

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF WEST VIRGINIA, et al.

Petitioners,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and REGINA A.
McCARTHY, Administrator, United States
Environmental Protection Agency**

Respondents.

Case No. 15-1363

**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**

Petitioners,

v.

**UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY and GINA
McCARTHY, Administrator, United States
Environmental Protection Agency**

Respondents.

**Case No. 15-1386
(consolidated with No.
15-1363 and other
consolidated cases)**

LUMINANT PETITIONERS' NON-BINDING STATEMENT OF ISSUES

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 (collectively, “Luminant Petitioners”), the Petitioners in Case No. 15-1386 (consolidated under Lead Case No. 15-1363), submit this non-binding statement of the issues in this proceeding challenging the final action of the Respondent United States Environmental Protection Agency (“EPA”) entitled *Carbon Pollution Emission Guidelines for Existing Sources: Electric Generating Units*, 80 Fed. Reg. 64,662 (Oct. 23, 2015) (“Final Rule”). The following is a nonexclusive and nonbinding list of issues that Luminant Petitioners may raise in this case:

1. Whether EPA’s Final Rule disproportionately penalizes Texas, among other states, for proactively investing in a diverse generation portfolio, including natural gas combined cycle (“NGCC”) units and renewables?
2. Whether EPA adequately considered costs in developing its standard of performance, as required by Section 111 of the Clean Air Act, in regard to the unique attributes of the Electric Reliability Council of Texas (“ERCOT”) market?
3. Whether EPA adequately demonstrated that its emission performance rates are achievable at Texas units, including Luminant’s units?
4. Whether EPA’s determination of the “best system of emission reduction” is adequately demonstrated for ERCOT or is arbitrary and capricious as applied to ERCOT?

- a. Whether EPA has demonstrated that the required heat rate improvements at affected sources are achievable at Texas units?
 - b. Whether EPA has adequately demonstrated that the shift in generation to NGCCs necessary under the Final Rule is achievable in Texas?
 - c. Whether EPA has adequately demonstrated that the additional amount of renewable generation required in Texas under the Final Rule can be developed and implemented in the timelines provided by EPA?
5. Whether EPA sufficiently considered reliability concerns for ERCOT, which is not interconnected with any other reliability regions?
 6. Whether EPA's state goal for Texas is arbitrary and capricious and contrary to law?
 7. Whether the Final Rule violates congressional intent to limit federal jurisdiction over the generation, transmission, and sale of electricity in the intrastate ERCOT market as expressed in the Federal Power Act, 16 U.S.C. § 824(a)–(b)?

Luminant Petitioners adopt and incorporate the Statement of Issues filed by the Utility Air Regulatory Group in Case No. 15-1370 as if fully set forth herein.

Luminant Petitioners submit these issues as a nonbinding statement only and reserve the right to raise other issues in merits briefing before the Court.

December 18, 2015

Respectfully submitted,

/s/ P. Stephen Gidiere III

P. Stephen Gidiere III

Counsel for Luminant Petitioners:

P. Stephen Gidiere III

Thomas L. Casey III

Julia B. Barber

Balch & Bingham LLP

1901 6th Ave. N., Ste. 1500

Birmingham, Alabama 35203

205-251-8100

sgidiere@balch.com

Stephanie Z. Moore

Vice President and

General Counsel

Luminant Generation

Company LLC

1601 Bryan Street

22nd Floor

Dallas, Texas 75201

Daniel J. Kelly

Vice President and

Associate General Counsel

Energy Future Holdings

Corp.

1601 Bryan Street

41st Floor

Dallas, Texas 75201

CERTIFICATE OF SERVICE

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

/s/ P. Stephen Gidiere, III
P. STEPHEN GIDIERE, III
Balch & Bingham LLP
1901 Sixth Avenue North
Suite 1500
Birmingham, AL 35303-4642
Tel: (205) 251-8100
sgidiere@balch.com