

ORAL ARGUMENT NOT YET SCHEDULED**UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NORTH DAKOTA

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. 15-1381
(and consolidated cases)**PETITIONER STATE OF NORTH DAKOTA'S STATEMENT OF ISSUES
TO BE RAISED**STATE OF NORTH DAKOTA
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In accordance with this Court's Order of October 28, 2015 and D.C. Circuit Rules 15(c)(3) and 28(a)(1), Petitioner State of North Dakota submits this non-binding statement of issues to be raised in this case.

1. Whether the Final Rule violates Section 111(b) of the Clean Air Act (CAA) by establishing emission standards of performance for new and modified and reconstructed Electric Generating Units (EGUs) based on a technology or technologies that have not been adequately demonstrated and are not achievable, as required by CAA Section 111(b)?

2. Whether EPA's reliance in the Final Rule on separate alleged "demonstrations" of the individual components of the technology or technologies on which the agency purports to rely violates CAA Section 111(b) or whether EPA has abused the agency's discretion by relying on such component demonstrations?

3. Whether EPA abused its discretion by failing to create a separate subcategory for lignite coal in the Final Rule and by failing to recognize regional variability of fuels?

4. Whether the Final Rule creates an unconstitutional taking of property interests that can be avoided by an interpretation that is more consistent with the plain text of the rule and more consistent with past practice?

5. Whether the Final Rule violates the Energy Policy Act of 2005?

Dated this 27th day of November, 2015.

Respectfully submitted,

By: /s/Paul M. Seby

Paul M. Seby

Special Assistant Attorney General

State of North Dakota

Counsel for Petitioner State of North Dakota

CERTIFICATE OF SERVICE

I hereby certify that on November 27, 2015, I electronically filed the foregoing **Statement of Issues to be Raised** with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

By: /s/Paul M. Seby

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