

**ORAL ARGUMENT REMOVED FROM CALENDAR 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 two motions filed on April 14, 2017, by Petitioners Basin Electric Power Cooperative and Denbury Onshore, LLC requesting 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 if the Court does not hold that case in abeyance. As EPA has previously stated in its responses to similar motions filed by other petitioners (*See* ECF Nos. 1665820 and 1670438), 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. Further, as explained in EPA’s prior abeyance motions, abeyance is appropriate, and the Court should therefore 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 27, 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 289 words according to the count of Microsoft Word and therefore is within the word limit of 5,200 words.

Dated: April 27, 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 27th day of April, 2017.

/s/ Eric G. Hostetler  
Counsel for Respondent