

**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 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 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 Clean Power Plan 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 Clean Power Plan, 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 June 19, 2019, EPA Administrator Andrew Wheeler signed a final rule entitled “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations” (the Affordable Clean Energy Rule or the ACE Rule). Among other things, the ACE Rule repeals the Clean Power Plan.

5. The ACE Rule was published in the Federal Register on July 8, 2019. 84 Fed. Reg. 32,520 (July 8, 2019). Shortly thereafter, nearly all Petitioners and Petitioner-Intervenors filed motions to dismiss the petitions for review as moot. *See* Doc. Nos. 1797267, 1799127. EPA supports dismissal of the petitions for review as moot. *See* Doc. No. 1797703. EPA suggests continuing to hold these petitions for review in abeyance pending resolution of the motions to dismiss.

Respectfully submitted,

JONATHAN D. BRIGHTBILL  
Principal Deputy Assistant Attorney General

DATED: August 2, 2019

BY: /s/ Meghan E. Greenfield  
MEGHAN E. GREENFIELD  
BENJAMIN R. CARLISLE  
U.S. Department of Justice  
Environmental Defense Section  
P.O. Box 7611  
Washington, D.C. 20044  
Phone: 202-514-2795  
Email: Meghan.Greenfield@usdoj.gov

**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 August 2, 2019.

*/s/Meghan E. Greenfield*  
Counsel for Respondent