

ORAL ARGUMENT HEARD EN BANC
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
UNITED STATES)	(and consolidated cases)
ENVIRONMENTAL PROTECTION)	
AGENCY, et al.,)	
)	
<i>Respondents.</i>)	

RESPONSE TO PETITIONER’S MOTION TO DISMISS

State and public health and environmental respondent-intervenors hereby jointly respond to the motion to dismiss filed by the Local Government Coalition for Renewable Energy, petitioner in No. 15-1483 (Doc. 1799127).

Similar motions to dismiss on mootness grounds were previously filed by most of the petitioners in Nos. 15-1363, *et al.* (Doc. 1797267) and Nos. 17-1014, *et al.* (Doc. 1798600). On July 25, 2019, respondent-intervenors filed a joint response to those motions (Doc. 1799095) explaining that because the July 8, 2019, rule movants rely upon as mootng these cases does not become effective

until September 6, 2019,¹ the motions should be denied as premature or held in abeyance. The current motion should be treated the same.

Dated: August 1, 2019

Respectfully submitted,

FOR ENVIRONMENTAL
DEFENSE FUND

FOR THE STATE OF NEW YORK

Sean H. Donahue
Susannah L. Weaver
Donahue, Goldberg & Weaver, LLP
1008 Pennsylvania Ave., SE
Washington, D.C. 20003
(202) 277-7085
sean@donahuegoldberg.com

LETITIA JAMES
ATTORNEY GENERAL

/s/ Michael J. Myers²

Tomás Carbonell
Vickie Patton
Martha Roberts
Benjamin Levitan
Environmental Defense Fund
1875 Conn. Avenue, N.W. Ste. 600
Washington, D.C. 20009
(202) 572-3610

Barbara D. Underwood
Solicitor General
Steven C. Wu
Deputy Solicitor General
David S. Frankel
Assistant Solicitor General
Michael J. Myers
Morgan A. Costello
Brian M. Lusignan
Assistant Attorneys General
The Capitol
Albany, NY 12224
(518) 776-2400

¹ *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, 32,530 (July 8, 2019).

² Counsel for the State of New York represents that the other parties listed in the signature blocks herein consent to the filing of this motion.

FOR THE STATE OF CALIFORNIA

XAVIER BECERRA
ATTORNEY GENERAL
Robert W. Byrne
Sally Magnani
Senior Assistant Attorneys General
David A. Zonana
Supervising Deputy Attorney General
Jonathan Wiener
M. Elaine Meckenstock
Timothy Sullivan
Elizabeth Rumsey
Deputy Attorneys General
1515 Clay Street
Oakland, CA 94612
(510) 879-1300

Attorneys for the State of California,
by and through Governor Gavin
Newsom, the California Air Resources
Board, and Attorney General Xavier
Becerra

FOR THE STATE OF DELAWARE

KATHLEEN JENNINGS
ATTORNEY GENERAL
Valerie S. Edge
Deputy Attorney General
Delaware Department of Justice
102 West Water Street, 3d Floor
Dover, DE 19904
(302) 739-4636

FOR THE STATE OF
CONNECTICUT

WILLIAM TONG
ATTORNEY GENERAL
Matthew I. Levine
Scott N. Koschwitz
Assistant Attorneys General
Office of the Attorney General
P.O. Box 120, 55 Elm Street
Hartford, CT 06141-0120
(860) 808-5250

FOR THE STATE OF HAWAII

CLARE E. CONNORS
ATTORNEY GENERAL
William F. Cooper
Deputy Attorney General
465 S. King Street, Room 200
Honolulu, HI 96813
(808) 586-4070

FOR THE STATE OF ILLINOIS

KWAME RAOUL
ATTORNEY GENERAL
Matthew J. Dunn
Gerald T. Karr
Daniel I. Rottenberg
Assistant Attorneys General
69 W. Washington St., 18th Floor
Chicago, IL 60602
(312) 814-3816

FOR THE STATE OF MAINE

AARON M. FREY
ATTORNEY GENERAL
Mary Sauer
Laura Jensen
Assistant Attorneys General
6 State House Station
Augusta, ME 04333
(207) 626-8800

FOR THE COMMONWEALTH OF MASSACHUSETTS

MAURA HEALEY
ATTORNEY GENERAL
Melissa A. Hoffer
Christophe Courchesne
Assistant Attorneys General
Environmental Protection Division
One Ashburton Place, 18th Floor
Boston, MA 02108
(617) 963-2423

FOR THE STATE OF IOWA

THOMAS J. MILLER
ATTORNEY GENERAL
Jacob Larson
Assistant Attorney General
Office of Iowa Attorney General
Hoover State Office Building
1305 E. Walnut Street, 2nd Floor
Des Moines, Iowa 50319
(515) 281-5341

FOR THE STATE OF MARYLAND

BRIAN E. FROSH
ATTORNEY GENERAL
Steven M. Sullivan
Solicitor General
200 St. Paul Place, 20th Floor
Baltimore, MD 21202
(410) 576-6427

FOR THE STATE OF MINNESOTA

KEITH ELLISON
ATTORNEY GENERAL
Karen D. Olson
Deputy Attorney General
Max Kieley
Assistant Attorney General
445 Minnesota Street, Suite 900
St. Paul, MN 55101-2127
(651) 757-1244

Attorneys for State of Minnesota, by
and through the Minnesota Pollution
Control Agency

FOR THE STATE OF NEW MEXICO FOR THE STATE OF OREGON

HECTOR BALDERAS
ATTORNEY GENERAL
Anne Minard
Special Assistant Attorney General
Office of the Attorney General
408 Galisteo Street
Villagra Building
Santa Fe, NM 87501
(505) 490-4045

ELLEN F. ROSENBLUM
ATTORNEY GENERAL
Paul Garrahan
Attorney-in-Charge
Natural Resources Section
Oregon Department of Justice
1162 Court Street NE
Salem, OR 97301-4096
(503) 947-4593

FOR THE STATE OF RHODE
ISLAND

PETER F. NERONHA
ATTORNEY GENERAL
Gregory S. Schultz
Special Assistant Attorney General
Office of the Attorney General
150 South Main Street
Providence, RI 02903
(401) 274-4400

FOR THE STATE OF VERMONT

THOMAS J. DONOVAN, JR.
ATTORNEY GENERAL
Nicholas F. Persampieri
Assistant Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609-1001
(802) 828-3186

FOR THE COMMONWEALTH OF
VIRGINIA

MARK HERRING
ATTORNEY GENERAL
Donald D. Anderson
Deputy Attorney General
Paul Kugelman, Jr.
Sr. Asst. Attorney General and Chief
Environmental Section
202 North 9th Street
Richmond, VA 23219
(804) 786-3811

FOR THE STATE OF
WASHINGTON

ROBERT W. FERGUSON
ATTORNEY GENERAL
Thomas J. Young
Senior Counsel
Office of the Attorney General
P.O. Box 40117
Olympia, WA 98504-0117
(360) 586-4614

FOR THE DISTRICT OF
COLUMBIA

KARL A. RACINE
ATTORNEY GENERAL
Loren L. AliKhan
Solicitor General
Office of the Attorney General
441 Fourth Street, NW, Suite 630
South
Washington, D.C. 20001
(202) 727-6287

FOR BROWARD COUNTY,
FLORIDA

ANDREW J. MEYERS
COUNTY ATTORNEY
Mark A. Journey
Assistant County Attorney
Broward County Attorney's Office
155 S. Andrews Avenue, Room 423
Fort Lauderdale, FL 33301
(954) 357-7600

FOR THE CITY OF NEW YORK

ZACHARY W. CARTER
CORPORATION COUNSEL
Christopher G. King
Kathleen C. Schmid
Senior Counsel
New York City Law Department
100 Church Street
New York, NY 10007
(212) 356-2314

FOR THE CITY OF BOULDER

TOM CARR
CITY ATTORNEY
Debra S. Kalish
City Attorney's Office
1777 Broadway, Second Floor
Boulder, CO 80302
(303) 441-3020

FOR THE CITY OF CHICAGO

EDWARD N. SISKEL
Corporation Counsel
BENNA RUTH SOLOMON
Deputy Corporation Counsel
30 N. LaSalle Street, Suite 800
Chicago, IL 60602
(312) 744-7764

FOR THE CITY OF PHILADELPHIA FOR THE CITY OF SOUTH MIAMI

MARCEL S. PRATT
CITY SOLICITOR
Scott J. Schwarz
Patrick K. O'Neill
Divisional Deputy City Solicitors
The City of Philadelphia
Law Department
One Parkway Building
1515 Arch Street, 16th Floor
Philadelphia, PA 19102-1595
(215) 685-6135

FOR AMERICAN LUNG
ASSOCIATION, CLEAN AIR
COUNCIL, CLEAN WISCONSIN,
CONSERVATION LAW
FOUNDATION, AND THE OHIO
ENVIRONMENTAL COUNCIL
Ann Brewster Weeks
James P. Duffy
Clean Air Task Force
114 State Street, 6th Fl.
Boston, MA 02109
(617) 624-0234, ext. 156

FOR CENTER FOR
BIOLOGICAL DIVERSITY

Clare Lakewood
Howard M. Crystal
Center for Biological Diversity
1212 Broadway, Suite 800
Oakland, CA 94612
(415) 844-7121

THOMAS F. PEPE
CITY ATTORNEY
City of South Miami
1450 Madruga Avenue, Ste 202
Coral Gables, Florida 33146
(305) 667-2564

FOR NATURAL RESOURCES
DEFENSE COUNCIL

David Doniger
Benjamin Longstreth
Melissa J. Lynch
Natural Resources Defense Council
1152 15th Street, N.W., Suite 300
Washington, D.C. 20005
(202) 513-6256

FOR SIERRA CLUB

Joanne Spalding
Andres Restrepo
Alejandra Núñez
Sierra Club
2101 Webster Street, Suite 1300
Oakland, CA 94612
(415) 977-5725

Vera Pardee
726 Euclid Ave.
Berkley, CA 94708
(858) 717-1448

Howard I. Fox
David S. Baron
Timothy D. Ballo
Earthjustice

1625 Massachusetts Avenue, N.W.,
Suite 702
Washington, D.C. 20036
(202) 667-4500

FOR WESTERN HIGHLANDS
CONSERVANCY, OHIO VALLEY
ENVIRONMENTAL COALITION,
COAL RIVER MOUNTAIN
WATCH, KANAWHA FOREST
COALITION, MON VALLEY
CLEAN AIR COALITION, AND
KEEPERS OF THE MOUNTAINS
FOUNDATION

William V. DePaulo
122 N Court Street, Suite 300
Lewisburg, WV 24901
(304) 342-5588

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

The undersigned attorney, Michael J. Myers, hereby certifies:

1. This document complies with the type-volume limitations of Fed. R. App. P. 27(d)(2). According to the word processing system used in this office, this document, exclusive the caption, signature block, and any certificates of counsel, contains 159 words.

2. This document 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 document has been prepared in a proportionally spaced typeface in 14-point Times New Roman.

/s/ Michael J. Myers
MICHAEL J. MYERS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Response to Petitioner's Motion to Dismiss was filed on August 1, 2019 using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Michael J. Myers
MICHAEL J. MYERS