

**UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OKLAHOMA**

STATE OF OKLAHOMA ex rel.)
E. Scott Pruitt, in his official capacity as)
Attorney General of Oklahoma, and)
OKLAHOMA DEPARTMENT OF)
ENVIRONMENTAL QUALITY,)

Plaintiffs,)

v.)

Case No. 15-CV-0369-CVE-FHM

GINA MCCARTHY, in her official)
capacity as Administrator of the U.S.)
Environmental Protection Agency, and)
U.S. ENVIRONMENTAL PROTECTION)
AGENCY,)

Defendants.)

ORDER

On July 1, 2015, the State of Oklahoma and the Oklahoma Department of Environmental Quality filed this case challenging the United States Environmental Protection Agency’s (EPA) proposed “Power Plan” to reduce carbon-dioxide emissions on a nationwide basis. However, plaintiffs represent that the Power Plan is not a final rule, and at this point the Power Plan is simply a proposal that may require the reduction of carbon-dioxide emissions if it is eventually adopted as a final rule. See Dkt. # 2, at 6-9. Plaintiffs are correct that the Power Plan is a proposed rule that is undergoing the rulemaking process. Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 79 Fed. Reg. 34830-01 (proposed June 18, 2014). Numerous states, including Oklahoma, recently filed a case in the United States Court of Appeals for the District of Columbia Circuit seeking to enjoin the EPA from proceeding with the Power Plan, but the case was dismissed for lack of jurisdiction because that court lacked jurisdiction

over the case. In re Murray Energy Corp., ___ F.3d ___, 2015 WL 3555931 (D.C. Cir. June 9, 2015). The decision was based on the clearly-established jurisdictional principle that a proposed rule by a governmental agency is not a final agency action subject to judicial review. Id. at *2. In addition, the Clean Air Act contains a judicial review provision that vests exclusive jurisdiction over challenges to a national primary or secondary ambient air quality standard in the D.C. Circuit. 42 U.S.C. § 7607(b). Challenges to a locally or regionally applicable plan must be filed directly in the appropriate federal circuit of appeals for that region. Id.

Plaintiffs' complaint acknowledges the D.C. Circuit's decision in Murray and the judicial review provision of the Clean Air Act, but the complaint fails to clearly set forth how this Court has the authority to exercise jurisdiction over this case given these jurisdictional limitations. The Court finds that the issue of subject matter jurisdiction should be resolved at the outset of the case. Until this Court determines that it has jurisdiction over this case, it would be premature to entertain plaintiffs' motion for a permanent injunction and related motions, and the Court finds that those motions (Dkt. ## 5, 7,8) are moot. If the Court determines that it has subject matter jurisdiction over this case, plaintiffs may reurge their motion for a preliminary injunction.

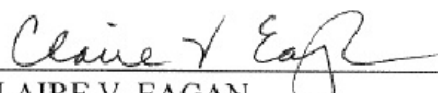
IT IS THEREFORE ORDERED that, no later than **July 16, 2015**, plaintiffs are directed to file a brief not to exceed 25 pages on the issues of whether this Court has jurisdiction to hear a challenge to a proposed rule by the EPA and whether the judicial review provision of the Clean Air Act precludes this Court from exercising jurisdiction over plaintiffs' claims. Defendants' response is due no later than **August 6, 2015**, and plaintiffs' reply is due no later than **August 20, 2015**.

IT IS FURTHER ORDERED that plaintiffs are directed to serve a copy of this Order on defendants no later than **July 9, 2015**, and plaintiffs shall promptly file notice that such service has

been made. Plaintiffs' failure to comply with this requirement will result in a delay of the Court's ruling on the issue of subject matter jurisdiction.

IT IS FURTHER ORDERED that Plaintiffs' Motion for a Preliminary Injunction (Dkt. # 5), Plaintiffs' Motion to Expedite Briefing on Their Motion for a Preliminary Injunction (Dkt. # 7), and Plaintiffs' Motion for Leave to File Oversized Brief (Dkt. # 8) are **moot**.

DATED this 2nd day of July, 2015.



CLAIRE V. EAGAN
UNITED STATES DISTRICT JUDGE