

ORAL ARGUMENT NOT YET SCHEDULED

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

AMERICAN LUNG ASSOC., et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, et al.,

Respondents.

No. 19-1140 (and consolidated)

OPPOSITION TO EPA’S MOTION TO EXPEDITE

Petitioners Consolidated Edison, Inc., Exelon Corporation, National Grid USA, New York Power Authority, Power Companies Climate Coalition, Public Service Enterprise Group Incorporated, and Sacramento Municipal Utility District (“Power Company Petitioners”) respectfully submit their opposition to Respondent U.S. Environmental Protection Agency’s (“EPA’s”) motion to expedite this appeal (Doc. 1803976).

As described in the State and Municipal Petitioners’ opposition to EPA’s motion to expedite (Doc. 1805699), EPA filed its motion more than a week before the deadline for filing petitions under section 307(b) of the Clean Air Act, 42 U.S.C. § 7607(b). State and Mun. Petitioners’ Oppos. to EPA’s Mot. to Expedite at 1. The Power Company Petitioners timely filed their petition for review on Friday, September 6, 2019 (Doc. 1805719), and their case was not consolidated with the

other cases challenging the same EPA action until after the close of business on Monday, September 9, 2019 (*see* Order, Doc. 1805728, accompanying docket entry, “[Entered: 09/09/2019 05:27 PM]”). Accordingly, Respondent EPA could not have attempted to confer with the Power Company Petitioners regarding an appropriate briefing schedule before filing its motion to expedite. Likewise, the Power Company Petitioners did not have an adequate opportunity to respond to EPA’s motion to expedite before the time for filing responses had passed.¹

According to this Court’s Handbook, motions for expedited consideration are granted “very rarely”, in cases where the movant demonstrates that the delay will cause irreparable injury and the decision under review is subject to substantial challenge or where the public generally or persons not before the Court have an unusual interest in prompt disposition and the reasons for granting expedited consideration are “strongly compelling.” Handbook of Practices and Internal Procedures for the U.S. Court of Appeals, District of Columbia, at 33 (as amended through December 2018) (“Handbook”). EPA makes no serious effort to demonstrate that its request meets this standard, which it discusses only in a footnote. *See* Mot. to Expedite at 1 n. 1. If the general interest cited by EPA in “provid[ing] certainty to the states, regulated utilities, electricity rate payers around

¹ To the extent leave of this Court is required to file this response in opposition at this time, the Power Company Petitioners seek leave of this Court for good cause shown by the reasons described in the foregoing paragraph.

the country and other affected stakeholders as to the scope of EPA's authority" (Mot. to Expedite at 4) were sufficient to meet such a standard, then expedition would be granted, not "very rarely" (Handbook at 33), but in almost every case touching upon regulation of the electricity sector.

There are no "strongly compelling" reasons for expediting consideration of this case outside of the ordinary course and schedule. No party is required to take any action imminently to comply with the requirements of the challenged rule. If anything, the large number of parties to this case demonstrates, not the unusual interest in prompt disposition suggested by EPA (*see* Mot. to Expedite at 3), but the need to establish a briefing schedule that provides adequate time for coordination among the many parties on the same side.

For the foregoing reasons, the Court should deny EPA's motion to expedite.

Dated: September 10, 2019

Respectfully submitted,

/s/ Kevin Poloncarz

Kevin Poloncarz

Donald L. Ristow

Jake Levine

COVINGTON & BURLING LLP

Salesforce Tower

415 Mission Street, 54th Floor

San Francisco, CA 94105-2533

(415) 591-7070

kpoloncarz@cov.com

*Counsel for Consolidated Edison, Inc.,
Exelon Corporation, National Grid
USA, New York Power Authority, Power
Companies Climate Coalition, Public
Service Enterprise Group Incorporated,
and Sacramento Municipal Utility
District*

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d)(2), I hereby certify that this document complies with the type-volume limitations because, according to the word processing system used to create it, it contains 534 words, excluding the portions that do not need to be counted.

Pursuant to Fed. R. App. P. 32(a)(5)-(6), I hereby certify that this document complies with the typeface requirements and the type-style requirements because it has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

Dated: September 10, 2019

/s/ Kevin Poloncarz
Kevin Poloncarz

CERTIFICATE OF SERVICE

I hereby certify that on this 10th day of September, 2019, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will cause all registered CM/ECF users to be served by the CM/ECF System.

Dated: September 10, 2019

/s/ Kevin Poloncarz
Kevin Poloncarz