

**ORAL ARGUMENT HELD SEPTEMBER 27, 2016
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

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

**RESPONDENTS’ MOTION FOR AN EXTENSION OF THE DEADLINE
TO FILE 30-DAY STATUS REPORT IN LIGHT OF THE LAPSE IN
APPROPRIATIONS**

Respondents United States Environmental Protection Agency et al. (“EPA”) hereby move for an extension of the January 21, 2019, deadline to file a 30-day status report, as directed by this Court in its December 21, 2018 order, until seven days after Congress has restored appropriations to the Department of Justice and EPA. Undersigned counsel for EPA has conferred with counsel for the other parties. State and Industry Petitioners and Respondent-Intervenor power companies have authorized counsel to represent that they do not oppose this motion. State and Municipal Respondent-Intervenors and Public Health and Environmental

Respondent-Intervenors have authorized counsel to represent that they take no position on this motion.

1. This litigation involves petitions for review of an EPA rule promulgating emission guidelines for states to follow in developing implementation plans to reduce greenhouse gas emissions from power plants. 80 Fed. Reg. 64,662 (Oct. 23, 2015) (“the Rule” or “the Clean Power Plan”). Oral argument was held before this Court, sitting en banc, on September 27, 2016.

2. The President on March 28, 2017, issued an Executive Order directing EPA to review the Rule in accordance with certain new policies and instructing the agency to conclude any appropriate rulemaking to repeal or revise the Rule “as soon as practicable.” 82 Fed. Reg. 16,093, 16,095. In accordance with that Executive Order, the EPA Administrator on March 28, 2017, announced EPA’s review of the Rule, 82 Fed. Reg. 16,329, 16,329 (Apr. 4, 2017), and EPA filed a motion on March 28, 2017, to hold these cases in abeyance pending completion of EPA’s review and any resulting forthcoming rulemaking. Doc. No. 1668274.

3. By order dated April 28, 2017, this Court held the cases in abeyance for 60 days and directed EPA to file status reports at 30-day intervals from the date of the order. Doc. No. 1673071. The Court has subsequently issued five additional orders, all on the court’s own motion, likewise holding the case in abeyance for 60-day intervals and directing EPA to file status reports at 30-day intervals. *See* August

8, 2017 Order (Doc. No. 1687838); November 9, 2017 Order (Doc. No. 1703889); March 1, 2018 Order (Doc. No. 1720228); June 26, 2018 Order (Doc. No. 1737735); December 21, 2018 Order (Doc. No. 1765562).

4. At the end of the day on December 21, 2018, the appropriations act that had been funding the Department of Justice expired and appropriations to the Department lapsed. The same is true for several other Executive agencies, including the United States Environmental Protection Agency (“EPA”), for which appropriations lapsed as of December 29, 2018. The Department does not know when funding will be restored by Congress.

5. Absent an appropriation, Department of Justice attorneys and employees of the EPA are prohibited from working, even on a voluntary basis, except in very limited circumstances, including “emergencies involving the safety of human life or the protection of property.” 31 U.S.C. § 1342.

Therefore, although we greatly regret any disruption caused to the court and the other litigants, Respondent hereby moves for an extension of the January 21, 2019, deadline to file a status report in this case until seven days after appropriations are restored and Department of Justice and EPA personnel are permitted to resume their usual civil litigation functions.

Respectfully submitted,

JONATHAN D. BRIGHTBILL
Deputy Assistant Attorney General

/s/ Eric G. Hostetler

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January 16, 2019

Counsel for EPA

CERTIFICATE OF COMPLIANCE

I hereby certify that this motion complies with the requirements of Fed. R. App. P. 27(d)(2)(A) because it contains 559 words according to the count of Microsoft Word, excluding the parts of the motion exempted by Fed. R. App. P. 32(f), and therefore is within the word limit of 5,200 words.

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this motion was prepared in Microsoft Word with the proportionally-spaced typeface of Garamond 14-point.

/s/ Eric G. Hostetler

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CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of January 2019, all counsel of record were served by receipt of electronic notification through the Court's CM/ECF system.

/s/ Eric G. Hostetler
Eric G. Hostetler