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

ENTERGY CORPORATION Petitioner, v. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and GINA MCCARTHY, Administrator, United States Environmental Protection Agency Respondents.	**No. 15-1413** (Consolidated, Lead Case No. 15-1363)

PETITIONER ENTERGY CORPORATION'S PRELIMINARY AND NONBINDING STATEMENT OF ISSUES

Pursuant to the Court's orders of November 13, 2015, ECF No. 1583626, and November 30, 2015, ECF No. 1585786, Petitioner Entergy Corporation ("Entergy"), hereby submits this preliminary and nonbinding statement of issues.

1. Whether the Environmental Protection Agency ("EPA" or the "agency"), in the final rule entitled "*Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*," 80 Fed. Reg. 64,661 (Oct. 23, 2015) ("Final Rule"), improperly defined "best system of emission reduction" ("BSER") under Section 111(d) of the Clean Air Act (the "Act")

to provide the agency with unfettered authority to regulate the Nation's entire electric grid.

2. Whether in the Final Rule EPA improperly failed to articulate any definable limit to the agency's purported regulatory authority under Section 111(d) of the Act.

3. Whether in the Final Rule EPA exceeded its authority under Section 111(d) of the Act by defining the "best system of emission reduction" for existing fossil fuel-fired electric utility generating units ("EGUs") to include measures that cannot be implemented at the sources themselves.

4. Whether in the Final Rule EPA improperly set rate-based performance standards based on an assumed level of renewable energy that has the effect of increasing system-wide carbon emissions.

5. Whether in the Final Rule EPA improperly interpreted "source" under Section 111(d) of the Act to include owners, grid operators, and combinations of sources, including sources (e.g., renewable generation sources) that are outside the scope of the "stationary source" category defined in Section 111(a) of the Act.

6. Whether in the Final Rule EPA exceeded its authority under Section 111(d) of the Act by establishing "standards of performance for any existing" fossil fuel-fired EGU that require the curtailment or closure of affected facilities

and a shift to (i.e., displacement by) EPA-preferred replacement generation sources that are lower- or non-emitting, such as wind, solar, geothermal, and hydroelectric power, rather than relying on feasible improvements in emissions performance of existing fossil fuel-fired EGUs.

7. Whether in the Final Rule EPA improperly failed to set performance rate standards under Section 111(d) of the Act that are based on a system that is "adequately demonstrated" for existing affected EGUs.

8. Whether in the Final Rule EPA arbitrarily and capriciously established emission rate performance standards for fossil generating units based on the utilization of renewable energy.

9. Whether in the Final Rule EPA improperly imposed on Arkansas, Louisiana, Mississippi, Texas, and other states performance standards that are not achievable by those states utilizing the "system" identified as EPA's definition of best system of emission reduction.

10. Whether EPA acted contrary to Congressional intent by setting standards for existing source EGUs in the Final Rule that are more stringent than the standards EPA is setting for new source EGUs in the final rule entitled "*Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units*," 80 Fed. Reg. 64,510 (Oct. 23, 2015).

11. Whether in the Final Rule EPA exceeded its authority under Section 111(d) of the Act by depriving states of their authority under Section 111(d)(1) "in 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."

12. Whether EPA's Final Rule is unlawful as a threshold matter because Section 111(d) of the Act prohibits EPA from regulating EGUs because those sources are already regulated under Section 112 of the Act.

13. Whether EPA's Final Rule is unlawful as a threshold matter because it engages in regulatory activities that Congress has preserved as the exclusive province of state public utility commissions.

14. Whether the Final Rule's "state measures" state plan type option unlawfully purports to allow EPA to adopt state law measures that apply to entities other than affected EGUs -- and thus are outside the scope of the Act -- as federal law.

15. Whether the Final Rule's "leakage" requirement for mass-based state plans is unlawful because it attempts to regulate the operation of non-affected EGUs and makes mass-based programs more stringent than rate-based plans.

16. Whether EPA's decision in the Final Rule to exclude all existing hydro and nuclear generation and to not credit wind and solar renewable energy

generation sources or nuclear uprates constructed before 2013 for compliance under rate-based plans is arbitrary and capricious.

17. Whether EPA contravened the Clean Air Act and the Administrative Procedure Act by failing to provide adequate notice of and opportunity to comment on the requirement that mass-based state plans must address "leakage" to non-affected EGUs.

18. Whether EPA contravened the Clean Air Act and Administrative Procedure Act by failing to provide adequate notice and opportunity to comment on the methodology for determining "equivalence" between the mass- and rate-based performance standards.

19. Whether EPA exceeded its authority under Section 111(d) of the Act by regulating EGUs that undergo a modification that results in an hourly increase in carbon dioxide emissions of 10 percent or less.

20. Whether EPA contravened the Clean Air Act and Administrative Procedure Act by failing to provide adequate notice and opportunity to comment on the mass-based goals for Arkansas, Louisiana, Mississippi, Texas, and other states.

21. Whether EPA contravened the Clean Air Act and Administrative Procedure Act by failing to provide adequate notice and opportunity to comment on the "new unit complement" to the mass-based goals for Arkansas, Louisiana,

Mississippi, Texas, and other states.

Entergy reserves its right to modify or supplement this statement of issues, as well as to address these and other issues in more detail in future pleadings.

December 18, 2015

Respectfully submitted,

/s/ William M. Bumpers
William M. Bumpers
Megan H. Berge
Baker Botts L.L.P.
1299 Pennsylvania Ave., NW
Washington, DC 20004
(202) 639-7700
william.bumpers@bakerbotts.com
megan.berge@bakerbotts.com

Kelly McQueen
Entergy Services, Inc.
425 W. Capitol Ave., 27th Floor
Little Rock, AR 72201
(501) 377-5760
kmcque1@entergy.com

Counsel for Entergy Corporation

CERTIFICATE OF SERVICE

I hereby certify that on this 18th day of December, 2015, I caused a copy of the foregoing to be served by the Court's CM/ECF System on all counsel of record in this matter who have registered with the CM/ECF System.

/s/ Megan H. Berge
Megan H. Berge