

ORAL ARGUMENT HEARD ON SEPTEMBER 27, 2016

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

_____	)	
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>	)	
_____	)	

**RESPONDENT-INTERVENORS THE AMERICAN WIND ENERGY  
ASSOCIATION AND THE SOLAR ENERGY INDUSTRIES  
ASSOCIATIONS’ OPPOSITION TO  
MOTION TO SEVER AND CONSOLIDATE**

The American Wind Energy Association (“AWEA”) and the Solar Energy Industries Association (“SEIA”) strongly oppose the motion by the Utility Air Regulatory Group, American Public Power Association, LG&E, and KU energy LLC (collectively, “Movant-Petitioners”) to sever their petitions for review in *North Dakota v. EPA, et al.* (Case No. 17-1014 and consolidated cases) and consolidate them with the petitions for review in *West Virginia v. EPA, et al.* (Case No. 15-1363 and consolidated cases).

The petitions in Case No. 15-1363 and consolidated cases seek review of an EPA final rule (“Rule”) promulgated under the Clean Air Act to address carbon

dioxide emissions from existing electric utility generating units, 80 Fed. Reg. 64,662 (Oct. 23, 2015), and concern the foundational legal issues related to whether EPA has authority under the Clean Air Act to issue the Rule. On the other hand, the petitions in Case No. 17-1014 and consolidated cases seek review of EPA's denial of administrative petitions for reconsideration of the Rule, *see* 82 Fed. Reg. 4864 (Jan. 17, 2017), and relate to notice-and-comment, as-applied, and related record issues.

As the Environmental and Public Health Organizations lay out in their opposition to the motion (Doc. 1663907), the Movant-Petitioners' proposal is extremely inefficient given that oral argument concerning the threshold legal issues was held over five months ago and only a small number of the Rule's challengers now ask this Court to delay deciding that case to consider conventional administrative issues raised in a distinct case that challenges a separate EPA decision to deny their reconsideration petitions.<sup>1</sup> As this Court has routinely done with such requests at this juncture in a case, it should address challenges to EPA's denial of administrative reconsideration on a separate track from the main case.

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<sup>1</sup> The Movant-Petitioners constitute a small minority of the petitioners in the reconsideration case but nevertheless seek to sever and consolidate only their two petitions for review in the reconsideration case, even though other petitioners in the reconsideration case raised substantially similar issues in their reconsideration petitions.

AWEA and SEIA collectively represent more than 3,000 companies and organizations in the wind and solar energy industries. Any delay of the implementation of the Rule that could be caused by the consolidation of these cases would harm our members. Investors rely significantly on policy certainty in deciding whether to finance wind and solar energy projects. The relief sought by the Movant-Petitioners—a delay of this Court’s resolution of the many threshold issues already properly and thoroughly briefed and argued before the *en banc* court—would create continued uncertainty with respect to the effectiveness of the Rule and, in turn, harm the wind and solar industries.

### CONCLUSION

This Court should deny the Movant-Petitioners’ motion to sever and consolidate their petitions for review in Case No. 17-1014 and consolidated cases with the instant case.

Respectfully submitted,

Dated: March 7, 2017

/s/ Gene Grace

Gene Grace

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for the District of Columbia Circuit

**CERTIFICATE OF COMPLIANCE**

I hereby certify that this opposition complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains 486 words according to the count of Microsoft Word and thus is within the word limit of 5,200 words.

Respectfully submitted,

Dated: March 7, 2017

/s/ Gene Grace  
Gene Grace

**CERTIFICATE OF SERVICE**

I hereby certify that, on this 7th day of March 2017, a copy of the foregoing document was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

Respectfully submitted,

/s/ Gene Grace  
Gene Grace