

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

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

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STATE OF WEST VIRGINIA, et al.,))
))
<i>Petitioners,</i>))
))
v.)	No. 15-1363
)	(and consolidated cases)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY, et al.,)	
)	
<i>Respondents.</i>)	
<hr/>)
STATE OF NORTH DAKOTA,)	
)	
<i>Petitioner,</i>)	
)	
v.)	No. 17-1014
)	(and consolidated cases)
U.S. ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
<i>Respondent.</i>)	
<hr/>)

**RESPONDENT-INTERVENOR PUBLIC HEALTH AND
ENVIRONMENTAL ORGANIZATIONS’ OPPOSITION TO
NORTH DAKOTA’S MOTION TO SEVER AND CONSOLIDATE**

North Dakota filed its motion to sever and consolidate, ECF 1670187 (Apr. 7, 2017), a week after the procedural motion deadline in No. 17-1014. Order, ECF 1662960 (Feb. 24, 2017) (setting March 31, 2017 as the deadline). Contrary to

North Dakota's contention (N.D. Mot. 8 n.4), its filing is undoubtedly a "procedural motion" subject to that deadline. *See* D.C. Circuit Handbook of Practice and Internal Procedure 28 (Jan. 26, 2017 rev.) ("Procedural motions are those that may affect the progress of the case through the Court, *e.g.*, motions to intervene, motions to consolidate, ..."). The motion should be denied as tardy, especially given the serious prejudice to Respondent-Intervenors from delay. *See, e.g.*, Resp. in Opp., 5-6, ECF 1670227 (Apr. 7, 2017).

If entertained, the motion should be denied for the reasons set forth in Respondent-Intervenors' responses in opposition to similar motions previously filed in these cases.¹ *See* ECF 1663909 (Mar. 2, 2017) (response to Feb. 24, 2017 motion from the Utility Air Regulatory Group, *et al.*); ECF 1670227 (Apr. 7, 2017) (consolidated response to the three motions filed on March 31, 2017).²

¹ Those prior severance-consolidation motions are from Utility Air Regulatory Group, *et al.* (ECF 1663047) (filed on Feb. 24, 2017); West Virginia, *et al.*, ECF 1668952 (Mar. 31, 2017); Entergy Corporation, *et al.*, ECF 1668921 (Mar. 31, 2017), and National Association of Home Builders, ECF 1668929 (Mar. 31, 2017).

² North Dakota misquotes the Supreme Court's stay order, asserting that the order "anticipates that this Court would address and resolve all of the 'applicants' petitions for review' of the Rule that might be filed." N.D. Mot. at 7. In fact, in granting North Dakota's application, the Supreme Court used the singular, providing that the Rule "is stayed pending disposition of the applicant's *petition* for review in the [D.C. Circuit] and disposition of the applicant's petition for a writ of certiorari, if such writ is sought." Order Granting Stay, No. 15A793 (Feb. 9, 2016) (emphasis added). The order does not encompass future petitions for review that "might be filed." *See also* Resp't-Intervenors' Resp. to UARG Mot., 8 n.2, ECF 1663909 (Mar. 2, 2017).

CONCLUSION

The motion should be denied.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I certify that the foregoing response was printed in a proportionally spaced font of 14 points and that, according to the word-count program in Microsoft Word 2016, it contains 360 words.

CERTIFICATE OF SERVICE

I certify that on April 11, 2017, the foregoing Opposition was filed via the Court's CM/ECF system, which will provide electronic copies to all registered counsel.

/s/ Sean H. Donahue