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Oral Argument Scheduled for October 8, 2020

August 25, 2020

VIA ELECTRONIC FILING

The Hon. Mark J. Langer
Clerk of Court
United States Court of Appeals
for the District of Columbia Circuit
Room 5523
333 Constitution Avenue, N.W.
Washington, D.C. 20001-2866

Re: *American Lung Association, et al. v. EPA, et al.*: No. 19-1140 (and consolidated cases); EPA Response to Petitioners' August 17, 2020 Letter

Dear Mr. Langer:

Respondents United States Environmental Protection Agency et al. (EPA) hereby address Coal Industry Petitioners' August 17, 2020, 28(j) Letter, ECF No. 1856940. This letter discusses EPA's recent Clean Air Act Section 111(b) rule regulating new sources in the oil and gas sector (the Oil and Gas Rule). The Oil and Gas Rule does not bear upon the ACE Rule.

Coal Industry Petitioners assert the ACE Rule is unlawful because EPA purportedly did not make an "endangerment finding" determining that carbon dioxide emissions from coal-fired power plants "cause or contribute significantly" to dangerous air pollution. As explained in EPA's brief (pp.162-63), Section 111(d) rules like the ACE Rule do not require an endangerment finding. To promulgate an existing source rule under Section 111(d), EPA need only show that it previously adopted a rule for new sources in the same source category. EPA did

so for coal-fired power plants. *See* 80 Fed. Reg. 64,510 (Oct. 23, 2015). The predicate New Source Rule is under review in a separate proceeding. *North Dakota v. EPA*, No. 15-1381 (D.C. Cir.). Notably, the Coal Petitioners in this case did not challenge that rule.

In the Oil and Gas Rule, EPA discusses when it is appropriate for the Agency to find that emissions of a pollutant from a source category “contribute[] significantly” for a Section 111(b) endangerment finding. But that discussion has no relevance here, as the ACE Rule is not a Section 111(b) rule. The Oil and Gas Rule did not revoke the New Source Rule that is the predicate for the ACE Rule.

EPA notes that it is engaged in a separate, ongoing rulemaking to revise the New Source Rule for coal-fired power plants. Within that proceeding, EPA can address any comments on the correctness of its interpretations and determinations with the endangerment finding it made regarding carbon dioxide for power plants (which the Oil and Gas Rule did not address). *See* 83 Fed. Reg. 65,424, 65,432, n.13.

Sincerely,

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD

cc: Counsel of record, via CM/ECF

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Federal Rule of Appellate Procedure 28(j) because it contains approximately 349 words according to the count of Microsoft Word and therefore is within the word limit of 350 words.

Dated: August 25, 2020

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD

CERTIFICATE OF SERVICE

I hereby certify that on August 25, 2020, I electronically filed the foregoing Rule 28(j) response letter with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Meghan E. Greenfield
MEGHAN E. GREENFIELD