

ORAL ARGUMENT NOT YET SCHEDULED

No. 15-1366 (and consolidated cases)

**In the United States Court of Appeals
for the District of Columbia Circuit**

MURRAY ENERGY CORPORATION,

Petitioner,

v.

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

Respondents.

On Petition for Judicial Review of an Action of the
United States Environmental Protection Agency

STATEMENT OF ISSUES TO BE RAISED

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December 18, 2015

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MURRAY ENERGY CORPORATION STATEMENT OF ISSUES

Pursuant to this Court's Orders of October 29, 2015, and November 30, 2015, Petitioner Murray Energy Corporation submits this non-binding statement of issues to be raised in this proceeding challenging EPA's final rule promulgating an emission guideline for carbon emissions from existing coal and natural gas power plants.

EPA's rule is arbitrary, capricious, an abuse of discretion, and unlawful because:

1. EPA subjects existing coal-fired power plants that are already regulated under the Clean Air Act Section 112 national standard program to additional regulation under the Clean Air Act Section 111(d) state-by-state standard program.
2. EPA transforms the limited Section 111(d) program into a national standard program by eliminating state authority to consider remaining useful life and other factors to ensure the standards are technically achievable, relying entirely on inapplicable language from a 1995 regulation.
3. EPA requires standards that cannot be achieved by fossil fuel power plants, and forces the curtailment or closure of plants, and forces a shift in power generation to EPA-preferred sources.
4. EPA subjects existing fossil fuel power plants to performance rates under Section 111(d) that are more stringent than the performance standards under Section 111(b) for new sources in the same category.
5. EPA's interpretation of Section 111(d) is an unconstitutional delegation of legislative power because it disregards the statute's only intelligible principle guiding the agency's discretion and asserts unbridled authority for EPA to dictate methods of generating electricity.

6. EPA's interpretation of Section 111(d) violates principles of federalism and separation of powers, and infringes upon on the States' rights under the Tenth Amendment and the Federal Power Act.
7. EPA intrudes on the exclusive authority of the Federal Energy Regulatory Commission to regulate the interstate electricity market.

Petitioner reserves the right to present and argue any other issues that have been preserved for judicial review or that arise during these proceedings.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing STATEMENT OF ISSUES TO BE RAISED has been served electronically by Petitioner, Murray Energy Corporation, through the Court's CM/ECF system on all ECF registered counsel.

/s/ Geoffrey K. Barnes

Geoffrey K. Barnes

December 18, 2015