

I just got a call from the managing editor of [Carbon Control News](#), which seems to be a pretty informative and useful web-based publication. His question: why hasn't the Tennessee Valley Authority joined the rest of the utilities in asking the Supreme Court to grant certiorari in [Connecticut v. AEP](#), the federal common law public nuisance case concerning greenhouse gas emissions?

To me, it seems that the answer is obvious. The Obama Administration wants comprehensive climate change legislation, the chances of which are profoundly smaller this session than a snowball in hell. If the Second Circuit's decision allowing the suit to go forward is either upheld by the Supremes or (more likely) the high court doesn't grant cert, then the only way to get rid of the suit is for Congress to displace it. And the only way for Congress to displace it is to pass legislation. As is the case with EPA authority to regulate carbon, this puts more bargaining power on the side that wants regulation.

Put another way, if the Obama Administration decides to enter the suit on behalf of the utilities, it would put the lie to its desire to get climate legislation. It will be interesting to see what the Justice Department does; I would hope that Acting Solicitor General Neal Katyal would file a brief with the Court recommending against cert. At the very least, TVA should drop out of the suit.