

EXHIBITS

Brief for Petitioners, No. 14-1146

November 26, 2014

EXHIBIT A

**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,

Respondent.

Case No. 14-1146

DECLARATION OF RONALD W. GORE

I, Ronald W. Gore, hereby declare as follows:

1. I am the Chief of the Air Division within the Alabama Department of Environmental Management (ADEM). I have been employed by ADEM for 40 years. As part of my duties, I am responsible for the Division's development of State plans to implement federal air quality rules and regulations.

2. Based on my position, I have the personal knowledge and experience to understand what steps the State will need to undertake in response to EPA's proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014) ("Section 111(d) Rule" or "Rule"), including preparing a State plan consistent with that proposed rule. Under that proposed Rule, the State must submit a plan to the Environmental Protection Agency ("EPA") by June 30, 2016, absent special circumstances.

3. Based on my knowledge and experience, I believe that developing Alabama's response the Section 111(d) Rule will be the most complex air pollution rulemaking undertaken by ADEM in the last 40 years. I have been responsible for and worked on many State plans designed to be submitted to and approved by EPA, including plans for attaining air quality standards, construction and operating permit plans, visibility rules, etc. The Clean Air Act recognizes the time and resources necessary to draft and finalize such plans by providing three to five years, at a minimum, for States to submit them. EPA proposes in the 111(d) Rule that States submit a vastly more complex rule in one to three years.

4. EPA has proposed that GHG reductions can be maximized by viewing the electric utility system in a very broad way, i.e., that States can and should regulate facilities and consumer behavior in ways never before considered to be authorized by the CAA. This broadening of authority means that ADEM will have to seek authorization from the State Legislature to implement EPA's proposal. It is likely that other Alabama agencies will need to participate in enforcing parts of Alabama's plan and broad new State Legislative authority will be needed for them as well. ADEM historically has been the agency solely responsible for air quality compliance in the State. Having several other State agencies closely involved in the development and administration of air quality rules presents a daunting challenge for ADEM.

5. Since EPA proposed the 111(d) rule in June of 2014, ADEM has expended considerable resources in attempting to understand the plan for a State response. Two employees have been assigned full-time to analyzing the proposal, and further man-hours have been expended by other staff members, by management, and by legal counsel. Efforts

through which resources have been spent include, but are not limited to, the following examples:

- Checking EPA's calculations and assumptions on the emissions reduction goals the State should attain
- Generating possible responses to check whether they are achievable in practice
- Meeting with trade groups, EPA, other states, environmental groups, individual utilities, etc. to consider their input and viewpoints
- Traveling to and speaking at EPA Regional Public Hearing
- Traveling to and participating in several national workshops on 111(d)
- Holding many internal meetings to facilitate information flow up and down the management chain

Since June of 2014, I estimate that two man-years of effort, plus travel expenses, have been expended in responding to the 111(d) proposal.

6. In addition to the two full-time staff members mentioned above, I estimate that there fifteen other employees who spend time on 111(d). I estimate that five man-years of effort is being deployed at present responding to the 111(d) proposal.

7. Should the Court rule that EPA has overstepped its authority, ADEM's efforts would cease.

I declare under penalty of perjury that the foregoing is correct. Executed on this 17th day of November 2014, at Montgomery, Alabama.



Ronald W. Gore

EXHIBIT B

**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,

Respondent.

Case No. 14-1146

DECLARATION OF LEONARD K. PETERS

I, Leonard K. Peters, hereby declare as follows:

1. I am the Secretary of the Commonwealth of Kentucky's Energy and Environment Cabinet. I have been employed by the Commonwealth of Kentucky in this capacity for more than six years. As part of my duties, I am responsible for programs related to the implementation of the provisions of the Clean Air Act.
2. Based on my position, I have the personal knowledge and experience to understand what steps the State will likely need to undertake in response to EPA's proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830

(June 18, 2014) (“Section 111(d) Rule”), including preparing a state plan consistent with that Rule. Under that Rule, the State must submit a plan to the Environmental Protection Agency (“EPA”) by June 30, 2016, absent special circumstances.

3. Based on my work, I have determined that implementing the Section 111(d) Rule presents a complicated endeavor, including creating a plan. Specifically, creating a plan of the type envisioned under the Section 111(d) Rule is a particularly complicated endeavor because every electric generating unit (“EGU”) in the Commonwealth of Kentucky is unique. Some facilities are part of larger companies, spanning over several states. Other facilities are single municipalities. Developing a plan that fairly regulates facilities, meets Kentucky’s state-specific carbon goal and keeps electricity affordable and reliable will be a significant undertaking. Development of the plan is not all the Commonwealth has to do to demonstrate compliance. Based on the proposed rule, Kentucky will have to monitor progress at each facility to ensure that goals for 2020 and 2030 are met. Therefore, as with all air quality regulations, the Commonwealth will continue to expend resources for the next 15 years to comply with a 111(d) Rule.

4. As a practical matter and in light of the proposed June 30, 2016 deadline, the Commonwealth cannot wait until the Rule is finalized to begin evaluating the Section 111(d) Rule and expending substantial resources to create a plan. The Commonwealth anticipates consulting with stakeholders, citizen groups and other agencies in developing a plan. Plan development will consume staff's time as the specific details of the 111(d) Rule are applied to each EGU and other potentially effected entities.
5. The State has already expended resources as a direct result of the Section 111(d) Rule. This includes meetings with every EGU in the Commonwealth, other governmental agencies, citizen groups, and sources potentially affected by the rule. Executive Staff also testified before legislative committees regarding the proposed rule.
6. The development of the plan associated with this rulemaking will require staff to devote significant time and resources at the expense of other agency functions.

I declare under penalty of perjury that the foregoing is correct. Executed on this 10th day of November, at Frankfort, Kentucky.



Leonard K. Peters

Commonwealth of Kentucky)
)
County of Franklin)

Subscribed and sworn to before me by Leonard K. Peters on this the
10th day of November, 2014.

Suzanne Paul
NOTARY PUBLIC
STATE AT LARGE

My Commission Expires:
01/2015

EXHIBIT C

**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,

Respondent.

Case No. 14-1146

DECLARATION OF SCOTT DELONEY

I, Scott Deloney hereby declare as follows:

1. I am the Branch Chief for the Office of Air Quality's Programs Branch. I have been employed by the Indiana Department of Environmental Management ("IDEM") since 1998. As part of my duties, I am responsible for developing Indiana's State Implementation Plan and incorporating other federal requirements to ensure the state meets the National Ambient Air Quality Standards and other state obligations under the Clean Air Act.

2. Based on my position, I have the personal knowledge and experience to understand what steps the State will likely need to undertake in response to EPA's proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014) ("Section 111(d) Rule"), including preparing a State Plan consistent with that Rule. Under that Rule as proposed, the State must submit a State Plan to the Environmental Protection Agency ("EPA") by June 30, 2016, absent special circumstances.

3. Based on my work experience, I have determined that implementing the Section 111(d) Rule presents a complicated endeavor, including creating a State Plan, which includes steps that will take 3 or more years. Specifically, creating a plan of the type envisioned under the Section 111(d) Rule is a particularly complicated endeavor because of the Rule's unprecedented reliance on "outside the fence" control measures, including increased utilization of renewable energy and demand-side energy efficiency. The unorthodox control measures contemplated by the Rule thus require a coordination effort across multiple state agencies, including the Indiana Utility Regulatory Commission (IURC), the Office of the Utility Consumer Counselor, and the Indiana Utility Forecasting Group (IUFG). Currently, neither the IDEM nor any other state agency has the authority to implement

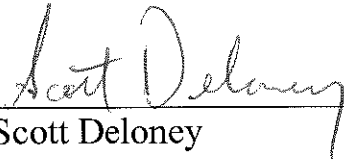
these building blocks in the measurable and enforceable fashion required by the Clean Air Act. IDEM has also determined it cannot meet the reduction goals set by the proposed Rule solely through the implementation of heat rate improvements (required under building block 1). Therefore, in order to comply with the Rule, the State would have to take legislative action to ensure the appropriate state agencies have the authority needed to implement any State Plan. Indiana's power supply is also governed by more than one Regional Transmission Organization (RTO), requiring coordination with both the Midcontinent Independent System Operator (MISO) and the Pennsylvania Jersey Maryland Power Pool (PJM), in attempting to find ways to implement the "outside the fence" building blocks. The coordination among state agencies and RTOs, as well as the legislative changes required to implement the Rule, make creating a State Plan extremely difficult, especially in the limited time frame contemplated by the proposed Rule.

4. As a practical matter and in light of the June 30, 2016 deadline, the State cannot wait until the Rule is finalized to begin evaluating the Section 111(d) Rule and expending substantial resources to create a State Plan. This expenditure of resources will likely include coordinating among state agencies and RTOs, seeking input of interested stakeholders, participating in external modeling and cost analyses, and possibly requesting legislative

changes to give IDEM or another state agency the authority needed to implement the “outside the fence” building blocks required by the proposed Rule. Because the statutory rulemaking process takes at least two and a half years to complete, IDEM cannot wait until the proposed Rule is final before expending significant time and resources on formulating a State Plan for meeting the required reductions in emissions.

5. The State has already expended resources and expects to take further steps in the coming months as a direct result of the Section 111(d) Rule. As discussed above, these efforts include coordinating among state agencies and RTOs, seeking input of interested stakeholders, participating in external modeling and cost analyses, and possibly requesting legislative changes to give IDEM or another state agency the authority needed to implement the “outside the fence” building blocks required by the proposed Rule. From a resource perspective, the proposed Rule detracts from efforts to implement other requirements of the Clean Air Act, and provides no additional revenue or resources to the State.
6. If this Court holds that EPA now lacks authority to regulate power plants under Section 111(d) of the Clean Air Act, the State will immediately halt entirely the above-described expenditures.

I declare under penalty of perjury that the foregoing is correct. Executed on this 9th day of September, 2014, at Indianapolis, Indiana.



Scott Deloney

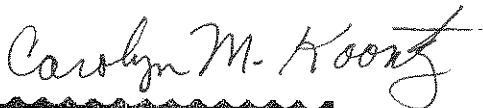
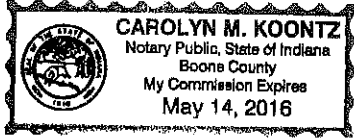



EXHIBIT D

**IN THE
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FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF WEST VIRGINIA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY,

Respondent.

Case No. 14-1146

DECLARATION OF LAURA CROWDER

I, LAURA CROWDER, hereby declare as follows:

1. I am the Assistant Director of Planning for the West Virginia Department of Environmental Protection's Division of Air Quality (DAQ). I have been employed by the West Virginia Department of Environmental Protection since 1994. As part of my duties, I am responsible for developing West Virginia's State Implementation Plan (SIP) and incorporating federal requirements to ensure the state meets the National Ambient Air Quality Standards (NAAQS) under the Clean Air Act (CAA), as well as any state plans that are required under Section 111 of the CAA.

2. Based on my position, I have the personal knowledge and experience to understand many of the steps the State will need to undertake in response to EPA's proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 FR 34830, 18 JUN 2014 (Section 111(d) Rule or Rule), including preparing a State Plan consistent with that Rule. Under the Rule as proposed, the State must submit a State Plan to the United States Environmental Protection Agency (EPA) by June 30, 2016, absent special circumstances.

3. Based on my work, I have determined that the State Plan and other measures necessary to implement the Section 111(d) Rule as proposed will be a complicated endeavor. Based on my experience in working on other state plans and SIPs, such the NO_x SIP Call, the Clean Air Interstate Rule (CAIR) SIP, the Regional Haze SIP, Ozone Attainment and Maintenance Plans, Fine Particulate Matter (PM_{2.5}) Attainment and Maintenance Plans, a Section 111(d) individual State Plan for West Virginia will take 3 or more years to develop. Specifically, creating a plan of the type envisioned under the proposed Section 111(d) Rule is a particularly complicated endeavor due to the Rule's unprecedented reliance on "outside the fence" control measures, including increased utilization of renewable energy and demand-side energy efficiency. The proposed Rule uses four building blocks to develop the CO₂

emissions goals for each state – 1) heat rate improvements, 2) redispatch to existing natural gas combined cycle (NGCC) units, 3) increased renewable energy generation and 4) demand-side energy efficiency measures. Three of these four building blocks would require affected units to achieve CO₂ emissions reductions “outside the fence.” Building block 2 or redispatch to NGCC units, does not apply in West Virginia since West Virginia does not have any qualifying NGCC units. All three of the applicable building blocks present significant issues where West Virginia’s electric generating fleet is concerned.

4. Building block 1, heat rate improvements, sets a goal that is not achievable across the West Virginia coal-fired electric generating fleet. The West Virginia coal-fired fleet is one of the most efficient in the country. Therefore, any boiler upgrade projects which have not already been completed that could potentially achieve significant heat rate improvements would likely trigger a Best Available Control Technology (BACT) review as part of a Prevention of Significant Deterioration (PSD) permit process. Smaller scale heat rate improvement projects that would not trigger a BACT review would be unable to achieve the 6 percent heat rate improvement goal contained in this building block.

5. Building block 3 sets a state goal for expansion of renewable energy generation based on an “average” of the Renewable Portfolio Standards (RPSs) in the “East Central” states with which EPA grouped West Virginia. However, the proposal would not grant emission reduction credit to West Virginia for the zero emission wind energy produced in the state. Instead, the renewable energy credits would follow the electricity to the out-of-state utility with the power purchase agreement. To capture credit for the renewable energy, West Virginia would be forced to participate in some form of interstate program that would include the states in which West Virginia-produced wind energy is sold. Such a program would require new statutory authority, significant groundwork in determining which states would participate, negotiations with those states, resources to develop interstate agreements to create an entity that would administer the interstate program, and time to create parallel regulations in each state to implement a program that would allow West Virginia to receive credit for the zero carbon emissions associated with current and future wind resources.
6. Building block 4 sets a goal for demand-side energy efficiency programs with a cumulative target for West Virginia of 10.1 percent. Developing a regulatory program with hard targets in time to meet the both the interim and final goals contained in the proposed Rule would be an extremely difficult

challenge. Developing the program and having the affected utilities implement the program in time to comply with the interim goal would be an even greater challenge, which I do not believe to be feasible in the amount of time the proposed rule allows.

7. The unorthodox control measures contemplated by the Rule will require a coordination of effort across multiple state agencies, including the West Virginia Department of Environmental Protection (DEP), the West Virginia Division of Energy (DOE) and the West Virginia Public Service Commission (PSC). Currently, neither the DEP nor any other state agency has the authority to implement these building blocks in the measurable and enforceable fashion required by the Rule. DEP has also determined it cannot meet the cumulative reduction goals set by the proposed Rule solely through the implementation of heat rate improvements (required under building block 1). Therefore, in order to comply with the Rule, the State would have to take Legislative action to ensure the appropriate state agencies have the authority needed to implement any State Plan.
8. As a practical matter and in light of the June 30, 2016 deadline, the State cannot wait until the Rule is finalized to begin evaluating the Section 111(d) Rule and expending substantial resources to create a State Plan. This expenditure of resources will include: coordinating among state agencies,

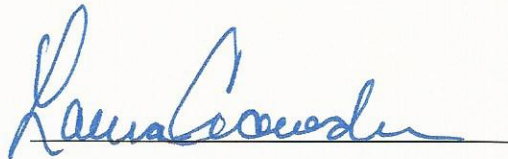
the Regional Transmission Organization (RTO) and other potential regulated entities; seeking input of interested stakeholders; coordinating with the WV DOE and PSC regarding renewable portfolio standards and demand-side energy management programs; participating in external modeling and cost analyses; evaluating different compliance strategies that could be implemented to meet the proposed goals; determining the statutory and regulatory changes that would be required for each of the strategies; taking initial steps to develop support across all stakeholders and policy makers for potential compliance strategies; and, possibly requesting legislative changes to give DEP or another state agency the authority needed to implement the “outside the fence” building blocks required by the proposed Rule. Enacting the new statutes necessary to implement the proposed rule will take at least a year. The statutory rulemaking process will take at least a year and a half to complete. Therefore, DEP cannot wait until the proposed Rule is final before expending significant time and resources on formulating a State Plan for meeting the required reductions in emissions.

9. The State has already expended significant resources as a direct result of the proposed Section 111(d) Rule. These efforts include reading the proposed rules and all supporting documentation; reviewing the proposal to determine whether the data and underlying assumptions used in calculating the goal are

correct; holding meetings with power plant owners/operators, the DOE and PSC; educating managers; and participating in legal work, all of which are part of the cost of preparing comments on the Section 111(d) proposal. From a resource perspective, the proposed rule detracts from efforts to implement other requirements of the CAA, and provides no additional revenue or resources to the State.

10. If this Court holds that EPA now lacks authority to regulate power plants under Section 111(d) of the Clean Air Act, the DAQ will immediately halt entirely the above-described expenditures.

I declare under penalty of perjury that the foregoing is correct. Executed on this 6th day of Nov. 2014, at Charleston, West Virginia.



LAURA CROWDER

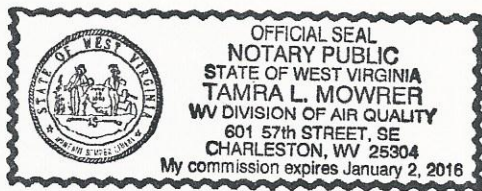


EXHIBIT E

**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,

Respondent.

Case No. 14-1146

DECLARATION OF THOMAS GROSS

I, Thomas Gross, hereby declare as follows:

1. I am the Chief of the Monitoring and Planning Section in the Bureau of Air Quality. I have been employed by the Kansas Department of Health and Environment for 38 years. As part of my duties, I am responsible for managing the group that develops state plans to implement federal air quality rules and regulations.
2. Based on my position, I have the personal knowledge and experience to understand what steps the State will need to undertake in response to EPA's proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014) ("Section 111(d) Rule" or "Rule"), including preparing a state plan consistent with that Rule. Under that Rule, the State must submit a plan to the Environmental Protection Agency ("EPA") by June 30, 2016, absent special circumstances.
3. Based on my work, I have determined that implementing the Section 111(d) Rule presents a complicated endeavor, including the creation of a state plan. Based on my experience

in working in other state plans and state implementation plans (SIPs) such as mercury, regional haze, ozone and lead, the 111(d) plan will likely take from three to five years, with the longer time frame being required if a multi-state plan is prepared. Specifically, creating a plan of the type envisioned under Section 111(d) is a complicated endeavor for several reasons. First is the large potential for stranded investments in the State of Kansas. The six largest coal fired units in Kansas made significant investments in criteria pollutant emission reduction equipment in the last two to three years to comply with the regional haze program. More than two billion dollars is earmarked for these projects that have recently been completed or are still under construction. Although not new facilities, the investments made in pollution control equipment are significant and should be allowed to be amortized over a greater time period than allowed under the proposal.

The proposed rule uses four building blocks to develop the CO₂ emissions goals for each state. Two of the four building blocks would require affected units to achieve CO₂ emissions reductions off the footprint of the affected unit. Building block number two does not apply in Kansas because Kansas does not have an existing combined cycle natural gas unit. All three of the applicable building blocks have issues where Kansas' electrical generating fleet is concerned.

Building block number one, regarding heat rate improvements, sets a goal that is not achievable across the entire fleet of affected units in Kansas. A major impediment to the type of boiler upgrade projects that could achieve significant heat rate improvements is the fact that they would likely trigger a Best Available Control Technology (BACT) review as part of a Prevention of Significant Deterioration (PSD) permit process. If a plant were not yet equipped with a SCR unit to control NO_x, a heat rate improvement project that might cost \$5 million could turn into an SCR project for NO_x reductions with a price tag of \$100 million. Smaller scale heat rate

improvement projects that would not trigger a BACT review, would not be able to achieve the 6% goal contained in this building block.

Kansas does not currently have any combined cycle natural gas plants, so building block number two regarding increased dispatch of such units does not currently apply. One Kansas utility has plans to convert a simple cycle turbine to a combined cycle unit in 2015.

In Kansas, the building block with the greatest potential for CO₂ emission reductions is the renewable building block. Building block number three sets a goal for expansion of renewable energy generation based on the Kansas renewable portfolio standard. While Kansas utilities currently meet the requirements of the standard and have plans to meet the 2020 goal, the shortfalls in meeting the goals established in building blocks one and four would have to be made up in building block three. There is a large potential for wind energy development in western Kansas when upgraded transmission lines to out of state markets are completed. Unfortunately, the proposal would not grant any emission reduction credits to Kansas for the zero emissions wind energy produced. In the proposal the renewable energy credits would follow the electricity to the out-of-state utility with the power purchase agreement. To capture credit for the renewable energy credits, Kansas will likely have to participate in some form of interstate program that would include states receiving Kansas wind energy. Such a program would require new statutory authority, significant groundwork in determining which states would participate, resources to develop interstate agreements to create the entity that would administer the trading program, and time to create parallel regulations in each state to implement a program that would allow for Kansas to receive benefit from the zero carbon emissions associated with future wind energy development.

Building block number four establishes a goal for demand side management programs with a cumulative target for Kansas of 9%. The Kansas legislature passed House Bill 2482 in the 2014 session. The new law provides utilities the opportunity for cost recovery for demand side management programs. It is a new voluntary program that is in the initial stages of implementation. It has no compliance provisions that could be adapted into a state 111(d) plan. Transitioning from a voluntary program in its developmental stages to a regulatory program with hard targets in time to meet the interim goals contained in the proposal would be a great challenge. Developing the program and having the affected utilities comply by the interim goals would be an even greater challenge.

4. As a practical matter and in light of the June 30, 2016 deadline, the State cannot wait until the Rule is finalized to begin evaluating the Section 111(d) rule and expending substantial resources to create a SIP. This expenditure of resources has included significant staff time to date and will only expand as we move forward in evaluating the proposal. Activities will include: reviewing the proposal to determine whether the data and underlying assumptions used in calculating the goal are correct; educating the regulated entities and other stakeholders regarding provisions of the proposal; coordinating with the Kansas Corporation Commission (“KCC”) regarding renewable energy standards and demand side management programs; evaluating different compliance strategies that could be implemented to meet the proposed goal; determining what statutory and regulatory changes would be needed for each of the strategies; and taking initial steps to develop support across all stakeholders and policy makers for potential compliance strategies. With the limitations described above regarding building blocks number one and four, implementation of a renewable portfolio standard greater than the existing statutory

requirement and change from a voluntary to a mandatory demand side management program will require significant policy shifts in the Kansas legislature and by other policymakers.

5. The State will expend significant resources as a direct result of the proposed Section 111(d) Rule. This includes time to read, absorb, and interpret the several thousand pages of white papers, program design documents, preamble, rule and technical support documents, as well as to attend meetings and conference calls with stakeholders, elected officials and the KCC. The State expects to take further steps in the coming months as a direct result of the Section 111(d) Rule. We may need statutory and regulatory changes, all requiring considerable staff time. Consultation meetings will include additional meetings with the KCC staff, the Southwest Power Pool, the Kansas Municipal Utilities and the Kansas Power Pool. We will present legislative briefings once the Kansas Legislature is in session. The amount of staff effort in analyzing the rule and making comments on it will be replaced by the staff time needed to educate stakeholders and develop a plan. KDHE can expect to spend at least four FTE amongst six to eight staff and managers per year involved in implementing this regulation (including proposing a state plan) over the next several years.

6. If this Court holds that EPA now lacks authority to regulate power plants under Section 111(d) of the Clean Air Act, the State will immediately halt entirely the above-described expenditures.

I declare under penalty of perjury that the foregoing is correct. Executed on this 19th day of November, at Topeka, Kansas.

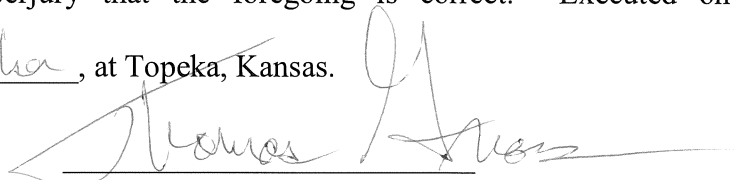

Thomas Gross

EXHIBIT F

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

STATE OF WEST VIRGINIA, STATE OF)
ALABAMA, STATE OF INDIANA, STATE)
OF KANSAS, COMMONWEALTH OF)
KENTUCKY, STATE OF LOUISIANA,)
STATE OF NEBRASKA, STATE OF)
OHIO, STATE OF OKLAHOMA, STATE)
OF SOUTH CAROLINA, STATE OF)
SOUTH DAKOTA, and STATE OF)
WYOMING,)

Petitioners,

v.

UNITED STATES ENVIRONMENTAL)
PROTECTION AGENCY,)

Respondent.)

Case No. 14-1146

AFFIDAVIT OF BRIAN
GUSTAFSON, SOUTH DAKOTA
DEPARTMENT OF ENVIRONMENT
AND NATURAL RESOURCES

COMES NOW, Brian Gustafson, and duly sworn upon his oath and
under the penalty of perjury, declares and states as follows:

1. I am the Engineering Manager III for the Air Quality Program of the
South Dakota Department of Environment and Natural Resources. I
have been employed in this position for 14 years. In this position, I am
responsible for the development, administration and enforcement of
South Dakota's Air Quality Program.

2. South Dakota has received delegation or approval of the following federal air programs from the United States Environmental Protection Agency (“EPA”): South Dakota’s State Implementation Plan (Minor air quality construction permit program, Minor air quality operating permit program, Prevention of Significant Deterioration preconstruction permit program, New Source Review preconstruction permit program, Rapid City area fugitive sanding and construction activity program, Ambient Air Monitoring, and Regional Haze air quality program), New Source Performance Standards program, National Emission Standards for Hazardous Air Pollutants program, Title V air quality operating permit program, and the Acid Rain program.
3. I have been involved in the revision and/or development of these delegated or approved regulatory programs, including the development of necessary legislation, drafting and presentation of rules, administration of the programs, and enforcement of the legislation and rules.
4. On June 2, 2014, the EPA proposed a new rule to be incorporated into 40 CFR Part 60 entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”, which was published in the Federal Register at Volume 79, Number 117, page 34830 on June 18, 2014, and which is commonly referred to as the “Section 111(d) Proposed Rule”.
5. Based on my position, I have the personal knowledge and experience to understand what steps the State of South Dakota will likely need to

undertake in response to EPA's Section 111(d) Proposed Rule, including preparing a Section 111(d) Plan consistent with that Proposed Rule.

Under the Proposed Rule, the State of South Dakota must submit a Section 111(d) Plan to the EPA by June 30, 2016, absent special circumstances. A Section 111(d) Plan is required by the Clean Air Act to include all implementing rules necessary to effectuate the program; state legislative grants of authority over a program are not sufficient to meet the requirements of a Section 111(d) Plan.

6. Based on my work and as described further below, I have determined that implementing the Section 111(d) Proposed Rule presents a complicated endeavor that involves the State's DENR, as well as potentially the State's Public Utilities Commission, and requires, based on my best knowledge, the enactment of new state legislation and new implementing administrative rules. Based on my experience with the State Legislature and the adoption of new administrative rules, I estimate that this endeavor will take several years to complete.
7. The Proposed Rule establishes an Interim Goal and a Final Goal for emissions of carbon dioxide emissions from the power sector in South Dakota. The Interim Goal imposed on South Dakota, to be met between 2020 and 2029 is 800 lbs/MWh; the Final Goal imposed on South Dakota, to be met by 2030, is 741 lbs/MWh. These "goals" are the lowest emission rates in the Great Plains States and reflect close to a

35% decrease in carbon dioxide emission rates from the 2012 baseline emitted by the power sector in the State of South Dakota.

8. The Proposed Rule establishes four “Building Blocks” that States are allowed to use to lower their carbon dioxide emissions. Of these four “Building Blocks”, only one is directly in the regulatory control of the State of South Dakota’s Air Quality Program: Block 1, Heat Rate Improvements. The Air Quality Program has direct regulatory control over such emissions through its Air Quality Permitting programs.
9. Building Block 2 involves, in South Dakota, the re-dispatching of energy produced from the one coal-fired power plant located in South Dakota to one natural-gas fired combined cycle power plant. These two power plants are not owned by the same entities, do not have common regional transmission operators, and do not have common customer bases. As a result, this alteration may result in some customers of the coal-fired power plant being without a power source. It is my understanding that the State (including the State Public Utilities Commission) does not have regulatory authority to order a coal-fired power plant to cut its production (by approximately 77% of its capacity pursuant to EPA’s goal calculations); or to order the natural-gas fired power plant to increase its production (by approximately 69% according to EPA’s goal calculations) to a rate for which it was not designed. As a result, utilization of this Building Block will require new state legislation, assuming that such

legislation can be drafted in a manner that does not result in a regulatory taking.

10. Building Block 3 requires that the State of South Dakota achieve 15% renewal energy sources; South Dakota wind energy is currently 24% of its power generation. However, many of these private businesses and individuals who consume the electricity generated by the wind farms in South Dakota are located out of state. The Proposed Rule is not clear that South Dakota will be able to “claim” the electricity generated in South Dakota but consumed by these out-of-state customers. In either case, the State must determine how to further encourage private businesses to develop wind resources in an area that has already been developed, which will require new state legislation.
11. Building Block 4 requires the State of South Dakota achieve an annual 1.5% improvement in energy efficiency. This is a consumer-based issue, the encouragement of the use of smart or utility-controlled technology that automatically adjusts the energy used by consumers based upon demand. This is not an area in which the State of South Dakota has currently existing regulatory authority, and will require new state legislation.
12. These changes being demanded in the Proposed Rule involve the very fundamentals of power supply and development within the State and concern matters that have traditionally been determined not by state government, but by the marketplace. Thus, much of the legislation

required will involve major fundamental grants of new power to a state agency or agencies, and will potentially be a matter of significant debate before the South Dakota Legislature.

13. In order to develop a Section 111(d) Plan as required by the Proposed Rule, the Air Quality Program of DENR cannot wait until the Rule is final, particularly in those areas where new state legislation appears to be required.
14. The Legislature of the State of South Dakota is in session annually for a maximum of 40 legislative days, generally in January through March of each year. All legislation from a state agency must be introduced within 10 or 15 days of the start of each term. Preparation of legislation by state agencies is initiated in the late summer preceding a term, and is required to be fully drafted for executive branch review by October of each year.
15. Agency rules implementing a statute, which will likely be required for the significant programmatic changes necessary to implement Building Blocks 2, 3, and 4, and will be required to be adopted prior to the submission of the Section 111(d) Plan. The rule-making process alone, excluding the drafting procedure, requires approximately 3-6 months to complete and cannot be initiated until after authorizing state legislation has been adopted.
16. As a practical matter, in light of the necessity for state legislation, and the June 30, 2016, Section 111(d) Plan submission deadline, the

State cannot wait until the Proposed Rule is finalized to begin evaluating the Section 111(d) Rule and developing the State's plan to comply with this Rule.

17. As a result, approximately 2 FTEs (Full-Time Equivalents) of the Air Quality Program's 15 FTE staff are currently involved in developing comments on the Proposed Rule, and in determining what changes need to be made to South Dakota's laws and regulations to implement the Proposed Rule. In addition, I and my staff are currently discussing possible methods of implementing the Proposed Rule with the Office of the Attorney General, the South Dakota Public Utilities Commission, Governor's Office, and Governor's Office of Economic Development.

18. I and my staff are also discussing these matters with approximately 16 stakeholders in the power industry and organizations to identify possible programs or methods to reduce carbon emissions from our one coal-fired power plant and one natural gas power plant, and to identify possible programs to encourage development of natural gas, renewables, and reduction of energy demand by consumers.


19. It is impractical, and indeed impossible, to wait until the Proposed Rule becomes final for the South Dakota Air Quality Program to initiate its review and alterations to the South Dakota laws and regulations. The extensive and significant changes to air quality regulation demanded by the Proposed Rule cannot be implemented within the one-year time period projected by EPA between the Final Rule (June 1, 2015) and the

required submission of the Section 111(d) Plan (June 30, 2016), particularly because new state legislation will be required.

20. As a result, the Air Quality Program of DENR has already initiated and expended, and will continue to be expending, substantial resources to determine the methods by which South Dakota will be able to comply with the EPA's mandated Interim and Final Goals, and to create a Section 111(d) Plan. This expenditure of resources includes dedication of scarce Program FTEs to these issues; extensive consultation with the South Dakota Public Utilities Commission and stakeholders; interagency discussions to determine what legislation is necessary, what agencies exercise jurisdiction over those areas (if any), and legal review; discussions with other States regarding interstate issues, including which state is entitled to claim the wind generation currently produced in South Dakota by out-of-state companies; drafting and vetting of state legislation with other agencies and stakeholders; drafting of implementation rules; participation in the agency proposed legislation process; lobbying and testimony in support of proposed legislation; adoption of implementation rules, which cannot occur until appropriate legislation is passed; and, ultimately, preparation of a Section 111(d) Plan.

21. If this Court holds that EPA now lacks authority to regulate power plants under Section 111(d) of the Clean Air Act, the State will immediately halt entirely the above-described expenditures.

Dated this 23 day of October, 2014.



Brian Gustafson

Subscribed and sworn to
Before me this ___ day of
October, 2014.



Notary Public

My Commission Expires:

8-8-2016

EXHIBIT G

**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,

Respondent.

Case No. 14-1146

DECLARATION OF TODD PARFITT

I, Todd Parfitt, hereby declare as follows:

1. I am the Director of the Wyoming Department of Environmental Quality. I received a bachelor of science in natural resources and a master of public administration with an emphasis in environmental policy from The Ohio State University. As part of my duties, I am responsible for overseeing the Department's regulatory programs, including its implementation of federal Clean Air Act regulations.

2. I have been employed by the Wyoming Department of Environmental Quality for twenty years. During that time, I have overseen the implementation of numerous facets of the Department's regulatory

programs. I have served as the Director for two years. I also served as Deputy Director for seven years, Administrator of the Industrial Siting Division for seven years, Interim Administrator of the Abandoned Mine Lands Division two different times, and manager of the Department's Clean Water Act pollution discharge permitting program for seven years. I also spent four years working in the Department's Resource Conservation and Recovery Act programs related to hazardous and solid waste and leaking underground storage tanks. In these positions, I regularly reviewed federal and state regulatory program requirements. I also worked with the Wyoming legislature on multiple matters related to the Department's regulatory programs. As a result of my experience, I am well versed in state implementation of environmental regulatory programs.

3. Based on my professional experience, education, and study of the Environmental Protection Agency's ("EPA") proposed *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34,830 (June 18, 2014) ("Section 111(d) Rule"), and supporting technical documents, I have the personal knowledge to understand what steps Wyoming will likely need to undertake in response to the rule, including preparing a state plan. Under that rule, Wyoming must submit a plan to the EPA by June 30, 2016, absent special circumstances.

4. Based on my evaluations of the EPA's requirements for Wyoming in the Section 111(d) Rule and the associated four "building blocks," I have determined that implementing the rule presents a complicated endeavor necessitating immediate investment of Department resources. Specifically, creating a plan of the type envisioned under the Section 111(d) Rule will require years of effort that will be particularly complicated for at least the following five reasons.
5. First, the 111(d) Rule relies on "outside the fence" control measures, which include increased utilization of renewable energy and natural gas, as well as demand-side conservation. Such "controls" are unlike any other Clean Air Act requirement the Department implements. Implementing and enforcing these unusual control measures will require the Department to coordinate with other agencies, including the Wyoming Public Service Commission, which regulates public utilities in Wyoming, and the Wyoming Game and Fish Department, which, along with federal agencies, manage wildlife in Wyoming's renewable energy development corridors. Preparing a plan to meet the requirements of the 111(d) Rule will require considerable coordination to align the differing missions of these agencies with the EPA's rule. For example, to meet the EPA's goal, Wyoming would almost certainly have to retire coal-fired power plants. To do that, the Department must, at

the very least, consult with the Public Service Commission, to evaluate the financial impacts that plant shutdowns would have on electricity consumers under Wyoming's system of public utility regulation. Plant shut-downs would also warrant the Department's consultation with public utility regulators in other states whose citizens pay for Wyoming-generated electricity.

6. Second, and related to the former, the EPA's 111(d) Rule requires the construction and operation of new renewable electricity projects in Wyoming to meet the State's goal. Specifically, the EPA's rule identifies wind energy as the highest potential renewable resource in Wyoming, and supposes that nearly 42,631 square miles are available in Wyoming to develop new wind energy projects. However, many of these lands are located within greater sage grouse core habitat. As a result, developing a plan to generate more wind energy consistent with the Rule will require intensive coordination with the Wyoming Game and Fish Department, which oversees Wyoming's sage grouse conservation efforts. Pursuant to Wyoming Executive Order, Wyoming agencies must "focus on the maintenance and enhancement of Greater Sage-Grouse habitats," may authorize new development in core habitat "only when it can be demonstrated that the activity will not cause declines in Greater Sage-

Grouse populations,” and must consult with the Game and Fish Department before taking any action that could impact sage grouse. Wyo. Exec. Order 2011-5, at ¶¶ 1, 3 (June 2, 2011). The Order expressly provides that wind energy development “is not recommended in sage-grouse core areas[.]” *Id.* at ¶ 5. Deploying enough new wind energy to comply with the EPA’s Rule also will require consultation and negotiation with the private parties that own the vast majority of the Wyoming lands suitable for wind energy projects. Lines to transmit wind energy generated by those projects will almost certainly have to cross federal lands, thereby implicating the regulatory interests of federal land managers, and requiring compliance with the National Environmental Policy Act. Coordinating these differing regulatory and private interests quickly enough to develop a state plan on the EPA’s proposed timeline could only be possible with an immediate re-allocation of a substantial portion of the Department’s resources.

7. Third, Wyoming is a net-exporter of energy from both fossil-fuel and renewable sources. Because Wyoming delivers energy to eleven different states, from California to Minnesota, complying with the Rule will most likely require Wyoming to enter into one, if not several, multi-state or regional agreements with states that consume power generated in Wyoming. Negotiating and executing those agreements in time to submit a plan on the

EPA's timeline will require a significant investment of Department resources. The effort will be complicated by the fact that other states with which Wyoming will likely have to collaborate are located in different EPA regions than Wyoming, which will in turn require plan approvals from different EPA regional offices.

8. Fourth, creating a plan that conforms to the 111(d) Rule will require the Wyoming legislature to act. Neither the Department nor any other Wyoming state agency likely has authority to require the unconventional controls on which the EPA's rule relies. For example, the Department does not have the authority to require the construction and utilization of renewable electricity generating projects, or to mandate that consumers install energy efficient appliances. Wyoming's legislature meets only once per year and for no more than a total of sixty days every two years, unless the Governor calls for a special session. Wyoming's legislative process typically involves multiple hearings and, therefore, does not produce new law overnight. Absent immediate efforts from the Department, obtaining the legislative authorization necessary to develop a plan that complies with the EPA's rule on the EPA's proposed timeline will be practically impossible.
9. Fifth, developing a plan to comply with the 111(d) Rule will require the Department to recruit and hire new employees. In some cases, the rule

implicates subjects outside the Department's normal area of air pollution control expertise, such as demand-side energy conservation. In other cases, the rule will create significant new workloads, for example, negotiating and administering complex multi-state and regional emissions allocation agreements and facilitating interagency coordination. Hiring new staff implicates the Department's budget, which the legislature approves every two years, and may, as a result, also require additional legislative action. In fact, the Department is already in the process of reassigning one full-time employee position to focus on state implementation plan development. To prepare a state plan to comply with the 111(d) Rule on the EPA's timeline, the Department cannot wait to make these human resource decisions until after the EPA finalizes the rule.

10. As a practical matter and in light of the June 30, 2016, deadline, Wyoming cannot wait until the Section 111(d) Rule is finalized to begin expending substantial resources to create a state plan. This expenditure of resources will likely include consultation with Wyoming energy producers and consumers of Wyoming-produced energy, coordination with multiple state agencies and federal land managers, passing new state legislation, and promulgating new regulations.

11. Wyoming has already expended resources as a direct result of the Section 111(d) Rule. As of November 12, 2014, the Department has dedicated 1,398 employee hours to evaluating the EPA's 111(d) Rule and developing ideas on how to craft a compliant state plan. Eight different members of the Department's program-level staff, including more than ten percent of the air quality program employees, have dedicated a total of 1,108 employee hours working on the EPA's 111(d) Rule since its publication. Those staff were pulled from their normal responsibilities, which include implementing the Department's normal Clean Air Act programs, such as Prevention of Significant Deterioration and Title V. I have personally worked a total of 152 hours on the 111(d) Rule, while the Administrator of the Department's Air Quality Division has worked 138 hours on the rule. In sum, the EPA's 111(d) Rule has already consumed considerable limited Department resources that would otherwise be dedicated to other regulatory efforts. These initial investments of Department resources represent only the tip of the iceberg.

12. Collectively, the Department's efforts have been dedicated to: (1) meeting with Wyoming's elected representatives and other Wyoming regulatory agencies; (2) meeting with regulators from other states, including through the Environmental Council of States, Western Regional Air Partnership, the

Western States Air Resources Council, and the Air & Waste Management Association; (3) participating in webinars hosted by the EPA, the Association of Air Pollution Control Agencies, and the National Association of Clean Air Agencies; (4) travelling to and attending the EPA's public hearings on the rule; and (5) researching and evaluating the rule internally. All of these efforts have been necessary to comprehend the bases for the 111(d) Rule, the prospects for interstate and regional cooperation, and the feasibility of crafting a Wyoming plan to meet the requirements of the rule.

13. The Department expects to take further steps in the coming months as a direct result of the Section 111(d) Rule. The Department will continue to confer with electricity generators, other state agencies, states that receive electricity produced in Wyoming, and to dedicate internal staff resources to creating a state plan to meet the requirements of the rule. Those efforts will require continued investments of Department resources that would otherwise support other priorities.
14. If this Court holds that the EPA now lacks authority to regulate power plants under Section 111(d) of the Clean Air Act, Wyoming will immediately halt entirely the above-described expenditures on the 111(d) Rule.

I declare under penalty of perjury that the foregoing is correct. Executed on this 18th day of November, 2014, at Cheyenne, Wyoming.



Todd Parfitt
Director
Wyoming Department of Environmental Quality

EXHIBIT H

**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,

Respondent.

Case No. 14-1146

DECLARATION OF ROBERT HODANBOSI

I, Robert Hodanbosi hereby declare as follows:

1. I am employed as the Chief of the Division of Air Pollution Control for the Ohio Environmental Protection Agency. I have served in this capacity for 22 years and am responsible for a statewide staff that encompasses all aspects of Ohio's air pollution control program—compliance monitoring, permit issuance, regulatory enforcement, and administering for Ohio the delegated aspects of the federal program under the Clean Air Act, as well as Ohio's own air pollution control laws and rules. Among my duties are attainment/nonattainment planning, SIP calls, state implementation plan development, regulation development, and other matters as necessary. In this capacity, I am familiar with Ohio's electric

generating units, their generating capacity, and the regulatory and related issues they face, as well as other industrial and commercial sources of air pollution.

2. I am familiar with and have been responsible for overseeing Ohio's role in responding to and commenting upon U.S. EPA's *Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units*, 79 Fed. Reg. 34829 (proposed June 18, 2014) ("Section 111(d) Rule"). Ohio EPA will be required to prepare a State Plan consistent with that Section 111(d) Rule.

3. Ohio EPA would be required to submit its 111(d) State Plan by June 30, 2016. Ohio EPA would have to commence activity on its State Plan well in advance of the June 30, 2016 deadline. It will also take a lengthy time for Ohio EPA to draft and finalize this 111(d) State Plan. The proposed existing-source rule is substantial and affects entities well beyond the fence-lines of the power plants themselves. The State Plans will be extremely complex, and U.S. EPA Administrator Gina McCarthy has publicly announced that Ohio and the other states should begin drafting their state plans now, before the rule is even finalized. Drafting the 111(d) State Plan will require extensive stakeholder outreach and inter-agency coordination.

4. There are a number of actions that will be required of Ohio in order to submit a plan 13 months after the rules are finalized. The first issue is going to be

whether Ohio develops a rate-based plan or mass-based plan. The proposed rule formulated only rate-based requirements for state plans. U.S. EPA only issued the rate-based to mass-based specifications on November 6, 2014 so it will be necessary to determine which approach provides the more appropriate compliance path for Ohio. This fundamental compliance approach may take months to analyze and decide which path to take.

5. The reductions in U.S. EPA's Clean Power Plan were derived from four separate elements or "building blocks": improve heat rate at power plants, institute emission dispatch for electricity onto the grid, require that renewable resources be built and used, and require more energy efficiency measures. Each of these elements have their own set of regulatory activities that will be needed as part of plan submittal.

A. Heat Rate Improvements at Power Plants – This will require Ohio EPA to begin working with the individual power plants to conduct studies on all appropriate heat rate improvements. Although U.S. EPA has stated heat rate improvements of 4% to 6% are possible, Ohio EPA believes that improvements in the range of 1% are more feasible. Ohio EPA will need to complete individual studies for each plant to determine which heat rate improvements are possible at a plant, what are the expected improvements, the time involved to implement those improvements, whether these improvements will trigger the major source

permitting requirements in the New Source Review program under U.S. EPA regulations, and develop state regulations that mandate that the above items be completed in an appropriate time frame. These actions will take many months to complete and certainly cannot be completed within the 13 months envisioned by U.S. EPA.

B. Implement Emission Dispatch – The second element of the Clean Power Plan obtains reductions, led by states, by implementing the dispatch from higher emitting plants to lower emitting plants. Under the Federal Power Act, the Federal Energy Regulatory Commission oversees the various Regional Transmission Organizations, including PJM Interconnection, LLC (“PJM”) which controls the power plants dispatched in Ohio, and requires that the plants are dispatched in an economic manner with the most economic being used first. PJM is responsible for grid management not just in Ohio, but other states also and Ohio receives its power from multiple power plants within the state borders and from neighboring states. Neither Ohio EPA nor the Public Utilities Commission of Ohio has authority to dictate to the multi-state regional transmission organizations, changes in the manner that PJM operates. Since the dispatch of power plants is within the purview of the federal government, it is currently unknown how Ohio can develop a program for emissions dispatch, since the current authority resides

with a multi-state organization that is overseen by the federal government. This element will certainly need longer than 13 months to develop.

C. The third element of reductions derives from instituting renewable energy in the state. Ohio has adopted renewable portfolio standards (RPS) through the Ohio General Assembly. Legislative changes to the RPS are currently being studied. Any legislative and administrative rule changes to the RPS could take years to complete.

D. The fourth element of the Clean Power Plan is to reduce demand for electricity by implementing energy efficiency measures. The scope of the reductions needed go far beyond energy efficiency at the power plant. Ohio EPA must identify where the state can develop energy efficiency measures to the degree demanded by U.S. EPA, which private and governmental entities are affected, and then begin to develop a plan to make energy efficiency measures “federally enforceable. Because Ohio is a deregulated electric utility state, the EGUs are independent of power distribution companies, so Ohio will need to regulate entities that do not own or operate pollution sources. This will represent a particular challenge to Ohio EPA, since the Agency’s authority under the Clean Air Act and Ohio Air Pollution Control Act is to regulate air pollution sources, not consumers of electricity. Ohio EPA will need to identify if it can be granted additional authority, what additional authority will be needed, what entities to

regulate, receive approval from the Ohio General Assembly to move forward, and draft, propose and promulgate rules. These efforts could take years to complete.

6. Due to the very tight timeframes proposed by U.S. EPA, it would not be possible to wait until June 2015 for U.S. EPA final rules to begin to work on putting together a plan for submittal in June 2016. Even if Ohio EPA could be granted the authority to develop a multi-phase plan to regulate the entire electric generation and distribution in 13 months, as required by U.S. EPA, there is simply not enough time.

7. U.S. EPA has stated that states may receive a one year extension to submit the plan to U.S. EPA. In order to obtain an extension, states must provide a package with ten separate elements including a commitment by the states to maintain existing measures. Ohio EPA does not have the authority to make a commitment on an action that was completed by the Ohio Legislature. So, the action to apply for an extension would also need legislative action prior to any administrative activity to complete the extension request. This illustrates the degree of action needed not just to develop a plan, but to even request a year extension to the June 30, 2016 deadline.


8. Ohio EPA, like all government agencies, operates on a fixed budget. Therefore, the costs (including the significant employee-hours) that would be dedicated to the preparation of the 111(d) State Plan means that Ohio EPA would

have considerably less resources to dedicate to other mandated U.S. EPA regulatory programs, such as developing State Implementation Plans for revised ambient air quality standards.

9. Furthermore, Ohio EPA's mere announcement of its State Plan could have significant and irreversible economic consequences. Currently, coal-fired power plants account for nearly 70% of Ohio's electricity generation. U.S. EPA's proposed existing-source rule has the potential to compromise the reliability of Ohio's electricity supply as demonstrated by the North American Reliability Council and others, as well as dramatically increase the cost of electricity for Ohio's citizens. Companies may choose not to do business in Ohio due to concerns about the reliability of electricity and increases in electricity costs. Further, coal-fired power plants in Ohio may shut down in anticipation of the State Plan going into effect. If the existing-source rulemaking is ultimately struck down, those companies and power plants that made decisions based on early versions of the State Plan would likely not be in a position to reverse the decisions made in anticipation of the rulemaking.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 26, 2014, in Columbus, Ohio.



Robert Hodanbosi
Robert Hodanbosi, Chief
Division of Air Pollution Control
Ohio EPA

EXHIBIT I

EPA-5757

Gina
McCarthy/DC/USEPA/US
12/23/2010 08:19 PM

To "Doniger, David"
cc
bcc
Subject Re: Happy Holidays

Thanks David. I really appreciate your support and your patience. Enjoy the holiday. This success is yours as much as mine.

From: "Doniger, David" [ddoniger@nrdc.org]
Sent: 12/23/2010 06:30 PM EST
To: Gina McCarthy
Subject: Happy Holidays

Gina,

Thank you for today's announcement. I know how hard you and your team are working to move us forward and keep us on the rails. The announcement is a major achievement. To paraphrase Ben Franklin: "Friends, you have your NSPS, now let's see if you can keep it." We'll be with you at every step in the year ahead.

David

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