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EN BANC ORAL ARGUMENT HELD SEPTEMBER 27, 2016

November 17, 2016

Mr. Mark Langer
Clerk of the Court
United States Court of Appeals for the
District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue, N.W.
Washington, D.C. 20001

Re: *State of West Virginia v. EPA*, No. 15-1363 (and consolidated cases)

Dear Mr. Langer:

Petitioner the National Mining Association (NMA) writes pursuant to Rule 28(j) of the Federal Rules of Appellate Procedure to correct a misimpression (at least in the November 10, 2016 letter of the Environmental and Public Health Intervenors (“Intervenors”) (#1645648). That letter responded to NMA’s October 31, 2016 letter (#1643743). To the extent this Court’s permission is required to file this reply to Intervenors’ response letter, NMA requests that permission on the ground that clarity on this issue would aid the Court’s disposition of this case.

Intervenors would have this Court believe that the Energy Information Administration (“EIA”) shares the view that the Clean Power Plan (CPP) will not have a significant effect on coal because underlying market forces will drive coal’s decline in any event. In fact, the EIA takes a different view, which is obvious from the charts on the second page of the Executive Summary of the EIA report that Intervenors cite in footnote 2 of their letter. The report is Annual Energy Outlook 2016 and contains the EIA’s most recent analysis of the energy economy. We attach the relevant page of the report containing those charts for convenience. As projected by the EIA, without the CPP, coal-fueled generation, facing headwinds, remains generally flat. With the CPP (the reference case), coal generation declines precipitously.

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In any event, as stated in NMA's October 31, 2016 letter, all predictions of the future energy economy without the CPP are inherently uncertain as markets—and government policy—often change in ways that are contrary to expert predictions made before the fact. But it is certain that there is currently more coal generation on the grid than EPA forecast when it issued the CPP, and that generation must decline significantly to meet the rule.

Sincerely,

/s/Peter S. Glaser

Counsel for National Mining Association

Projections in the *Annual Energy Outlook 2016* (AEO2016) focus on the factors expected to shape U.S. energy markets through 2040. The projections provide a basis for examination and discussion of energy market trends and serve as a starting point for analysis of potential changes in U.S. energy policies, rules, and regulations, as well as the potential role of advanced technologies.

Key issues addressed in the AEO2016 Reference and alternative cases and discussed in this Executive summary include:

- Recent changes in laws and regulations, including the U.S. Environmental Protection Agency's (EPA) Clean Power Plan (CPP) [7], which requires states to reduce carbon dioxide (CO₂) emissions from existing fossil fuel generators, and an extension of tax credits for wind and solar energy. Together with lower natural gas prices, these changes significantly affect the projected electricity generation fuel mix.
- Implications of the changing electricity generation fuel mix for overall coal demand and the coal production outlook across U.S. coal supply regions.
- Slower electricity demand growth and increases in onsite generation, which together determine the demand for generation from central power stations.
- The effects of resource and technology improvements and prices on the outlook for U.S. oil and natural gas production, and the effect of changing production levels on prices projected consumption.
- Implications of the California Air Resources Board's Zero-Emission Vehicle program [2], which nine states have joined, representing 33% of the total U.S. market for new light-duty vehicles.
- Implications of EPA's proposed medium- and heavy-duty vehicle Phase 2 standards [3] for CO₂ emissions and projected fuel use.
- Implications of alternative economic, energy market, and policy scenarios for energy-related CO₂ emissions.

The Clean Power Plan's requirement to reduce carbon dioxide emissions accelerates the shift in the generation mix

The CPP requirement for states to develop plans to reduce CO₂ emissions imposes additional costs on higher-emitting energy sources. Combined with lower natural gas prices and the extension of renewable tax credits, the CPP accelerates the shift toward less carbon-intensive generation. In the AEO2016 Reference case, which includes the CPP, 92 gigawatts (GW) of coal-fired capacity is retired by 2030—32 GW more than is retired by 2030 in the No CPP case, which excludes the CPP. In the Reference case, coal-fired generation in 2040 is 32% lower than the 2015 total (Figure ES-1).

From 2015 levels, natural gas-fired electricity generation in the Reference case increases by 26% in 2030 and by 44% in 2040, and generation from renewables increases by 99% in 2030 and by 152% in 2040. These projected changes result in electricity generation with both natural gas and renewables surpassing coal generation in 2024 (natural gas) and in 2028 (renewables). In the No CPP case, electricity generation with natural gas does not surpass coal generation until 2029, and renewable generation does not overtake coal-fired generation in the 2015–40 time frame of the projection (Figure ES-2).

How the states implement the Clean Power Plan influences its effect on electricity generators

The EPA provides several kinds of flexibility to states in implementing the CPP [4]. This flexibility allows the states to choose between a mass-based approach (with a cap on total CO₂ emissions) and a rate-based approach (with a cap on pounds of CO₂ emitted per megawatthour of electricity produced), with different potential consequences for electricity generators and customers. In the CPP Rate case, a rate-based target provides a more direct incentive for switching to carbon-free sources of energy by

Figure ES-1. Net electricity generation from coal, natural gas, and renewables in the AEO2016 Reference case, 2013–40 (billion kilowatthours)

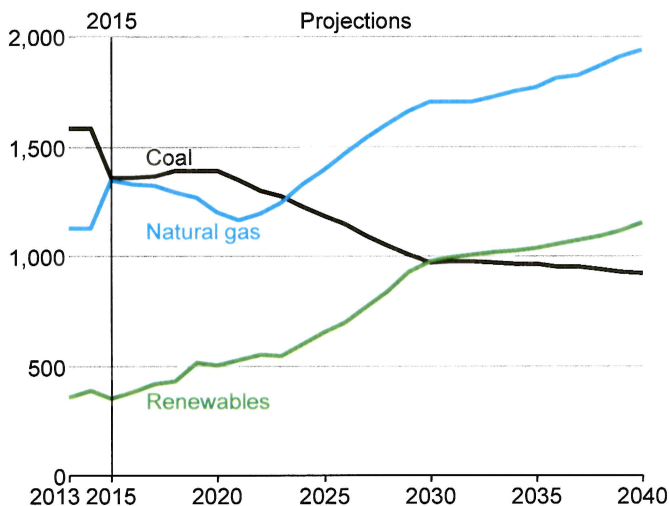


Figure ES-2. Net electricity generation from coal, natural gas, and renewables in the No CPP case, 2013–40 (billion kilowatthours)

