

ORAL ARGUMENT HELD SEPTEMBER 27, 2016**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WEST VIRGINIA, ET AL.,)	
)	
Petitioners,)	
)	
v.)	No. 15-1363 (and
)	consolidated cases)
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, ET AL.,)	
)	
Respondents.)	

EPA STATUS REPORT

Pursuant to this Court’s orders of June 26, 2018 (Doc. No. 1737735) and January 24, 2019 (Doc. No. 1769953), Respondents United States Environmental Protection Agency, et al. (“EPA”), hereby provide their scheduled 30-day status report.

1. This litigation involves petitions for review of an EPA rule promulgating emission guidelines for states to follow in developing implementation plans to reduce greenhouse gas emissions from power plants. 80 Fed. Reg. 64,662 (Oct. 23, 2015) (“the Rule” or “the Clean Power Plan”). Oral argument was held before this Court, sitting en banc, on September 27, 2016.

2. The President on March 28, 2017, issued an Executive Order directing EPA to review the Rule in accordance with certain new policies and instructing the agency to conclude any appropriate rulemaking to repeal or revise the Rule “as soon as practicable.” 82 Fed. Reg. 16,093, 16,095. In accordance with that Executive Order, the EPA Administrator on March 28, 2017, announced EPA’s review of the Rule, 82 Fed. Reg. 16,329, 16,329 (Apr. 4, 2017), and EPA filed a motion on March 28, 2017, to hold these cases in abeyance pending completion of EPA’s review and any resulting forthcoming rulemaking. Doc. No. 1668274.

3. By order dated April 28, 2017, this Court held the cases in abeyance for 60 days and directed EPA to file status reports at 30-day intervals from the date of the order. Doc. No. 1673071. The Court has subsequently issued five additional orders likewise holding the case in abeyance for 60-day intervals and directing EPA to file status reports at 30-day intervals. *See* August 8, 2017 Order (Doc. No. 1687838); November 9, 2017 Order (Doc. No. 1703889); March 1, 2018 Order (Doc. No. 1720228); June 26, 2018 Order (Doc. No. 1737735); December 21, 2018 Order (Doc. No. 1765562).¹

4. On August 20, 2018, EPA Acting Administrator Andrew R. Wheeler signed the proposed “Affordable Clean Energy Rule” (“the ACE Rule Proposal”).

¹ On January 24, 2019, the Court granted EPA’s motion, in light of a lapse in appropriations, to extend the deadline to file a 30-day status report until 14 days of the date that appropriations are restored. They were restored on January 25, 2019.

The ACE Rule Proposal contains proposed replacement section 111(d) emission guidelines premised on an alternative regulatory approach to that set forth in the Clean Power Plan.

5. The ACE Rule Proposal was published in the Federal Register. 83 Fed. Reg. 44,746 (Aug. 31, 2018). EPA held a public hearing on October 1, 2018, in Chicago, Illinois. 83 Fed. Reg. 45,588 (Sep. 10, 2018). The comment period closed on October 31, 2018, and EPA is currently reviewing the comments submitted. From December 28, 2018, through January 25, 2019, EPA's ongoing work to review the public comments and complete final rulemaking was delayed due to a lapse in appropriations.

6. EPA's review of the Clean Power Plan continues to be a high priority for the Agency, and EPA is committed to completing final rulemaking action as expeditiously as practicable. EPA's intention and expectation is that the Agency will be in a position to take final action in the second quarter of 2019.

7. For the reasons set forth in EPA's March 28, 2017, motion for abeyance and in EPA's September 14, 2018, response to Intervenors' motion to decide merits of case, these cases should continue to be held in abeyance pending the conclusion of rulemaking.

Respectfully submitted,

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DATED: March 11, 2019

BY: /s/ Eric G. Hostetler
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CERTIFICATE OF SERVICE

I hereby certify that copies of the foregoing Status Report have been served through the Court's CM/ECF system on all registered counsel this 11th day of March, 2019.

/s/ Eric G. Hostetler
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