

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

STATE OF NORTH DAKOTA

Petitioners,

v.

UNITED STATES ENVIRONMENTAL  
PROTECTION AGENCY,

Respondent.

Case No. 15-1380  
Lead Case No. 15-1363  
(and consolidated cases)**PETITIONER STATE OF NORTH DAKOTA'S STATEMENT OF ISSUES  
TO BE RAISED**STATE OF NORTH DAKOTA  
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In accordance with this Court's Orders of October 29, 2015 and November 30, 2015 and D.C. Circuit Rules 15(c)(3) and 28(a)(1), Petitioner State of North Dakota submits this non-binding Statement of Issues to be raised in this case in challenging the Final Rule issued by the U.S. Environmental Protection Agency ("EPA"), entitled "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) ("Final Rule"). North Dakota expects to raise the following issues:

1. Whether the Final Rule violates Section 111(d) of the Clean Air Act ("CAA") by establishing stringent compliance requirements for existing Electric Utility Generating Units because they are already regulated under CAA § 112.
2. Whether the EPA has exceeded its authority Section 111 (42 U.S. C. § 7411) by imposing binding CO<sub>2</sub> emission reduction requirements on North Dakota by adopting CAA § 111(d) regulations for a source category without first adopting corresponding regulations for that source category under CAA § 111(b).
3. Whether the EPA has exceeded its authority under Section 111 (42 U.S. C. § 7411) by establishing federally enforceable measures that apply to facilities that are not in the regulated source category.
4. Whether the Final Rule improperly deprives North Dakota of authority to consider the remaining useful lives of regulated sources.

5. Whether EPA's determination of what constitutes a Best System of Emissions Reduction ("BSER") for all existing power plants on a state-wide basis is an abuse of discretion.
6. Whether EPA's establishment of a BSER analysis and standards of performance is arbitrary, capricious, an abuse of discretion, or not otherwise in accordance with law.
7. Whether EPA abused its discretion by attempting to force North Dakota to amend its laws to enforce EPA's requirements in the Final Rule, and in doing so, is effectively dictating the sovereign legislative power of North Dakota.
8. Whether Final Rule violates Section 111(d) by establishing specific standards of performance and requiring submittal of state implementation plans that meet those performance standards and are legally enforceable.
9. Whether the Final Rule is unlawful because it is not a logical outgrowth of the Rule as it was proposed.
10. Whether EPA properly promulgated the Final Rule due to failure to provide proper notice and comment.

North Dakota reserves the right to supplement these issues in subsequent submissions.

Dated: December 18, 2015

Respectfully submitted,

By: /s/Paul M. Seby

Paul M. Seby

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By: /s/Margaret Olson

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**CERTIFICATE OF SERVICE**

I hereby certify that on December 18, 2015, I electronically filed the foregoing **Statement of Issues to be Raised** with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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