UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION, *et al.* Petitioners, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, Respondent.	)	No. 15-1376

STATEMENT OF ISSUES

Pursuant to the Clerk's Order of November 30, 2015, Petitioners in Case No. 15-1376, the National Rural Electric Cooperative Association and its member rural electric cooperatives hereby submit this preliminary and non-binding statement of issues to be raised in this challenge to the U.S. Environmental Protection Agency's final rule entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," to be codified at 40 C.F.R. Part 60, Subpart UUUU, published at 80 Fed. Reg. 64,662 (Oct. 23, 2015) (the "Final Rule"). Those issues are as follows:

1. Whether the Final Rule is unlawful because EPA has regulated the same power plants under CAA section 112, 42 U.S.C. § 7412.

2. Whether EPA has exceeded its authority under Clean Air Act ("CAA") section 111(d), 42 U.S.C. §7411(d), in the Final Rule by establishing "standards of performance for any existing source" in the fossil fuel-fired Electric Generating Unit ("EGU") category that are not achievable in practice by any existing EGU through either technological or operational processes that continuously limit the rate at which carbon dioxide ("CO_2") is emitted by that source.
3. Whether EPA has exceeded its authority under CAA section 111(d) in the Final Rule by establishing "standards of performance for any existing" fossil fuel-fired EGU that require the curtailment or closure of affected facilities and a shift to (i.e., displacement by) EPA-preferred replacement generation sources that are lower- or non-emitting, such as wind, solar, geothermal, and hydroelectric power, rather than relying on feasible improvements in emissions performance of existing fossil fuel-fired EGUs.
4. Whether EPA has exceeded its authority under CAA section 111(d) in the Final Rule by defining the "best system of emission reduction" for existing fossil fuel-fired EGUs to include measures that cannot be implemented at the sources themselves or that impermissibly require the construction of new sources.

5. Whether EPA has exceeded its authority under CAA section 111(d) in the Final Rule by subjecting existing fossil fuel-fired EGUs to performance rates that are more stringent than the concurrently-finalized performance standards under CAA section 111(b) for new sources in the same category.
6. Whether EPA has exceeded its authority under CAA section 111(d) in the Final Rule by depriving 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."
7. Whether EPA has violated the Tenth Amendment to the U.S. Constitution in the Final Rule by intruding on powers reserved to the States, such as the power to establish interstate energy policies, violating constitutional principles including federalism and separation of powers.
8. Whether EPA has impermissibly intruded on the exclusive authority of the Federal Energy Regulatory Commission to regulate the interstate electricity market in the Final Rule.
9. Whether the Final Rule is arbitrary or capricious because there is no record support for the achievability, by any individual unit in the category, of the emission rates that EPA established in the Rule for coal-fired units and natural gas combined cycle units.

10. Whether the Final Rule is arbitrary and capricious because, in establishing the emission rate for coal-fired units, EPA double-counted incremental generation from natural gas combined cycle units.

11. Whether the Final Rule is arbitrary and capricious due to miscalculations in the States' individual target emission rates as specified by EPA.

12. Whether the Final Rule is arbitrary, capricious, or otherwise contrary to law because it does not contain adequate provisions to ensure a reliable electricity supply under all reasonably foreseeable circumstances, such as during heat waves and periods of extreme cold or due to unanticipated failures or retirements of units.

13. Whether the Final Rule is arbitrary, capricious, or otherwise contrary to law because it does not exempt from its requirements coal- or gas-fired units that are owned by entities that do not own other units to which generation can be transferred or that cannot feasibly find replacement generation from lower-emitting or zero-emission generation sources.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was on the 18th day of December, 2015, served electronically through the Court's CM/ECF system on all registered counsel.

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