

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

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NATIONAL RURAL ELECTRIC	)	
COOPERATIVE ASSOCIATION; ARIZONA	)	
ELECTRIC POWER COOPERATIVE, INC.;	)	
ASSOCIATED ELECTRIC COOPERATIVE,	)	
INC.; BIG RIVERS ELECTRIC	)	
CORPORATION; BRAZOS ELECTRIC	)	
POWER COOPERATIVE, INC.; BUCKEYE	)	
POWER, INC.; CENTRAL MONTANA	)	<b>No. 15-1376</b>
ELECTRIC POWER COOPERATIVE;	)	(Consolidated, Lead Case
CENTRAL POWER ELECTRIC	)	No. 15-1363)
COOPERATIVE, INC.; CORN BELT POWER	)	
COOPERATIVE; DAIRYLAND POWER	)	
COOPERATIVE; DESERET GENERATION &	)	
TRANSMISSION CO-OPERATIVE; 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	)	
CORPORATION; 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 )  
 ASSOCIATION; 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 ASSOCIATION, INC.; WESTERN )  
 FARMERS ELECTRIC COOPERATIVE; )  
 WOLVERINE POWER SUPPLY )  
 COOPERATIVE, INC. )

Petitioners, )

v. )

UNITED STATES ENVIRONMENTAL )  
 PROTECTION AGENCY, )

Respondent. )

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**PETITIONER WESTERN FARMERS ELECTRIC COOPERATIVE’S  
 PRELIMINARY AND NONBINDING STATEMENT OF ISSUES**

Pursuant to the Court’s orders of October 29, 2015, ECF No. 1580895, and November 30, 2015, ECF No. 1585786, Petitioner Western Farmers Electric Cooperative (“WFEC”) hereby submits this preliminary and nonbinding statement of issues.

1. Whether the Environmental Protection Agency (“EPA” or the “agency”), in the final rule entitled “*Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*,” 80 Fed. Reg. 64,661

- (Oct. 23, 2015) (“Final Rule”), improperly defined “best system of emission reduction” (“BSER”) under Section 111(d) of the Clean Air Act (the “Act”) to provide the agency with unfettered authority to restructure the Nation’s electricity sector and regulate the Nation’s entire electric grid.
2. Whether in the Final Rule EPA improperly failed to articulate any definable limit to the agency’s purported regulatory authority under Section 111(d) of the Act.
  3. Whether in the Final Rule EPA improperly failed to set performance rate standards under Section 111(d) of the Act that are based on a system that is “adequately demonstrated” for existing affected electric utility generating units (“EGUs”).
  4. Whether in the Final Rule EPA improperly interpreted “source” under Section 111(d) of the Act to include owners, grid operators, and combinations of sources, including sources (e.g., renewable generation sources) that are outside the scope of the “stationary source” category defined in Section 111(a) of the Act.
  5. Whether in the Final Rule EPA improperly interpreted Section 111(d) of the Act to include the authority to mandate redispatch from coal-fired generators to natural gas generators.
  6. Whether EPA acted contrary to Congressional intent by setting standards for

existing source EGUs in the Final Rule that are more stringent than the standards EPA is setting for new source EGUs in the final rule entitled “*Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units*,” 80 Fed. Reg. 64,510 (Oct. 23, 2015).

7. Whether the Final Rule’s “state measures” state plan type option unlawfully purports to allow EPA to adopt state law measures that apply to entities other than affected EGUs -- and thus are outside the scope of the Act -- as federal law.
8. Whether the Final Rule’s “leakage” requirement for mass-based state plans is unlawful because it attempts to regulate the operation of non-affected EGUs and makes mass-based programs more stringent than rate-based plans.
9. Whether EPA failed to comply with the plain meaning of Section 111(d) of the Act by prohibiting states from considering the “remaining useful life” in setting performance standards for individual affected EGUs.
10. Whether EPA’s decision in the Final Rule to exclude all existing hydro and nuclear generation and to not credit wind and solar renewable energy generation sources or nuclear uprates constructed before 2013 for compliance under rate-based plans is arbitrary and capricious.
11. Whether EPA’s decision in the Final Rule not to credit carbon sequestration

for compliance under rate- or mass-based plans is arbitrary and capricious.

12. Whether EPA exceeded its authority under Section 111(d) of the Act by regulating EGUs that undergo a modification that results in an hourly increase in carbon dioxide emissions of 10 percent or less.
13. Whether EPA contravened the Clean Air Act and Administrative Procedure Act by failing to provide adequate notice and opportunity to comment on the mass-based goal for the state of Oklahoma.
14. Whether EPA contravened the Clean Air Act and Administrative Procedure Act by failing to provide adequate notice and opportunity to comment on the “new unit complement” to the mass-based goals for Oklahoma.

WFEC reserves its right to modify or supplement this statement of issues, as well as to address these and other issues in more detail in future pleadings.

December 18, 2015

Respectfully submitted,

/s/ Megan H. Berge

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## CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December 2015, I caused a copy of the foregoing to be served by the Court's CM/ECF System on all counsel of record in this matter who have registered with the CM/ECF System.

/s/ Megan H. Berge

Megan H. Berge