

IN THE UNITED STATES COURT OF APPEALS
FOR THE TENTH CIRCUIT

STATE OF OKLAHOMA, *et al.*,

Appellants,

v.

GINA MCCARTHY, *et al.*,

Appellees.

No. 15-5066

Consent Motion for Voluntary Dismissal of Appeal

Pursuant to Rule 42(b), Appellants State of Oklahoma and Oklahoma Department of Environmental Quality (“Oklahoma”) respectfully move to dismiss their appeal in this case, with each side to bear its own costs.

In support of this motion, Oklahoma states as follows:

1. On July 1, 2015, Oklahoma filed a complaint and motion for a preliminary injunction seeking to enjoin Appellees from regulating existing electric utility generating units under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d), and from taking any action in furtherance of or to enforce such regulation.

2. On July 17, 2015, the United States Court for the Northern District of Oklahoma dismissed Oklahoma’s complaint for lack of jurisdiction.

3. Oklahoma appealed on July 20, 2015, and subsequently moved this Court for a stay pending appeal. This Court denied Oklahoma’s motion on August 24, 2015.

4. Because this Court denied Oklahoma’s stay motion, Appellees will promulgate a final rule regulating existing electric utility generating units within the next several months, prior to the time that this Court could address the merits of this appeal. Promulgation of a final rule will vest exclusive jurisdiction over Appellees’ actions in the D.C. Court of Appeals, 42 U.S.C. § 7606(b)(1), and deprive this Court of continuing jurisdiction.

Accordingly, Oklahoma moves to dismiss this appeal, with each side to bear its own costs. Appellees consent to this relief.

Conclusion

The Court should order this appeal dismissed pursuant to Rule 42(b), with each side to bear its own costs.

Dated: September 18, 2015

Respectfully submitted,

/s/ David B. Rivkin, Jr.
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CERTIFICATE OF COMPLIANCE

I hereby certify that no privacy redactions are required with regard to the foregoing. I further certify that, on September 18, 2015, I scanned the foregoing and all exhibits thereto for viruses using the current online edition of VirusTotal, and, according to that program, they are free of viruses.

By: David B. Rivkin, Jr.
David B. Rivkin, Jr.

CERTIFICATE OF SERVICE

I hereby certify that on September 18, 2015, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Tenth Circuit by using the Court's ECF system. Service was accomplished on the following by the ECF system:

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