

ORAL ARGUMENT NOT YET SCHEDULED

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

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American Lung Association, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	No. 19-1140
v.)	(and consolidated cases)
)	
U.S. Environmental Protection Agency, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	
<hr/>)	

**UNOPPOSED MOTION OF COORDINATING PETITIONERS FOR
EXTENSION AND MODIFICATION OF BRIEFING SCHEDULE**

Petitioners States and Municipalities (Nos. 19-1165, 19-1177), Public Health and Environmental Organizations (Nos. 19-1140, 19-1166, 19-1173), Clean Energy Trade Associations (Nos. 19-1186, 19-1187), Power Companies (No. 19-1188), and Petitioner-Intervenor State of Nevada (collectively, “Coordinating Petitioners”) respectfully move for a 21-day extension of time to file petitioners’ opening briefs, and a corresponding modification of the briefing schedule for all parties and amici as set forth below. Coordinating Petitioners have consulted with counsel for the other parties. Counsel for respondents United States Environmental Protection Agency, *et al.* (“EPA”) has stated that respondents agree to the relief requested in this motion. All counsel for other parties that provided positions on

this motion by the time requested stated that their clients either consent to, do not oppose, or take no position.¹

These consolidated petitions seek review of the “Repeal of the Clean Power Plan; Emission Guidelines for Greenhouse Gas Emissions from Existing Electric Utility Generating Units; Revisions to Emission Guidelines Implementing Regulations,” 84 Fed. Reg. 32,520, (July 8, 2019) (“Rule”). On January 31, 2020, this Court entered an order (ECF No. 1826621) establishing a briefing schedule under which opening briefs are due on March 27, 2020. Under the Court’s order, as many as seven distinct sets of petitioners may file opening briefs. *See id.*

¹ Counsel for Public Health and Environmental Organizations sent an email to liaison counsel at approximately 5:15 p.m. eastern on March 18 seeking parties’ positions on the motion and requesting a response by close-of-business on March 19. Petitioner Westmoreland Mining Holdings LLC and Respondent-Intervenors AEP Generation Resources Inc.; AEP Generating Company; America's Power; Appalachian Power Company; Chamber of Commerce of the United States; Georgia Power Company; Indiana Michigan Power Company; Kentucky Power Company; National Rural Electric Cooperative Association; National Mining Association; Nevada Gold Mines LLC and Nevada Gold Energy LLC (previously Newmont Nevada Energy Investment); Public Service Company of Oklahoma; Southwestern Electric Power Company; State of North Dakota, and Wheeling Power Company consent to the relief requested. Respondent-Intervenors Indiana Energy Association; Indiana Utility Group; and the states of Alabama; Alaska; Arkansas; Georgia; Indiana; Kansas; Kentucky; Louisiana; Missouri; Montana; Nebraska; Ohio; Oklahoma; South Carolina; South Dakota; Texas; Utah; West Virginia, and Wyoming do not oppose. Petitioners Biogenic CO2 Coalition and North American Coal Corporation take no position. Other parties had not responded as of the time by which response was requested.

Coordinating Petitioners include four coalitions of parties who challenge the Rule as unlawful and under-protective of public health and welfare. State and Municipal Petitioners and Petitioner-Intervenor Nevada include 23 states, the District of Columbia, and seven cities; Public Health and Environmental Petitioners include 13 nonprofit public health and environmental organizations; Power Company Petitioners include six power companies and an association of power companies; and Clean Energy Trade Association Petitioners include the American Wind Energy Association, Advanced Energy Economy, and the Solar Energy Industries Association.

Recent developments associated with the COVID-19 pandemic² have presented significant logistical challenges for Coordinating Petitioners and have presented a set of rapidly evolving changes in work environments for counsel. Some counsel actively involved in the briefing for Coordinating Petitioners – including those located in the San Francisco Bay Area – are subject to “shelter in place” orders prohibiting activity outside the home other than enumerated essential

² See President of the United States, *Proclamation on Declaring a National Emergency Concerning the Novel Coronavirus Disease (COVID-19) Outbreak* (Mar. 13, 2020), <https://www.whitehouse.gov/presidential-actions/proclamation-declaring-national-emergency-concerning-novel-coronavirus-disease-covid-19-outbreak/>; World Health Org., Novel Coronavirus (COVID-19) Situation, <https://experience.arcgis.com/experience/685d0ace521648f8a5beeeee1b9125cd>.

purposes such as purchasing food.³ In other areas – including New York City and Washington, D.C. – employers, consistent with recommendations of public health authorities, have closed workplaces and instituted remote working arrangements. In all areas where counsel actively involved in preparing the briefs for Coordinating Petitioners live and work, schools and most day-care facilities are closed for at least the next several weeks, and alternative child-care options are limited or non-existent. As a result, many counsel and client representatives have children at home throughout the work day, which in some cases significantly limits their availability to work. Some counsel face other significant challenges associated with the pandemic that limits the amount of time available to them to work on this litigation.

These challenges significantly impinge upon Coordinating Petitioners' ability to complete their briefs by the March 27 deadline. The challenges are particularly acute because the four Coordinating Petitioner coalitions are of briefing the case collaboratively, dividing up issues to avoid duplication, and sharing an aggregate briefing word limit. Accordingly, the briefing requires

³ *E.g.*, Order of the Health Officer of the City and County of San Francisco, No. C19-07 (“Order of the Health Officer of the City and County of San Francisco Directing All Individuals in the County to Shelter at their Place of Residence ...”), <https://www.sfdph.org/dph/alerts/files/HealthOrderC19-07-%20Shelter-in-Place.pdf>. Five other Bay Area counties have issued such orders.

consultation among many different counsel and organizations, and each brief must be reviewed by multiple Petitioner coalitions. Approval of the briefs will require extensive coordination, including by attorney general's offices and client agencies of 23 states. The significant challenges faced by Coordinating Petitioners are exacerbated by the current obstacles in contacting supervisors and client agencies to complete review and approval of briefs and declarations in support of Petitioners' standing. The requested extension is therefore necessary to allow Coordinating Petitioners to complete their work despite these disruptions.

Coordinating Petitioners have discussed modifications to the briefing schedule with counsel for Respondents to arrive at mutually acceptable dates. Based on those discussions, Coordinating Petitioners request that the due date for opening briefs, and all other due dates, be extended by 21 days, with the exception that the due date for submission of the deferred appendix and final briefs be extended by 14 days. (Word limits and limits on the number of briefs would remain as set forth in this Court's January 31, 2020 order). The revised briefing schedule would be as follows:

Briefs for Coordinating Petitioners	April 17, 2020
Brief for Biogenic CO2 Coalition	April 17, 2020
Brief for Coal Industry Petitioners	April 17, 2020
Brief for Robinson Petitioners	April 17, 2020

Brief(s) of Amici Curiae for Petitioners	April 24, 2020
Brief for Respondents	June 16, 2020
Brief(s) of Amici Curiae for Respondents	June 23, 2020
Briefs for Coordinating Petitioners as Intervenors for Respondents	July 16, 2020
Briefs for Industry & State Intervenors as Intervenors for Respondents	July 16, 2020
Brief for the State of North Dakota as Intervenor for Respondents	July 16, 2020
Reply Briefs for Coordinating Petitioners	July 30, 2020
Reply Brief for Biogenic CO2 Coalition	July 30, 2020
Reply Brief for Coal Industry Petitioners	July 30, 2020
Reply Brief for Robinson Petitioners	July 30, 2020
Deferred Appendix	August 6, 2020
Final Briefs	August 13, 2020

Conclusion

Coordinating Petitioners respectfully request that the Court grant this unopposed motion and enter the revised briefing schedule set forth above.

Dated: March 19, 2020

Respectfully submitted,

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⁴ Counsel for the State of New York represents that the other state and municipal parties listed in the signature blocks herein consent to this filing.

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CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure and Circuit Rule 25(c), I hereby certify that, on this 19th day of March 2020, I caused the foregoing Unopposed Motion of Coordinating Petitioners for Extension and Modification of Briefing Schedule to be electronically filed with the Clerk of the Court by using the Court's CM/ECF system. All registered CM/ECF users will be served by the Court's CM/ECF system.

/s/ Michael J. Myers
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CERTIFICATE OF COMPLIANCE

1. Pursuant to Fed. R. App. P. 27(d)(2), I hereby certify that **Unopposed Motion of Coordinating Petitioners for Extension and Modification of Briefing Schedule** complies with the type-volume limitations. According to the word processing system used in this office, this document, exclusive the caption, signature block, and any certificates of counsel, contains 1,140 words.

2. Pursuant to Fed. R. App. P. 32(a)(5)-(6), I hereby certify that **Unopposed Motion of Coordinating Petitioners for Extension and Modification of Briefing Schedule** 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: March 19, 2020

/s/ Michael J. Myers
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