

**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 MOTIONS TO SEVER AND CONSOLIDATE**

Respondents United States Environmental Protection Agency, et al. ("EPA"), hereby respond to the four motions filed on March 31, 2017 and April 7, 2017 by (1) State Petitioners West Virginia et al., DN 1668960, (2) Petitioners Entergy Corporation et al, DN1668921, (3) Petitioner National Association of Home Builders,

DN166829 (collectively “Movants”) and (4) and Petitioner State of North Dakota, DN 1670187. These motions request that the Court sever their respective petitions for review in *North Dakota, et al. v. EPA, et al.*, consolidate those petitions for review with the petitions in *West Virginia, et al. v. EPA, et al.* (Case No. 15-1363 et al.), and order the parties in *West Virginia* to submit a proposal to govern the scheduling of supplemental briefing in that case.

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, EPA believes that 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 some 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.

As some of the Movants note, EPA has filed motions to hold all of these petitions in abeyance—motions which Movants have not opposed. EPA’s abeyance motions are based on a recent Executive Order directing EPA to review the Clean Power Plan, the underlying Rule at issue in these cases, and on EPA’s initiation of a review of the Clean Power Plan and if appropriate, forthcoming rulemaking. EPA has requested that abeyance remain in place until 30 days after the conclusion of EPA

review and any resulting forthcoming rulemaking, with motions to govern further proceedings due upon expiration of the abeyance period.

As explained more fully in EPA's abeyance motions, abeyance will further the Court's interests in avoiding unnecessary adjudication, support the integrity of the administrative process, and ensure due respect for the prerogative of the executive branch to reconsider the policy decisions of a prior Administration. Because abeyance is appropriate, the Court should decline to establish any deadline at this time for submission of proposals to govern the scheduling of supplemental briefing.

Respectfully submitted,

BRUCE GELBER
Deputy Assistant Attorney General

DATED: April 10, 2017

BY: /s/ Eric G. Hostetler

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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 421 words according to the count of Microsoft Word and therefore is within the word limit of 5,200 words.

Dated: April 10, 2017

/s/ Eric G. Hostetler
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 10th day of April, 2017.

/s/ Eric G. Hostetler
Counsel for Respondent