

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

NATIONAL ASSOCIATION OF HOME BUILDERS (“NAHB”)	)	
	)	
Petitioner,	)	
	)	
v.	)	<b>No. 15-1379</b>
	)	(Consolidated, Lead Case
	)	No. 15-1363)
UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and GINA MCCARTHY, Administrator, United States Environmental Protection Agency	)	
	)	
Respondents.	)	
	)	

**PETITIONER NATIONAL ASSOCIATION OF HOME BUILDERS’  
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 National Association of Home Builders (“NAHB”) 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 the Final Rule’s “state measures” plan 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.
4. Whether the Final Rule’s “Evaluation Measurement and Verification” requirements for demand-side energy efficiency projects are arbitrary and capricious.
5. Whether EPA contravened the Clean Air Act and the Administrative Procedure Act by failing to provide adequate notice of and opportunity to comment on the Clean Energy Incentive Program.

NAHB 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

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