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**VIA CM/ECF**

December 16, 2015

Mr. Mark J. Langer, Clerk  
U.S. Court of Appeals for the District of Columbia Circuit  
United States Courthouse  
333 Constitution Avenue, Room 5205  
Washington, D.C. 20001

**Re: International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers & Helpers v. U.S. Environmental Protection  
Agency, Case No. 15-1365 (consolidated with Nos. 15-1363, *et al.*)**

Dear Mr. Langer:

Pursuant to this Court's orders of October 29, 2015 and November 30, 2015, enclosed for filing via CM/ECF please find the International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers Docketing Statement and Non-Binding Statement of Issues to be filed in the above-captioned proceeding.

The Certificate as to Parties, Rulings, and Related Cases, Statement of Intent to Use Deferred Joint Appendix, and Final Rule are being jointly submitted by the Petitioners in these consolidated cases.

Respectfully submitted,

/s/ Eugene M. Trisko

Eugene M. Trisko  
Attorney for International Brotherhood of  
Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers & Helpers

Enclosures

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

STATE OF WEST VIRGINIA, )  
*et al.* )

*Petitioners,* )

v. )

No. 15-1363, *et al.*

U.S. ENVIRONMENTAL PROTECTION )  
AGENCY, *et al.* )

Respondents. )

INTERNATIONAL BROTHERHOOD OF )  
BOILERMAKERS, )

*Petitioner,* )

v. )

No. 15-1365

U.S. ENVIRONMENTAL PROTECTION )  
AGENCY, *et al.* )

Respondents. )

(consolidated)

**PETITIONER INTERNATIONAL BROTHERHOOD  
OF BOILERMAKERS’ NON-BINDING STATEMENT OF ISSUES**

Pursuant to the Court’s orders of October 29, 2015 and November 30, 2015,  
in the above-captioned proceeding, Petitioner International Brotherhood of  
Boilermakers, Iron Ship Builders, Blacksmiths, Forgers & Helpers, AFL-CIO  
 (“IBB”) hereby submits the following non-binding Statement of Issues to be raised  
in challenging the Final Rule issued by the U.S. Environmental Protection Agency  
 (“EPA”) “Carbon Pollution Emission Guidelines for Existing Stationary Sources:

Electric Utility Generating Units,” published in the *Federal Register* at 80 Fed. Reg. 64,662 (Oct. 23, 2015) (“Final Rule”). IBB expects to raise the following issues:

1. Whether EPA exceeded its authority under Section 111 of the Clean Air Act (42 U.S.C. § 7411) by establishing “standards of performance for any existing source” in the fossil fuel-fired electric generating unit category that cannot be achieved by any existing source in that category through either technological or operational measures that limit the amount of carbon dioxide generated by that source?
2. Whether EPA exceeded its authority under Section 111 (42 U.S.C. § 7411) by establishing “standards of performance for any existing source” in the fossil fuel-fired electric generating unit category that require the curtailment or closure of affected facilities and replacement of their generation by EPA-preferred low- or zero-carbon generating sources (such as wind, solar, geothermal, and hydroelectric power), instead of establishing such standards based on improvements achievable in those facilities’ emissions performance?
3. Whether EPA exceeded its authority under Section 111 (42 U.S.C. § 7411) by defining the “best system of emission reduction” for existing fossil fuel-fired electric generating units to include measures, such as construction of

new renewable sources of energy, that cannot be implemented by the sources themselves?

4. Whether EPA exceeded its authority under Section 111 (42 U.S.C. § 7411) by establishing standards that compel reductions in the operation of existing fossil fuel-fired electric generating units based on the assumption that the generation from those units will be replaced by sources such as wind, solar, geothermal, and hydroelectric power?
5. Whether EPA exceeded its authority under Section 111 (42 U.S.C. § 7411) by subjecting existing fossil fuel-fired electric generating units to national performance standards that are more stringent than the national performance standards that EPA has finalized under 42 U.S.C. § 7411(b) for new sources in the same category?
6. Whether EPA's failure to establish subcategories for coal types by CO<sub>2</sub> emission performance characteristics when establishing the standards of performance was arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law?
7. Whether standards of performances established under the Final Rule deprived States of their authority under Section 111(d)(1), "in applying a standard of performance to any particular source . . . to take into

consideration, among other factors, the remaining useful life of the existing source to which such standard applies”?

IBB reserves the right to refine or supplement these issues in subsequent submissions, including to present and argue any other issues that have been preserved for judicial review, as well as any other issues that may arise from EPA’s reconsideration process or revisions to the Final Rule.

Respectfully submitted,

/s/ Eugene M. Trisko

Eugene M. Trisko

Attorney for International Brotherhood of  
Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers & Helpers

Dated: December 16, 2015

UNITED STATES COURT OF APPEALS

DISTRICT OF COLUMBIA CIRCUIT

333 Constitution Avenue, NW
Washington, DC 20001-2866
Phone: 202-216-7000 | Facsimile: 202-219-8530

AGENCY DOCKETING STATEMENT

Administrative Agency Review Proceedings (To be completed by appellant/petitioner)

- 1. CASE NO. 15-1365 (consol. w/15-1363) 2. DATE DOCKETED: 10-23-2015
3. CASE NAME (lead parties only) International Brotherhood of Bej v. U.S. Environmental Protection Agency
4. TYPE OF CASE: [X] Review [ ] Appeal [ ] Enforcement [ ] Complaint [ ] Tax Court
5. IS THIS CASE REQUIRED BY STATUTE TO BE EXPEDITED? [ ] Yes [X] No
6. CASE INFORMATION:
a. Identify agency whose order is to be reviewed: U.S. Environmental Protection Agency
b. Give agency docket or order number(s): EPA-HQ-OAR-2013-0602; FRL-9930-65-OAR
c. Give date(s) of order(s): August 3, 2015; 80 Fed. Reg. 64,662 (October 23, 2015)
d. Has a request for rehearing or reconsideration been filed at the agency? [X] Yes [ ] No
e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2): See Attachment B
f. Are any other cases involving the same underlying agency order pending in this Court or any other? [X] Yes [ ] No
g. Are any other cases, to counsel's knowledge, pending before the agency, this Court, another Circuit Court, or the Supreme Court which involve substantially the same issues as the instant case presents? [ ] Yes [X] No
h. Have the parties attempted to resolve the issues in this case through arbitration, mediation, or any other alternative for dispute resolution? [ ] Yes [X] No

Signature /s/ Eugene M. Trisko Date 12-16-2015
Name of Counsel for Appellant/Petitioner Eugene M. Trisko
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ATTACH A CERTIFICATE OF SERVICE

Note: If counsel for any other party believes that the information submitted is inaccurate or incomplete, counsel may so advise the Clerk within 7 calendar days by letter, with copies to all other parties, specifically referring to the challenged statement.

**Attachment A to Agency Docketing Statement  
for Petitioner's in Case No. 15-1365**

6.d. Has a request for rehearing or reconsideration been filed at the agency?

September 2, 2015	The State of New Jersey
October 27, 2015	Ameren Corporation

**Attachment B to Agency Docketing Statement  
for Petitioner's in Case No. 15-1365**

6.e. Identify the basis of appellant's/petitioner's claim of standing. See D.C. Cir. Rule 15(c)(2):

The Final Clean Power Plan Rule will result in the permanent shutdown of a large number of existing coal-fired power plants, including many of the plants that are serviced by workers employed by the International Brotherhood of Boilermakers. The shutdown of these power plants would therefore result in the loss of jobs for performing major maintenance work that Boilermaker workers routinely perform on boilers and other major components at these plants. This loss of jobs will have severe economic impacts on the Boilermaker workers and their surrounding communities due to the loss of employment.



**Attachment C to Agency Docketing Statement  
for Petitioner's in Case No. 15-1365**

6.f. Are any other cases involving the same underlying agency order pending in this Court or any other?

<b>Case No.</b>	<b>Date Filed</b>	<b>Petitioner(s)</b>
15-1363 (lead)	10/23/2015	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 v. EPA
15-1364	10/23/2015	Oklahoma and Oklahoma Department of Environmental Quality v. EPA
15-1366	10/23/2015	Murray Energy Corporation v. EPA
15-1367	10/23/2015	National Mining Ass'n v. EPA
15-1368	10/23/2015	American Coalition for Clean Coal Electricity v. EPA
15-1370	10/23/2015	Utility Air Regulatory Group and American Public Power Ass'n v. EPA
15-1371	10/23/2015	Alabama Power Company, Georgia Power Company, Gulf Power Company, and Mississippi Power Company v. EPA
15-1372	10/23/2015	CO <sub>2</sub> Task Force of the Florida Electric Power Coordinating Group, Inc. v. EPA
15-1373	10/23/2015	Montana-Dakota Utilities Co., a Division of MDU Resources Group, Inc. v. EPA
15-1374	10/23/2015	Tri-State Generation & Transmission Ass'n, Inc. v. EPA
15-1375	10/23/2015	United Mine Workers of America v. EPA

Case No.	Date Filed	Petitioner(s)
15-1376	10/23/2015	National Rural Electric Cooperative Ass'n, Arizona Electric Power Cooperative, Inc., Associated Electric Cooperative, Inc., Big Rivers Electric Corp., 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 Cooperative, Inc., East Kentucky Power Cooperative, Inc., East River Electric Power 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 Corp., Powersouth Energy Cooperative, Prairie Power, Inc., Rushmore Electric Power Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Ass'n, 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 Ass'n, Inc., Western Farmers Electric Cooperative, and Wolverine Power Supply Cooperative, Inc. v. EPA
15-1377	10/23/2015	Westar Energy, Inc. v. EPA
15-1378	10/23/2015	NorthWestern Corp. d/b/a NorthWestern Energy v. EPA
15-1379	10/23/2015	National Ass'n of Home Builders v. EPA
15-1380	10/23/2015	North Dakota v. EPA

Case No.	Date Filed	Petitioner(s)
15-1382	10/23/2015	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 and Steel Institute, American Wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and the Portland Cement Association v. EPA
15-1383	10/23/2015	Association of American Railroads v. EPA
15-1386	10/26/2015	Luminant Generation Company, LLC, Oak Grove Management Company, LLC, Big Brown Power Company, LLC, Sandow Power Company, LLC, Big Brown Lignite Company, LLC, Luminant Mining Company, LLC, and Luminant Big Brown Mining Company, LLC v. EPA
15-1393	10/29/2015	Basin Electric Cooperative v. EPA
15-1398	10/30/2015	Energy & Environment Legal Institute v. EPA
15-1409	11/5/2015	Mississippi Department of Environmental Quality v. EPA
15-1410	11/5/2015	International Brotherhood of Electrical Workers, AFL-CIO v. EPA
15-1413	11/12/2015	Entergy Corporation v. EPA
15-1418	11/16/2015	LG&E and KU Energy LLC v. EPA
15-1422	11/16/2015	West Virginia Coal Ass'n v. EPA
15-1432	11/25/2015	Newmont Nevada Energy Investment, LLC and Newmont USA Limited
15-1442	12/8/2015	Kansas City Board of Public Utilities--Unified Government of Wyandotte County/Kansas City, Kansas
15-1451	12/14/2015	North American Coal Corporation

**CERTIFICATE OF SERVICE**

Pursuant to Federal Rule of Appellate Procedure 25(d) and Rule 25(c) of the D.C. Circuit, I hereby certify that, on this 16<sup>th</sup> day of December 2015, I have served the foregoing Petitioner's Non-Binding Statement of the Issues to Be Raised and Agency Docketing Statement upon all counsel registered to receive service through the Court's CM/ECF system via electronic filing.

Respectfully submitted,

/s/ Eugene M. Trisko

Eugene M. Trisko

Attorney for International Brotherhood of  
Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers & Helpers