

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

AMERICAN COALITION FOR CLEAN)
COAL ELECTRICITY,)

Petitioner,)

v.)

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

Case No. 15-1368

STATEMENT OF NONBINDING ISSUES OF PETITIONER
AMERICAN COALITION FOR CLEAN COAL ELECTRICITY

Pursuant to this Court’s Orders dated October 29, 2015 and November 30, 2015, Petitioner American Coalition for Clean Coal Electricity (“ACCCE”) submits this Nonbinding Statement of Issues to be raised in this proceeding regarding the final EPA action “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units,” published in the Federal Register at 80 Fed. Reg. 64,662 (Oct. 23, 2015).

1. Did EPA exceed its authority by issuing regulations for existing coal-fired power plants under Section 111(d) of the Clean Air Act (“CAA”), 42 U.S.C. § 7411(d), when it has already regulated those same plants under Section 112 of the CAA, 42 U.S.C. § 7412?

2. Did EPA exceed its authority under CAA Section 111(d), 42 U.S.C. § 7411(d), by issuing a rule that is explicitly designed to take a certain amount of business away from some sources and award it to other sources preferred by EPA?
3. Did EPA exceed its authority under CAA Section 111(d), 42 U.S.C. § 7411(d), by establishing requirements “for any existing source” based on the “best system of emission reduction” for controlling emissions from the U.S. electricity system as a whole rather than on the “best system of emission reduction” for controlling emissions from a regulated facility?
4. Did EPA exceed its authority under CAA Section 111(d), 42 U.S.C. § 7411, by defining the “best system of emission reduction” for controlling emissions from “any existing source” to include measures, such as changing the way electricity is dispatched, that cannot be adopted or implemented by any existing source?
5. Did EPA exceed its authority under CAA Section 111(d), 42 U.S.C. § 7411(d), by establishing requirements “for any existing source” that cannot be achieved by any existing source through either technological or operational measures that limit the amount of carbon dioxide (“CO₂”) generated by that source when it is in operation?

6. Did EPA exceed its authority under CAA Section 111(d), 42 U.S.C. § 7411(d), by issuing a rule that renders meaningless the statutory requirement that States shall be permitted, when “applying a standard of performance to any particular source” . . . “to take into consideration, among other factors, the remaining useful life of the existing source to which such standard applies”?
7. Was EPA’s failure to establish subcategories for different coal types by CO₂ emission performance characteristics when establishing the standards of performance arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law?

Respectfully submitted,

Date: December 18, 2015

/s/ Jeffrey R. Holmstead

Jeffrey R. Holmstead
DC Bar Number: 457974

Sandra Y. Snyder
DC Bar Number: 981418

Bracewell & Giuliani LLP
2000 K Street, N.W., Suite 500
Washington, D.C. 20006-1872
(202) 828-5800 (Telephone)
(202) 857-4812 (Facsimile)

*Counsel for Petitioner American Coalition for Clean
Coal Electricity*

CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I hereby certify that I have this day caused the foregoing “Statement of Nonbinding Issues Of Petitioner American Coalition For Clean Coal Electricity” to be served electronically through the Court’s CM/ECF system on all ECF registered counsel. I further certify that a copy has been served by first-class U.S. mail on the following:

Ms. Janice M. Alward
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007-2927

Mr. Ben H. Stone
Balch & Bingham LLP
1310 Twenty Fifth Avenue
Gulfport, MS 39501-1931

Ms. Janet F. Wagner
Arizona Corporation Commission
1200 West Washington
Phoenix, AZ 85007-2927

Mr. Karl Roy Moor
Southern Company Services, Inc.
600 18th Street, North 15N
Birmingham, AL 35203

Mr. Laurence H. Tribe
Harvard Law School
1563 Massachusetts Avenue
Cambridge, MA 02138

Mr. Luther J. Strange, III
Office of the Attorney General, State
of Alabama
501 Washington Avenue
Montgomery, AL 36130

Mr. Kelvin Allen Brooks
Office of the Attorney General, State
of New Hampshire
33 Capitol Street
Concord, NH 03301-6397

Mr. David Finley Crabtree
Deseret Power
10714 South Jordan Gateway
South Jordan, UT 84092

Ms. Karen R. Harned
National Federation of Independent
Business
1201 F Street, NW
Suite 200
Washington, DC 20004

Mr. Gary Vergil Perko
Hopping Green & Sams
119 South Monroe Street
Suite 300
Tallahassee, FL 32301

Tannis Fox
Office of the Attorney General
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501

Carrie Noteboom
New York City Law Department
100 Church Street
New York, NY 10007

Bill Spears
Segrest & Segrest, P.C.
18015 West Highway 84
McGregor, TX 76657

Patrick Burchette
Holland & Knight LLP
800 17th Street, NW
Suite 1100
Washington, DC 20006-6801

Date: December 18, 2015

Steven J. Oberg
Lynn, Jackson, Shultz & Lebrun, P.C.
PO Box 8250
Rapid City, SD 57709

William F. Cooper
State of Hawaii Department of the
Attorney General
425 Queen Street
Honolulu, HI 96813

Jacob Larson
Environmental Law Division
321 E. 13th Street, Room 18
Des Moines, IA 50319

Thiruvendran Vignarajah
Office of the Attorney General, State
of Maryland
200 St. Paul Place
20th Floor
Baltimore, MD 21202-2021

Philip Zoebisch
28 W. Madison Avenue
Collingswood, NJ 08108

/s/ Jeffrey R. Holmstead

Jeffrey R. Holmstead
DC Bar Number: 457974