

**ORAL ARGUMENT NOT YET SCHEDULED IN NO. 17-1014  
ORAL ARGUMENT HELD SEPTEMBER 27, 2016, IN NO. 15-1363**

**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

STATE OF NORTH DAKOTA, ET AL.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 17-1014 (and
	)	consolidated cases)
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY, ET AL.,	)	
	)	
Respondents.	)	
_____	)	
	)	
STATE OF WEST VIRGINIA, ET AL.,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 15-1363 (and
	)	consolidated cases)
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY, ET AL.,	)	
	)	
Respondents.	)	
_____	)	

**RESPONDENTS' RESPONSE  
TO MOTION TO SEVER AND CONSOLIDATE**

Respondents United States Environmental Protection Agency, et al. (“EPA”), hereby respond to the motion of Petitioners Utility Air Regulatory Group, the American Public Power Association, and LG&E and KU Energy LLC (collectively “Movants”) to sever their petitions for review in *State of North Dakota, et al. v. EPA, et*

*al.* (Case Nos. 17-1018 and 17-1019, consolidated under Case No. 17-1014 et al.), and consolidate those petitions for review with the petitions in *State of West Virginia, et al. v. EPA, et al.* (Case No. 15-1363 et al.).

EPA does not object to consolidation of the challenges to the Clean Power Plan (“the Rule”) presented in *State of West Virginia, et al. v. EPA, et al.* (Case No. 15-1363 et al.) with the challenges to EPA’s action denying reconsideration petitions (“the Denial Action”) presented in *State of North Dakota, et al. v. EPA, et al.* (Case No. 17-1014 et al.). However, as a matter of judicial economy, consolidation of all of the petitions for review of the Denial Action with the challenges to the Rule would be more appropriate than consolidating only two of the petitions for review of the Denial Action, so as to avoid having overlapping claims challenging the same Denial Action pursued within separate proceedings.

Respectfully submitted,

BRUCE GELBER  
Deputy Assistant Attorney General

DATED: March 13, 2017

BY: /s/ Chloe H. Kolman  
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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains 209 words according to the count of Microsoft Word and therefore is within the word limit of 5,200 words.

Dated: March 13, 2017

/s/ Chloe H. Kolman  
Counsel for Respondent

**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing Respondent's Response to Motion to Sever and Consolidate have been served through the Court's CM/ECF system on all registered counsel this 13th day of March, 2017.

/s/ Chloe H. Kolman  
Counsel for Respondent