

EN BANC ORAL ARGUMENT HELD ON SEPTEMBER 27, 2016

November 10, 2016

Mr. Mark Langer

Clerk

United States Court of Appeals for the District of Columbia Circuit

333 Constitution Avenue, N.W.

Washington, D.C. 20001

Re: *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases)
Response of Environmental and Public Health Intervenors to Rule 28(j) Letter
of National Mining Association (Doc. 1643743; filed October 31, 2016)

Dear Mr. Langer:

The National Mining Association's contention that post-promulgation developments "confirm" petitioners' argument that the Clean Power Plan (CPP) will "transform" the power sector is inaccurate. As EPA explains (Doc. 1644919), the disparity between respective projections in the Cross-State Air Pollution Rule Update (CSAPRU) and CPP for coal capacity in 2016 is attributable to the CPP model's assumption of perfect foresight, which accelerates retirements that under real-life conditions would occur later. Harvey Decl. ¶¶ 26-41 (ECF #1586661). The 2016 capacity estimates are in any event unimportant given that, as EPA's letter explains, the CSAPRU base case and CPP base case converge by 2020. EPA Letter at 2.¹

These projections also align with the most recent forecasts from the Energy Information Administration, which indicate that coal capacity would decline

¹ The CPP and CSAPRU modeling contain closely similar "base case" estimates of coal-fired *generation* in 2016. Compare CPP Base Case (Row 95), <https://www.epa.gov/airmarkets/analysis-clean-power-plan>, link to EPA Base Case for the Clean Power Plan, link to Base Case SSR *with* CSAPRU Base Case (Row 102), <https://www.epa.gov/airmarkets/analysis-cross-state-air-pollution-rule-update>, link to IPM v.5.15 Final Base Case for the CSAPRU Update, link to v.5.15_OS_NOx_Final_Base_Case SSR.

significantly by 2020 even without the CPP.² As the EIA's report explains, other factors—including low natural gas prices, falling capital costs of renewable generation, and renewable energy tax credits extended by Consolidated Appropriations Act in December 2015—will continue to drive changes in the power sector. See EIA, *Annual Energy Outlook 2016*, ES-3. EIA data show that market forces are already propelling the power sector toward the CPP carbon reduction targets: carbon dioxide emissions in 2015 were 21% below 2005 levels,³ approximately two-thirds of the way to the CPP's final reduction target of 32% below 2005 levels.

Respectfully submitted,

/s/ Sean H. Donahue

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² See EIA, *Annual Energy Outlook 2016* at Table A9 (Aug. 2016) (coal capacity expected to decline to 213 GW by 2020 in “No CPP” scenario), *available at* www.eia.gov/forecasts/aeo/, link to Table A9, Electricity Generating Capacity.

³ EIA, “Carbon Dioxide Emissions from Electricity Generation in 2015 Were Lowest Since 1993,” May 13, 2016, <http://www.eia.gov/todayinenergy/detail.cfm?id=26232>.

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Certificate of Service

I certify that on this 10th day of November, 2016, the foregoing Rule 28(j) letter response was filed via the Court's CM/ECF system, which will serve copies upon all registered counsel.

Sean H. Donahue