims for damages arising from Defendants' agreement to use their substantial shareholdings in the Coal Companies to suppress competition in the coal markets because Defendants do not themselves sell coal and because Plaintiffs are not consumers of the products that Defendants do sell. ECF 152 at 10–11.

This argument essentially rehashes the argument against the economic plausibility of the conspiracy that Defendants made in support of their motions to dismiss. Joint Mot. to Dismiss, ECF 64 at 14–15 (Mar. 17, 2025). It fares no better repackaged as a challenge to Plaintiffs' standing. Indeed, if a plaintiff lacked standing to pursue claims for damages simply because the

defendant "did not sell any relevant product at all, much less set its price," ECF 152 at 11, then a defendant could never be held liable for suppressing competition in a market in which it did not itself compete. This is a limitation found nowhere in the antitrust laws, and one that would eviscerate Section 7's prohibition on using shares to diminish competition by limiting its application to those shareholders who acquire shares in competition. This Court rejected this argument on the merits when it denied Plaintiffs' motion to dismiss. It should reject it again in its repackaged form.

The basic flaw in the argument is that it rests on an assumption that the market in which a defendant restrains competition will always be the market in which that defendant itself operates. This assumption holds true as a general rule. *In re Aluminum Warehousing Antitrust Litig.*, 833 F.3d 151, 158 (2nd Cir. 2016) ("Generally, only those that are participants in the defendants' market can be said to have suffered antitrust injury."). But this is the accidental consequence of the fact that defendants most often seek to restrain competition in the market in which they themselves operate and would thus otherwise compete. This was the situation confronted by both the Nebraska Supreme Court, *Kanne v. Visa USA Inc.*, 723 N.W.2d 293 (Neb. 2006), and the Iowa Supreme Court, *Southard v. Visa USA Inc.*, 734 N.W.2d 192 (Iowa 2007), in the cases discussed by Defendants. See ECF 152 at 11 (observing that "in *Southard* and *Kanne*, the defendants at least operated in the allegedly restrained market for debit processing services and set the allegedly inflated prices" while "[h]ere, Defendants did not sell any relevant product at all, much less set its price").

The law is clear, however, that the relevant market, for purposes of assessing antitrust standing and the merits of an antitrust claim alike, is not the market in which defendants participated, but the market in which defendants restrained trade. *See, e.g.*, *Aluminum*

Warehousing, 833 F.3d at 162 ("To fall within *McCready*, Consumers and Commercials had to participate in the very market that the defendants directly restrained."); *see also id.* at 158 (citing *Am. Ad Mgmt., Inc. v. Gen. Tel. Co. of Cal.*, 190 F.3d 1051, 1057 (9th Cir. 1999) ("Antitrust injury requires the plaintiff to have suffered its injury in the market where competition is being restrained."); *Serpa Corp. v. McWane, Inc.*, 199 F.3d 6, 10 (1st Cir. 1999) ("Competitors and consumers in the market where trade is allegedly restrained are presumptively the proper plaintiffs to allege antitrust injury.")).

Defendants are alleged to have restrained competition, not in the markets for the financial products in which they operate their businesses and sell those products, but in the coal markets in which they have acquired substantial ownership stakes in the participants. It would be absurd to require that a plaintiff have either competed with BlackRock in the market for ETFs or invested in a mutual fund marketed by State Street to establish their prudential standing to challenge the agreement between BlackRock and State Street to restrain competition in the markets for thermal coal. The competitors and customers of the Asset Managers participate in markets that are irrelevant to the claims here asserted; it is unlikely, moreover, that they could allege having suffered any form of Article III injury. The relevant market for purposes of assessing antitrust standing is thus the same as the market for purposes of the merits: the market that Defendants are alleged to have subjected to a restraint on competition.

Plaintiffs note that, far from "underscore[ing] the absence of standing and compel[ling] dismissal," the "added layer of removal" that is a consequence of Defendants "not sell[ing] any relevant product" actually bolsters the argument that, for purposes of assessing prudential standing, a *parens patriae* action brought by the Iowa and Nebraska Attorneys General on behalf of their State's consumers is the proper vehicle for obtaining redress for those injured by Defendants'

unlawful conduct. ECF 152 at 11. The essential inquiry for purposes of antitrust standing is whether denying a plaintiff standing to sue is "likely to leave a significant antitrust violation undetected or unremedied." AGC, 459 U.S. at 542. The "added layer of removal" between Defendants and the competition they have restrained makes it unlikely that any other market participants in the chain of distribution would be able to detect Defendants' violation or be inclined to challenge it. The State Attorneys General bringing suit in their capacity as *parens patriae* on behalf of the ultimate consumers are the best and perhaps the only plaintiffs who are properly situated to detect and to *remedy* Defendants' anticompetitive conduct.

3. The *AGC* Analysis Is Inapplicable When The State Attorneys General Bring Suit To Enforce Their States' Antitrust Laws.

There "is little case law addressing whether antitrust standing analysis applies when State Attorneys General sue for violations of state antitrust laws," *Connecticut v. Sandoz, Inc.*, No. 3:20-cv-00802, 2026 WL 395842, at *7 (D. Conn. Feb. 12, 2026), with the one court to have considered the question concluding that whether the *AGC* analysis applies depends on the type of relief being sought under State law. *Id.* Plaintiffs respectfully disagree with that decision, and submit that, while the question whether the State Attorneys General stand in the same position as a private party when enforcing the federal antitrust laws is debatable, the State Attorneys General act as the public enforcers of their respective State's antitrust laws and are thus categorically exempt from the prudential standing analysis that is applied to private parties. In the case of Iowa and Nebraska, moreover, the Attorneys General are not merely authorized, but expressly charged with the duty to bring suit to enforce their State's respective antitrust laws. *See* IOWA CODE § 553.7 ("The attorney general, with such assistance as may be required from time to time of the county attorneys in their respective counties, shall institute all criminal and civil actions and proceedings brought under this Act in the name of the state."); NEB. REV. STAT. § 59-828(a) ("It is hereby made the duty of the

Attorney General and the county attorney of each county under the direction of the Attorney General to institute and prosecute such proceedings as may be necessary to carry into effect sections 59-801 to 59-831."). Although the courts of both the Iowa, *Southard v. Visa USA, Inc.*, 734 N.W.2d 192, 198–99 (Iowa 2007), and Nebraska, *Kanne v. Visa USA, Inc.*, 723 N.W.2d 293, 302–03 (Neb. 2006), have concluded that the *AGC* factors apply in private suits seeking damages claims on behalf of Indirect Purchasers, they have not addressed the question whether or how they would apply to a suit brought by the Attorney General. Prudential considerations cannot thwart unambiguous statutory commands, and the analytical framework announced by the Court in *AGC* should not here limit the ability of the Iowa and Nebraska Attorneys General to perform their statutory duties.

As the Supreme Court itself explained in *AGC*, the five-factor standing analysis seeks to determine only "whether the plaintiff is a proper party to bring a *private* antitrust action." *AGC*, 459 U.S. at 535 n.31 (emphasis added). "'Antitrust standing' is [thus properly understood as] a 'judicially-created set of threshold requirements that a *private plaintiff* must show before a court can entertain its antitrust claims.' " *TravelPass Group, LLC v. Caesars Ent. Corp.*, No. 5:18-cv-153, 2019 WL 5691996, at *11 (E.D. Tex. Aug. 29, 2019) (quoting *BRFHH Shreveport, LLC v. Willis Knighton Med. Ctr.*, 176 F. Supp. 3d 606, 626 (W.D. La. 2016) (emphasis added). By limiting private plaintiffs' ability to recover under the antitrust laws, the *AGC* framework ensures that only a proper private plaintiff is permitted to bring suit and "'vindicate the law as private attorneys general,' without the problems attendant to suits by more remote parties." *Tex. Carpenters Health Benefit Fund v. Philip Morris, Inc.,* 21 F. Supp. 2d 664, 671 (E.D. Tex. 1998) (quoting *Holmes v. Sec. Inv. Protection Corp.*, 503 U.S. 258, 269 (1992)).

But while some private parties may be better situated than others to play the role of a private attorney general, no private party is better situated to play the role of attorney general, and no private party may usurp a State Attorney General's role as the statutorily designated enforcers of their State's antitrust laws. As a leading antitrust treatise explains, "when a state is enforcing its own antitrust provision, it is acting as a government enforcer rather than as a private party—in sum, it has largely the same status as the Justice Department's Antitrust Division or the FTC has in a federal case." PHILLIP AREEDA & HERBERT HOVENKAMP, ANTITRUST LAW: AN ANALYSIS OF ANTITRUST PRINCIPLES AND THEIR APPLICATION § 2412c (2024). Like the Department of Justice and the FTC, therefore, State Attorneys General need not satisfy the *AGC* analysis to establish that they are proper parties when suing to enforce their respective States' antitrust laws.

Finally, Plaintiffs note that there can be no question that each of the Plaintiff States is the most efficient enforcer of the State's antitrust laws for purposes of seeking civil penalties and injunctive relief. Under their respective statutes, only the State Attorneys General are authorized to seek civil penalties. There are simply no other enforcers. *See, e.g.*, *Connecticut*, 2026 WL 395842, at *6 & n.2 (observing that Defendant's "counsel did not identify any States that require proof of causation to collect a civil penalty, and I am not aware of any" and finding that establishing antitrust standing is not required for civil penalties). And, of course, indirect purchasers and direct purchasers alike have standing to pursue injunctive relief under federal and state antitrust laws.

4. Iowa and Nebraska Satisfy The *AGC* Factors Regardless.

Should the Court conclude that Iowa and Nebraska are required to satisfy the *AGC* analysis when seeking damages as *parens patriae* under their respective state antitrust laws, Plaintiffs submit that they both satisfy the five *AGC* factors. The Court in *AGC* "declined to apply a rigid test to resolve the standing issue," but instead analyzed a "battery of factors to reach its conclusion: 1) the existence of a causal connection between the antitrust violation and the alleged injury; 2)

the nature of plaintiff's alleged injury; 3) the directness or indirectness of the asserted injury and the related inquiry of whether the damages are speculative; 4) the potential for duplicative recovery or complex apportionment of damages; and, finally, 5) the existence of a more direct victim of the alleged anti-competitive conduct." *Austin v. Blue Cross & Blue Shield of Ala.*, 903 F.2d 1385, 1388 (11th Cir. 1990) (citing *AGC,* 459 U.S. at 536–45). Evaluation of those factors and circumstances establish that Iowa and Nebraska have established their standing to pursue damages as *parens patriae*. Indeed, the consideration of these specific factors renders it readily apparent that, for the same reasons the exception to *Illinois Brick* applies to permit recovery of damages on behalf of indirect purchasers, the specific facts and circumstances of this case warrant finding that these States are the most "efficient enforcer[s] of the antitrust laws," *Todorov v. DCH Healthcare Auth.*, 921 F.2d 1438, 1451 (11th Cir. 1991), and have established their standing to pursue claims for damages on behalf of their citizens.

a. Plaintiff States Have Alleged Injuries To Consumers That Are of the Type the Antitrust Laws are Meant to Prevent And The Alleged Injuries to Consumers Are Not Too Remote.

Defendants' first two arguments—that plaintiffs lack antitrust standing because electricity customers are not consumers or competitors in the coal markets that Defendants have restrained, ECF 152 at 11, and that the alleged injuries to those customers are too remote because they are "merely an offshoot of the injuries suffered by buyers in the spot market for coal," *id.* at 11–12 (brackets omitted), both fail for the reasons explained above with respect to Defendants' other antitrust standing arguments. What is more, these factors should have little weight under Iowa and Nebraska law, which both allow indirect purchasers to assert antitrust claims.

b. Plaintiff States Are Motivated Enforcers of the Antitrust Laws.

When assessing this factor, as Defendants observe, the courts consider whether there is " 'an identifiable class of persons whose self-interest would normally motivate them to vindicate the public interest in antitrust enforcement diminishes the justification for allowing a more remote party . . . to perform the office of a private attorney general.'" *Id.* at 12 (quoting *AGC*, 459 U.S. at 542). Posing the question whether industrial purchasers of coal and the power companies are better situated than the State Attorneys General to play the role of a private attorney general and to ensure that no "significant antitrust violation [is left] undetected or unremedied," *id.* (quotation marks omitted), illustrates why the *AGC* analysis serves only to establish which *private* party is better situated to serve as a private attorney general, and is inapposite to an action brought by actual Attorneys General. The Iowa and Nebraska Attorneys General have statutory mandates to enforce their antitrust laws; no private party is better motivated to perform their duties.

c. Damages are Not Speculative.

As explained above, see *supra* at I.B.1, the damages inflicted on the consumers of electric power are neither speculative nor difficult to trace. Indeed, Defendants' argument to the contrary, ECF 152 at 12, i.e., that other factors could result in higher prices for electricity, misses the mark. Damages in this case are not the *price* paid for electricity, but the *overcharge* incorporated into that price. Fluctuations in the price paid by utilities for natural gas, oil, rail transportation, and labor will affect the price of electricity, but they do not change the amount by which utilities overpaid for the coal that they used to generate electricity and the amount of the overcharge for coal that went into the price of that electricity. Quite simply, if the price of 1 ton of coal was artificially inflated by $1, and 1 ton of coal generates 2,000 kilowatt-hours of electricity, then the price of 2,000 kWh of electricity generated using that coal was $1 higher than it would have been in a

competitive market. The ultimate price of a chocolate chip cookie, to provide another example, will depend on the specific costs of all of the input and overhead costs of the baker, but if every cookie contains 10 chips, and the cost of those 10 chips is artificially inflated by 10 cents, then the consumer of that cookie will suffer damages of 10 cents, regardless the free market prices the baker paid for flour, baking powder, salt, natural gas, etc.

d. Damages Would Be Neither Duplicative Nor Difficult to Apportion.

Contrary to Defendants' argument, *id.* at 12, there appears to be no risk either of duplicative recoveries or of this Court having to apportion damages in the case of Defendants' conspiracy. First, the financial incentive these corporate purchasers would ordinarily have to sue is absent because the increased cost of coal is passed through to the consumers of electricity. (And, given Defendants' substantial shareholdings at all levels of the economy, it is unlikely any publicly traded utilities would be likely to sue in any event.) Second, because the increased cost of coal is incorporated into the rate base and passed through to consumers, there would be no damages to apportion. Finally, in the fifteen months this action has been pending, there has been no private individual or class action filed to challenge the Defendants' anticompetitive conduct.

But even if there were a need to apportion damages to claimants at different levels of the market, that would not bar antitrust standing. The courts routinely hold that potential complexity in apportioning damages is not a basis for dismissing indirect purchaser claims, *Comes*, 646 N.W.2d at 451 (observing that courts "should not defeat the ends of justice simply because the litigation may be complicated" and ruling that "the possibility of complex litigation is an insufficient reason for us to find indirect purchasers must be barred from bringing a state cause of action for antitrust violations"); *Freeman Indus., LLC v. Eastman Chem. Co.*, 172 S.W.3d 512, 520 (Tenn. 2005) (rejecting the argument that complex apportionment justifies barring indirect

purchaser claims), and particularly on a motion for judgment on the pleadings. *See, e.g*, *In re Lithium Ion Batteries Antitrust Litig.*, No. 13-MD-2420, 2014 WL 4955377, at *16 (N.D. Cal. Oct. 2, 2014) ("defendants do not explain why damages could not be apportioned in this case, as they have been in other complex antitrust cases, such that the case should be dismissed on the pleadings alone"). To the contrary, it is a rule of long standing "that in complicated antitrust cases plaintiffs are permitted to use estimates and analysis to calculate a reasonable approximation of their damages." *Loeb Indus., Inc. v. Sumitomo Corp.*, 306 F.3d 469, 493 (7th Cir. 2002). The mere presence of multiple levels in a distribution chain does not preclude reasonable damage calculations, and courts are fully capable of addressing the potential for duplicative recoveries that can result from overlapping claimants.

To conclude, a *parens patriae* action brought by a State on behalf of its citizens provides an independent enforcement mechanism that is distinct from private individual and class actions and reflects the legislative intent to provide multiple layers of enforcement, often with distinct methods of proof. The Nebraska and Iowa legislatures have further determined that antitrust damages should be available to both direct and indirect purchasers. It is not for the courts to second guess these determinations and rewrite the antitrust laws of these States to render damages unavailable when the State Attorney General brings an action authorized by those laws. *See California v. ARC Am. Corp.*, 490 U.S. 93, 101 (1989) (holding state antitrust laws are complementary to federal laws and not preempted, even if they permit recovery by indirect purchasers). And to do so on the basis of a fact-intensive prudential standing analysis at this preliminary stage, before Defendants have produced any documents and before any witnesses have been deposed, would be plain error.

5. Plaintiffs Have Asserted a Quasi-Sovereign Interest Affecting the States' population generally.

In support of their argument that Plaintiffs lack standing to pursue *parens patriae* claims for damages on behalf of coal-fired power plants, Defendants assert that "Plaintiffs … do not allege a quasi-sovereign interest affecting the States' population generally." ECF 152 at 14. That is incorrect. First, Plaintiffs have alleged that Defendants' output reduction scheme subverted the operation of the competitive markets. This interest alone suffices to establish *parens patriae* standing. *See, e.g., AU Optronics Corp. v. South Carolina*, 699 F.3d 385, 393–94 (4th Cir. 2012) (states possess a quasi-sovereign interest in pursuing enforcement of consumer protection and antitrust laws); *In re TFT-LCD (Flat Panel) Antitrust Litig*., No. C 07-1827, 2011 WL 560593, at *5 (N.D. Cal. Feb. 15, 2011) ("States have a sovereign interest in the enforcement of their consumer protection and antitrust laws . . . [and] in securing an honest marketplace"); *Illinois v. SDS W. Corp.*, 640 F. Supp. 2d 1047, 1050 (C.D. Ill. 2009) ("securing an honest marketplace" is "a well-established quasi-sovereign interest") (collecting cases). Plaintiffs have also alleged that state residents have been injured as a result of the higher prices paid for winter heat and summer cooling and that their State economies have been harmed by the higher production costs incurred by their agricultural sectors. *See, e.g.*, ECF 145 ¶¶ 1, 5, 248, 257–58. The States have "a quasi-sovereign interest in the health and well-being—both physical and economic—of [their] residents in general." *Alfred L. Snapp & Son, Inc. v. Puerto Rico, ex rel., Barez*, 458 U.S. 592, 607 (1982).

II. Iowa Is Entitled to Civil Penalties.

Defendants argue that they enjoy immunity from civil penalties because, although they engaged in conduct prohibited by Iowa's competition laws when they agreed to abuse their power as dominant shareholders to orchestrate a coordinated reduction in the output of coal, they did not themselves sell the coal, and civil penalties are tied to the amount of the commodity "sold in the

relevant market in this state by the enterprise in each year." Defendants are inviting this Court to achieve an absurd result that is contrary to the clear intent of the legislature by taking a single phrase of the statutory text in isolation. The Court should decline that invitation.

The Iowa courts interpret the State's "statutes with a goal to effectuate the intent of the legislature." *Bankers Standard Ins. Co. v. Stanley*, 661 N.W.2d 178, 180 (Iowa 2003) (quoting *Miller v. Marshall County*, 641 N.W.2d 742, 747–48 (Iowa 2002)). To discern the intent of the legislature, they read "all portions of the statute together, without attributing undue importance to any single or isolated portion," to arrive at the "reasonable interpretation that will best effect the purpose of the statute and avoid an absurd result." *John Deere Dubuque Works & Co. v. Weyant*, 442 N.W.2d 101, 104 (Iowa 1989). They look to the language of the statute, the underlying purpose and policies of the statute, and the consequences of different interpretations. *State v. Carpenter*, 616 N.W.2d 540, 542 (Iowa 2000).

The statute here at issue, Section 553.13 of the Iowa Competition Law, authorizes assessing civil penalties against enterprises "whose conduct is prohibited under this chapter" that are to reflect the value of the commodities or services sold in the relevant market in Iowa:

> In addition to suit under section 553.12, the state may bring suit to assess a civil penalty against an enterprise whose conduct is prohibited under this chapter. The suit may be tried to the jury and the civil penalty provided for in this section shall be imposed by the court. The civil penalty assessed shall not exceed ten percent of the total value of the specific commodities by their brand, make, and size or of services either of which were the subject of the prohibited conduct sold in the relevant market in this state by the enterprise in each year in which this conduct occurred, but this penalty shall not exceed one hundred fifty thousand dollars. In computing this penalty, only the four most recent years in which the prohibited conduct occurred, as of commencement of suit under this section, shall be used in the computation.

IOWA CODE § 553.13. The intention of the legislature is clear and unmistakable: to fix the civil penalty that may be imposed on those whose conduct violated the law at the lesser of 10% of the total value of the tainted commodities or services sold in Iowa or $150,000.

Defendants' argument that a civil penalty cannot be assessed against them because they are not one of the coal companies they coerced and that actually made the sale of coal at prices inflated as a result of the conspiracy that the Defendants orchestrated, and the maximum penalty is tied to the total value of the commodities or services "sold … by the enterprise." ECF 152 at 14. It is clear on the face of the statute that the legislature intended to impose civil penalties on those enterprise[s] whose conduct is prohibited under this chapter." IOWA CODE § 553.13. Equally clear, the amount of that penalty is not to exceed ten percent of the amount of the commodity sold in the relevant market in Iowa during the past four years, and in no case is to exceed $150,000. Defendants ask the Court to focus its attention exclusively on the phrase "sold … by the enterprise" and find that they are thus exempt from liability. This is a statutory construction that would immunize, not penalize, those "enterprise[s] whose conduct is prohibited under this chapter." It is a textbook example of a statutory construction that achieves an absurd result and thwarts the clear intention of the legislature by "attributing undue importance to [a] single or isolated portion" of a statute, *John Deere Dubuque Works*, 442 N.W.2d at 104, and should be rejected as such. The sales made in Iowa were made at an inflated price because of the prohibited conduct in which Defendants engaged; they are the enterprises responsible for those sales, even if they were not themselves working the register.

CONCLUSION

For the foregoing reasons, Defendants' motion for judgment on the pleadings should be denied.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was filed electronically and served on all counsel of record by the Court's CM/ECF system on April 13, 2026.

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