ORAL ARGUMENT NOT YET SCHEDULED

No. 15-1363 and Consolidated Cases

(15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432, 15-1442, 15-1451, 15-1459)

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

STATE OF WEST VIRGINIA, et al.,

Petitioners,

v.

ENVIRONMENTAL PROTECTION AGENCY
AND REGINA A. MCCARTHY, ADMINISTRATOR,

Respondents.

RESPONSE OF POWER COMPANIES IN OPPOSITION TO PETITIONERS' JOINT MOTION TO ESTABLISH BRIEFING FORMAT AND EXPEDITED BRIEFING SCHEDULE

Movant-Intervenors for Respondents Calpine Corporation, the City of Austin d/b/a Austin Energy, the City of Los Angeles, by and through its Department of Water and Power, the City of Seattle, by and through its City Light Department, National Grid Generation, LLC, New York Power Authority, NextEra Energy, Inc., Pacific Gas and Electric Company, Sacramento Municipal Utility District and Southern California Edison Company (hereinafter, the "Power Companies")

respectfully respond to Petitioners' Joint Motion to Establish Briefing Format and Expedited Briefing Schedule, Doc. No. 1587531 (hereinafter, "Joint Motion").

The Power Companies agree with Respondents and other Movant-Intervenors for Respondents that this case should be briefed and argued expeditiously in one round that addresses all issues regarding the Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units (hereinafter, "Rule" or "Clean Power Plan").[1] Bifurcated briefing would lengthen, not shorten, the amount of time required to complete judicial review of the Clean Power Plan. The Power Companies do not oppose Petitioners' request for an expedited briefing schedule; however, for the reasons articulated by Respondents[2] and other Movant-Intervenors for Respondents[3], the distinction Petitioners seek to draw between "fundamental core" legal issues that would be briefed first, and "programmatic" issues that would be briefed only if Petitioners lose in the first round, is artificial. The Power Companies agree that setting a bifurcated briefing schedule would only frustrate Petitioners' ultimate interest in an expedited resolution of this case, an interest that the Power Companies share. Accordingly, the Court should reject Petitioners' proposal for bifurcation of briefing in this case.

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[1] *See* Respondents' Opposition to Petitioners' Joint Motion to Establish Briefing Format and Expedited Briefing Schedule (filed Dec. 21, 2015), Doc. #1589819 (hereinafter, "Respondents' Response"), at 2; Joint Response of Respondent-Intervenors to Petitioners' Joint Motion to Establish Format and Expedited Briefing Schedule (filed Dec. 21, 2015), Doc. #1589874 (hereinafter, "Joint Response"), at 6-7.
[2] *See* Respondents' Resp. at 7-10.
[3] *See* Joint Resp. at 2-5.

The Power Companies further agree with other Movant-Intervenors for Respondents that Petitioners' proposed word allocations would deprive Respondent-Intervenors of a fair opportunity to present their perspective to the Court on the Rule's lawfulness.[4] The Power Companies will not burden the Court with duplicative or unnecessary briefing and will coordinate with other Respondent-Intervenors to avoid duplication. As a coalition of some of the largest electric utilities and owners of generating units subject to the Clean Power Plan's emission reduction obligations (including four of the ten largest municipal utilities and the largest state power organization in the United States), the Power Companies will bring an important perspective to this litigation regarding the achievability and reasonableness of the Clean Power Plan's goals. Their perspective deserves to be heard. By proposing that all Respondent-Intervenors share the same number of words that would be separately afforded to Petitioner-Intervenors (8,750 words), Petitioners' proposal would deprive the Power Companies and other Movant-Intervenors of the opportunity to provide a balanced perspective of the views of electric generators and utilities on the lawfulness, flexibility and achievability of the Clean Power Plan. Accordingly, the Court should reject Petitioners' proposed word allocations.

Should the Court establish a briefing schedule at this time, the Power Companies would request that the Court afford all Respondent-Intervenors no fewer than the proportionate number of words that are provided by the rules, relative to the number provided by the rules for Petitioners' briefs, i.e., because D.C. Cir. Rule 32(e)(2)(B)(i) accords 8,750 words for an intervenor brief and Fed. R. App. P.

[4] *See id.* at 7-9.

32(a)(7)(B)(i) provides 14,000 words for a principal brief, Respondent-Intervenors should be afforded no fewer than 62.5 percent of the total number of words allocated by the Court for all Petitioners.

Conclusion

The Court should deny Petitioners' Joint Motion for bifurcated briefing and direct the parties to confer with one another, including Movant-Intervenors, to reach agreement on a proposed briefing schedule or to submit separate proposals for briefing of the entire case. If the Court establishes a briefing schedule with word allocations at this time, it should afford all Respondent-Intervenors no fewer than 62.5 percent of the total number of words allocated to all petitioners.

Dated: December 21, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of December, 2015, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users. I also caused the foregoing to be served via U.S. mail on counsel for the following parties at the following addresses:

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