

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

ASSOCIATION OF AMERICAN)
RAILROADS,)
)
Petitioner,)
)
v.)
)
UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)
)
Respondent.)
)

Case No. 15-1383
December 18, 2015

(consolidated under No. 15-1363)

ASSOCIATION OF AMERICAN RAILROADS
NONBINDING STATEMENT OF ISSUES

The Association of American Railroads (“AAR”), Petitioner in Case No. 15-1383, submits this preliminary, nonbinding statement of issues:

1. Whether the United States Environmental Protection Agency’s Rule, *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Rule*, 80 Fed. Reg. 64662 (Oct. 23, 2015) (the “Rule”), is arbitrary and capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act (“CAA”), the Administrative Procedure Act (“APA”), or other law.
2. Whether the EPA’s Rule is unlawful and otherwise not in accordance with the CAA because the Rule’s standards are premised on and attempt to regulate activities beyond those taken at individual sources, contrary to the text, structure, and history of the CAA.
3. Whether EPA’s Rule is unlawful because it attempts to establish standards of “non-

performance” by forcing sources to curtail operations or shutter entirely, rather than comply with the “standards of performance” required by Section 111(d) of the CAA, 42 U.S.C. § 7411(d).

4. 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.

5. Whether EPA’s threat that it will seize control over the States’ energy economies if they do not submit state plans violates the States’ rights under the Tenth Amendment and the Federal Power Act, 16 U.S.C. § 824(a).

6. Whether the Rule impermissibly intrudes on the exclusive authority of the Federal Energy Regulatory Commission to regulate the interstate electricity market.

Dated: December 18, 2015

Respectfully submitted,

/s/ Kathryn D. Kirmayer
General Counsel

Evelyn R. Nackman
Associate General Counsel

Association of American Railroads
425 3rd Street SW
Washington, DC 20024
(202) 639-2100

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2015, I caused the foregoing Nonbinding Statement of Issues to be served on counsel of record by means of the Court's CM/ECF system.

/s/ Kathryn D. Kirmayer