

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 order of June 26, 2018 (Doc. No. 1737735), Respondents United States Environmental Protection Agency, et al. (“EPA”), hereby provide the following scheduled 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 existing fossil-fuel fired electric generating units. 80 Fed. Reg. 64,662 (Oct. 23, 2015) (“the Rule” or “the Clean Power Plan”).

2. The Supreme Court granted Petitioners’ applications for a stay of the Rule pending judicial review on February 9, 2016. Order, West Virginia v. EPA, No.

15A773. Following full merits briefing, oral argument was held before this Court, sitting en banc, on September 27, 2016.

3. Following the change in Administration, 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.

4. 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. Id. The Court further directed the parties to file supplemental briefs by May 15, 2017, addressing “whether these consolidated cases should be remanded to the agency rather than held in abeyance.” Doc. No. 1673071. The Court has subsequently issued four additional orders, all on the court’s own motion, 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).

5. On October 10, 2017, the Administrator signed a Federal Register notice proposing to repeal the Clean Power Plan on the grounds that it exceeds EPA's statutory authority under a proposed change in the Agency's interpretation of section 111 of the Clean Air Act, 42 U.S.C. § 7411. The period for public comment on this proposal closed on April 26, 2018.

6. EPA has also been developing proposed replacement section 111(d) emission guidelines for existing electric utility generating units that would implement an alternative regulatory approach to that set forth in the Clean Power Plan. On December 18, 2017, the Administrator signed an Advance Notice of Proposed Rulemaking ("ANPR") soliciting information on systems of emission reduction that are in accord with the revised legal interpretation proposed by EPA. 82 Fed. Reg. 61,507 (Dec. 28, 2017). The comment period for the ANPR closed on February 26, 2018.

7. Since the last status report was filed, EPA has completed its review of the over 270,000 comments received on the ANPR, and consistent with EPA's standard rulemaking process, EPA on July 9, 2018, submitted a draft Notice of Proposed Rulemaking ("NPRM") to the Office of Management and Budget ("OMB") for interagency review. Interagency review is the last major step in the proposal development process before the proposed rule package can be signed by the EPA Administrator and sent to the Federal Register for publication and public comment. While interagency review can take up to 90 days, the Agency has requested that OMB

expedite the interagency review process, and hopes to complete the interagency review process in August.

8. The Clean Power Plan replacement rulemaking is a high priority for the Agency, and EPA is committed to completing it as expeditiously as practicable. EPA's intention and expectation is that the NPRM will be published in the Federal Register by late summer or early fall so that the Agency will be in a position to take final action on the NPRM by the first part of 2019.

9. For the reasons set forth in EPA's March 28, 2017 Motion to Hold Cases in Abeyance (Doc. No. 1668274) and May 15, 2017 Supplemental Brief in Support of Abeyance (Doc. No. 1675243), these cases should remain in abeyance pending the conclusion of this high priority rulemaking, which the Agency is committed to completing expeditiously.

Respectfully submitted,

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DATED: July 26, 2018

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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 26th day of July, 2018.

/s/ Eric G. Hostetler
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