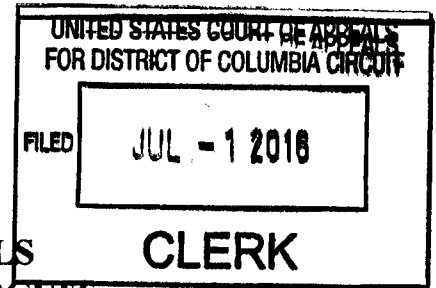


JUL - 1 2016

RECEIVED

IN THE
UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT



STATE OF WEST VIRGINIA,
STATE OF ALABAMA,
STATE OF ARIZONA CORPORATION
COMMISSION,
STATE OF ARKANSAS,
STATE OF FLORIDA,
STATE OF GEORGIA,
STATE OF INDIANA,
STATE OF KANSAS,
COMMONWEALTH OF KENTUCKY,
STATE OF LOUISIANA,
STATE OF LOUISIANA DEPARTMENT
OF ENVIRONMENTAL QUALITY,
ATTORNEY GENERAL BILL SCHUETTE,
People of Michigan,
STATE OF MISSOURI,
STATE OF MONTANA,
STATE OF NEBRASKA,
THE NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY,
STATE OF OHIO,
STATE OF OKLAHOMA,
STATE OF SOUTH CAROLINA,
STATE OF SOUTH DAKOTA,
STATE OF TEXAS,
STATE OF UTAH,
STATE OF WISCONSIN, and
STATE OF WYOMING,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,
and REGINA A. MCCARTHY, Administrator,
United States Environmental Protection Agency,

Respondents.

PETITION FOR REVIEW

Case No. 16-1220


The States of West Virginia, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, the People of Michigan, the Arizona Corporation Commission, the Louisiana Department of Environmental Quality, and the North Carolina Department of Environmental Quality hereby petition this Court, pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure, Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), and 5 U.S.C. § 702, for review of the final action (“Final Action”) of the United States Environmental Protection Agency (“EPA”) denying petitions for reconsideration of the “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units,” 80 Fed. Reg. 64,510 (Oct. 23, 2015). Notice of the Final Action was published in the Federal Register at 81 Fed. Reg. 27,442 (May 6, 2015), titled “Reconsideration of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.” EPA described the full basis for the Final Action in a separate memorandum. *See* EPA-HQ-OAR-2013-0495-11918.

This Court has jurisdiction, and is a proper venue for this action, under 42 U.S.C. § 7607(b)(1).

Petitioners will show that the Final Action is in excess of the agency's statutory authority and otherwise is arbitrary, capricious, an abuse of discretion and not in accordance with law. Accordingly, Petitioners ask the Court to hold unlawful and set aside the Final Action, and to order other such relief as may be appropriate. *See* 42 U.S.C. § 7607(d).

Dated: July 1, 2016

Respectfully submitted,



Patrick Morrisey
ATTORNEY GENERAL OF WEST
VIRGINIA
Elbert Lin
Solicitor General
Counsel of Record
J. Zak Ritchie
Katlyn M. Miller
Assistant Attorneys General
State Capitol Building 1, Room 26-E
Charleston, WV 25305
Tel: (304) 558-2021
Fax: (304) 558-0140
elbert.lin@wvago.gov

*Counsel for Petitioner State of West
Virginia*

Andrew Brasher
(w/permission Kathy Miller)

Luther Strange

ATTORNEY GENERAL OF ALABAMA

Andrew Brasher

Solicitor General

Counsel of Record

501 Washington Avenue

Montgomery, AL 36130

Tel: (334) 353-2609

abrasher@ago.state.al.us

Counsel for Petitioner State of Alabama

John R. Lopez IV
(w/permission Kathy Miller)

Mark Brnovich

ATTORNEY GENERAL OF ARIZONA

John R. Lopez IV

Counsel of Record

Dominic E. Draye

Keith Miller

Assistant Attorneys General

Maureen Scott

Janet Wagner

Janice Alward

Arizona Corp. Commission,

Staff Attorneys

1275 West Washington

Phoenix, AZ 85007

Tel: (602) 542-5025

john.lopez@azag.gov

dominic.draye@azag.gov

keith.miller@azag.gov

Counsel for Petitioner Arizona

Corporation Commission

Lee Rudofsky
(w/permission Kathy Miller)

Leslie Rutledge

ATTORNEY GENERAL OF ARKANSAS

Lee Rudofsky

Solicitor General

Counsel of Record

Jamie L. Ewing

Assistant Attorney General

323 Center Street, Suite 400

Little Rock, AR 72201

Tel: (501) 682-5310

jamie.ewing@arkansasag.gov

Counsel for Petitioner State of Arkansas

Jonathan F. Williams
(w/permission Kathy Miller)

Pamela Jo Bondi

ATTORNEY GENERAL OF FLORIDA

Jonathan L. Williams

Deputy Solicitor General of Florida

Counsel of Record

Jonathan A. Glogau

Special Counsel

Office of the Attorney General

PL-01, The Capitol

Tallahassee, FL 32399-1050

Tel: (850) 414-3681

Fax: (850) 410-2672

allen.winsor@myfloridalegal.com

Counsel for Petitioner State of Florida

Britt C. Grant
(w/permission Kathryn Miller)

Samuel S. Olens

ATTORNEY GENERAL OF GEORGIA

Britt C. Grant

Solicitor General

Counsel of Record

40 Capitol Square S.W.

Atlanta, GA 30334

Tel: (404) 656-3300

Fax: (404) 463-9453

bgrant@law.ga.gov

Counsel for Petitioner State of Georgia

Jeffrey A. Chanay
(w/permission Kathryn Miller)

Derek Schmidt

ATTORNEY GENERAL OF KANSAS

Jeffrey A. Chanay

Chief Deputy Attorney General

Counsel of Record

Bryan C. Clark

Assistant Solicitor General

120 S.W. 10th Avenue, 3rd Floor

Topeka, KS 66612

Tel: (785) 368-8435

Fax: (785) 291-3767

jeff.chanay@ag.ks.gov

bryan.clark@ag.ks.gov

Counsel for Petitioner State of Kansas

Timothy Junk
(w/permission Kathryn Miller)

Gregory F. Zoeller

ATTORNEY GENERAL OF INDIANA

Timothy Junk

Deputy Attorney General

Counsel of Record

Indiana Government Ctr. South

Fifth Floor

302 West Washington Street

Indianapolis, IN 46205

Tel: (317) 232-6247

tim.junk@atg.in.gov

Counsel for Petitioner State of Indiana

Joseph A. Newberg, II
(w/permission Kathryn Miller)

Andy Beshear

ATTORNEY GENERAL OF KENTUCKY

Mitchel T. Denham

Assistant Deputy Attorney General

Joseph A. Newberg, II

Assistant Attorney General

Counsel of Record

700 Capital Avenue

Suite 118

Frankfort, KY 40601

Tel: (502) 696-5611

joe.newberg@ky.gov

*Counsel for Petitioner Commonwealth
of Kentucky*

Stephen B. "Beaux" Jones
(w/ permission Katelyn Hill)

Jeff Landry

ATTORNEY GENERAL OF LOUISIANA

Steven B. "Beaux" Jones

Counsel of Record

Duncan S. Kemp, IV

Assistant Attorneys General

Environmental Section – Civil Division

1885 N. Third Street

Baton Rouge, LA 70804

Tel: (225) 326-6085

Fax: (225) 326-6099

jonesst@ag.state.la.us

*Counsel for Petitioner State of
Louisiana*

Aaron D. Lindstrom
(w/ permission Katelyn Hill)

Bill Schuette

ATTORNEY GENERAL FOR THE PEOPLE
OF MICHIGAN

Aaron D. Lindstrom

Michigan Solicitor General

Counsel of Record

Neil D. Gordon

Assistant Attorney General

P.O. Box 30212

Lansing, MI 48909

Tel: (515) 373-1124

Fax: (517) 373-3042

lindstroma@michigan.gov

*Counsel for Petitioner People of the
State of Michigan*

Donald Trahan
(w/ permission Katelyn Hill)

Herman Robinson

Executive Counsel

Donald Trahan

Counsel of Record

Elliott Vega

LOUISIANA DEPARTMENT OF

ENVIRONMENTAL QUALITY

Legal Division

P.O. Box 4302

Baton Rouge, LA 70821-4302

Tel: (225) 219-3985

Fax: (225) 219-4068

donald.trahan@la.gov

elliott.vega@la.gov

*Counsel for Petitioner State of
Louisiana Department of
Environmental Quality*

James R. Layton
(w/ permission Katelyn Hill)

Chris Koster

ATTORNEY GENERAL OF MISSOURI

James R. Layton

Solicitor General

Counsel of Record

P.O. Box 899

207 W. High Street

Jefferson City, MO 65102

Tel: (573) 751-1800

Fax: (573) 751-0774

james.layton@ago.mo.gov

Counsel for Petitioner State of Missouri

Dale Schowengerdt
(w/ permission Kathy Till)

Timothy C. Fox
ATTORNEY GENERAL OF MONTANA
Alan Joscelyn
Chief Deputy Attorney General
Dale Schowengerdt
Solicitor General
Counsel of Record
215 North Sanders
Helena, MT 59620-1401
Tel: (406) 444-7008
dales@mt.gov

Counsel for Petitioner State of Montana

Sam M. Hayes
(w/ permission Kathy Till)

Sam M. Hayes
General Counsel
Counsel of Record
Craig Bromby
Deputy General Counsel
Andrew Norton
Deputy General Counsel
NORTH CAROLINA DEPARTMENT OF
ENVIRONMENTAL QUALITY
1601 Mail Service Center
Raleigh, NC 27699-1601
Tel: (919) 707-8616
sam.hayes@ncdenr.gov

*Counsel for Petitioner North Carolina
Department of Environmental Quality*

Justin D. Lavene
(w/ permission Kathy Till)

Doug Peterson
ATTORNEY GENERAL OF NEBRASKA
Dave Bydlaek
Chief Deputy Attorney General
Justin D. Lavene
Assistant Attorney General
Counsel of Record
2115 State Capitol
Lincoln, NE 68509
Tel: (402) 471-2834
justin.lavene@nebraska.gov

*Counsel for Petitioner State of
Nebraska*

Eric E. Murphy
(w/ permission Kathy Till)

Michael DeWine
ATTORNEY GENERAL OF OHIO
Eric E. Murphy
State Solicitor
Counsel of Record
30 E. Broad Street, 17th Floor
Columbus, OH 43215
Tel: (614) 466-8980
eric.murphy@ohioattorneygeneral.gov

Counsel for Petitioner State of Ohio

*P. Clayton Eubanks
(w/permission Katy Hill)*

E. Scott Pruitt

ATTORNEY GENERAL OF OKLAHOMA

Patrick R. Wyrick

Solicitor General

P. Clayton Eubanks

Deputy Solicitor General

Counsel of Record

313 N.E. 21st Street

Oklahoma City, OK 73105

Tel: (405) 521-4396

Fax: (405) 522-0669

clayton.eubanks@oag.ok.gov

*Counsel for Petitioners State of
Oklahoma*

*Steven R. Blair
(w/permission Katy Hill)*

Marty J. Jackley

ATTORNEY GENERAL OF SOUTH

DAKOTA

Steven R. Blair

Assistant Attorney General

Counsel of Record

1302 E. Highway 14, Suite 1

Pierre, SD 57501

Tel: (605) 773-3215

steven.blair@state.sd.us

*Counsel for Petitioner State of South
Dakota*

*James Emory Smith, Jr.
(w/permission Katy Hill)*

Alan Wilson

ATTORNEY GENERAL OF SOUTH

CAROLINA

Robert D. Cook

Solicitor General

James Emory Smith, Jr.

Deputy Solicitor General

Counsel of Record

P.O. Box 11549

Columbia, SC 29211

Tel: (803) 734-3680

Fax: (803) 734-3677

esmith@scag.gov

*Counsel for Petitioner State of South
Carolina*

*Scott A. Keller
(w/permission Katy Hill)*

Ken Paxton

ATTORNEY GENERAL OF TEXAS

Jeffrey C. Mateer

First Assistant Attorney General

Scott A. Keller

Solicitor General

Counsel of Record

P.O. Box 12548

Austin, TX 78711-2548

Tel: (512) 936-1700

scott.keller@texasattorneygeneral.gov

Counsel for Petitioner State of Texas

Tyler R. Green
(w/ permission Kathy Hill)

Sean Reyes

ATTORNEY GENERAL OF UTAH

Tyler R. Green

Solicitor General

Counsel of Record

Parker Douglas

Federal Solicitor

Utah State Capitol Complex

350 North State Street, Suite 230

Salt Lake City, UT 84114-2320

tylergreen@utah.gov

pdouglas@utah.gov

Counsel for Petitioner State of Utah

James Kaste
(w/ permission Kathy Hill)

Peter K. Michael

ATTORNEY GENERAL OF WYOMING

James Kaste

Deputy Attorney General

Counsel of Record

Michael J. McGrady

Erik Petersen

Senior Assistant Attorneys General

Elizabeth Morrisseau

Assistant Attorney General

2320 Capitol Avenue

Cheyenne, WY 82002

Tel: (307) 777-6946

Fax: (307) 777-3542

james.kaste@wyo.gov

Counsel for Petitioner State of Wyoming

Misha Tseytlin
(w/ permission Kathy Hill)

Brad Schimel

ATTORNEY GENERAL OF WISCONSIN

Misha Tseytlin

Solicitor General

Counsel of Record

Andrew Cook

Deputy Attorney General

Delanie M. Breuer

Assistant Deputy Attorney General

Wisconsin Department of Justice

17 West Main Street

Madison, WI 53707

Tel: (608) 267-9323

tseytlinm@doj.state.wi.us

Counsel for Petitioner State of Wisconsin

CERTIFICATE OF SERVICE

I hereby certify that I will cause to be served a true copy of the Petition for Review via U.S. mail on July 1, 2016, upon the following:

Hon. Gina McCarthy, Administrator
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Ave., N.W.
Washington, DC 20460

Hon. Loretta E. Lynch
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Ave., NW
Washington, DC 20530-0001

Correspondence Control Unit
Office of General Counsel (2311)
United States Environmental Protection Agency
1200 Pennsylvania Ave., NW
Washington, DC 20460



Elbert Lin
*Counsel for Petitioner State of
West Virginia*