

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

WEST VIRGINIA COAL ASSOCIATION,

Petitioners,

v.

Case No. 15-1422

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

(consolidated under No. 15-1363)

Respondents.

**WEST VIRGINIA COAL ASSOCIATION'S
NONBINDING STATEMENT OF ISSUES**

The West Virginia Coal Association (“WVCA”), Petitioner in Case No. 15-1422, submits this preliminary, nonbinding statement of issues:

1. Whether the Rule, which regulates existing power plants under CAA § 111(d), 42 U.S.C. § 7411(d), is unlawful because EPA has regulated the same power plants under CAA § 112, 42 U.S.C. § 7412.
2. Whether the Rule is a lawful outgrowth of the proposed rule.
3. Whether EPA has the authority to force States to favor certain sources of electricity rather than regulating power plants under CAA § 111(d), 42 U.S.C. § 7411(d).

4. Whether the Rule's exclusion of certain categories of sources of zero emission energy and sources of energy efficiency from the special incentives created under the Clean Energy Incentive Program is unlawful.
5. Whether the Rule allowing cap and trade as a compliance option for meeting a "performance standard" is unlawful.
6. Whether the Rule impermissibly intrudes on the exclusive authority of the Federal Energy Regulatory Commission to regulate the interstate electricity market.

Dated: 18 December 2015.

Respectfully submitted,

/s/Robert G. McLusky

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CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2015, one copy of the foregoing Nonbinding Statement of Issues was served upon all counsel of record through this Court's CM/ECF system.

/s/Robert G. McLusky

ROBERT G. McLUSKY