

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

LG&E AND KU ENERGY LLC,**Petitioner,****v.****UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,****Respondent.**

) No. 15-1418**) (consolidated with****) No. 15-1363 and****) other cases)****NONBINDING STATEMENT OF ISSUES OF
PETITIONER LG&E AND KU ENERGY LLC**

Petitioner LG&E and KU Energy LLC (“LKE”) submits this preliminary and nonbinding statement of issues in this proceeding to review the final rule of respondent United States Environmental Protection Agency (“EPA”) published at 80 Fed. Reg. 64,662 (Oct. 23, 2015), entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (the “Clean Power Plan Rule”).

1. Whether the Clean Power Plan Rule is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law because it imposes

compliance obligations that may be unachievable in practice for affected electric utility generating units owned and operated by LKE's operating companies.

2. Whether the Clean Power Plan Rule is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law because it establishes nationally applicable uniform emission performance rates that (a) are not a logical outgrowth of the proposed rule (which set emission rates on a state-by-state basis) and thus were not subject to notice and comment as required under the Clean Air Act, and (b) are not achievable at affected electric utility generating units owned and operated by LKE's operating companies.

3. Whether the Clean Power Plan Rule is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law because it establishes nationally applicable uniform emission performance rates based on assumptions about the future development of new renewable energy generating resources that (a) were not articulated in the proposal and thus not subject to notice and comment as required under the Clean Air Act, and (b) are not valid as applied to affected electric utility generating units owned and operated by LKE's operating companies.

4. Whether the Clean Power Plan Rule is arbitrary and capricious, an abuse of discretion or otherwise not in accordance with law because it establishes

nationally applicable uniform emission performance rates based on the assumption that generation from existing affected coal-fired units in Kentucky can be replaced by generation from gas-fired generating units or renewable energy generating facilities located anywhere within the Eastern Interconnection (comprised of all or parts of 39 eastern and midwestern states) where that assumption (i) was not articulated in the proposal and thus not subject to notice and comment as required under the Clean Air Act, (ii) was not a logical outgrowth of the proposed rule which set state-specific emission rates based on projected available replacement generation from facilities located solely within each state, and (iii) is not valid as applied to affected electric utility generating units owned and operated by LKE's operating companies.

LKE reserves the right to raise any additional issues in the briefs to be filed in these consolidated cases.

Respectfully submitted,

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Dated: December 18, 2015

CERTIFICATE OF SERVICE

I hereby certify that, on this 18th day of December, 2015, a copy of the foregoing Nonbinding Statement of Issues of Petitioner LG&E and KU Energy LLC was served electronically through the court's CM/ECF on all registered counsel.

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