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. UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, ET AL., Respondents.	No. 15-1363 (and consolidated cases)

EPA STATUS REPORT

Pursuant to this Court's order of April 5, 2019 (Doc. No. 1781428), 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 six 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); April 5, 2019 Order (Doc. No. 1781428).

4. On August 20, 2018, EPA Acting Administrator Andrew R. Wheeler signed the proposed "Affordable Clean Energy Rule" ("the ACE Rule Proposal"). 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. On April 26, 2019, EPA sent a draft of the final rulemaking package to OMB for interagency review, which is ongoing. Since the filing of the last status report, EPA has continued to work to complete final rulemaking action.

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. The interagency review process is almost complete, and EPA's intention and expectation is that the Agency will be in a position to take final action in June 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: June 5, 2019 BY: */s/ Chloe H. Kolman*

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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 5th day of June, 2019.

/s/ *Chloe H. Kolman*
Counsel for Respondent