

ORAL ARGUMENT NOT YET SCHEDULED

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

<hr/>		)	
State of West Virginia,		)	
State of Texas, et al.,		)	
		)	
	<i>Petitioners,</i>	)	
		)	
v.		)	No. 15-1363 and
		)	consolidated cases
		)	
U.S. Environmental Protection Agency, et al.,		)	
		)	
		)	
	<i>Respondents.</i>	)	
<hr/>		)	

**JOINT REPLY OF STATE PETITIONERS ON  
MERITS BRIEFING PROPOSAL**

State Petitioners (Case Nos. 15-1363, -1364, -1380, and -1409) join in full the Joint Reply Of Non-State Petitioners On Merits Briefing Proposal (“Joint Non-State Briefing Reply”).

State Petitioners write separately only to emphasize their interest in a briefing schedule that allows oral argument to take place before the end of this Court’s term in May 2016. The requirements and timeframe imposed by EPA under the Power Plan—designed to “aggressive[ly] transform[] . . . the domestic energy industry”<sup>1</sup>—are causing the States ongoing, massive, and irreparable consequences on a scale they have never experienced from any federal environmental regulation.<sup>2</sup> It is thus critical to State Petitioners that oral argument occurs by May 2016, prior to this Court’s several-month-long summer recess. As explained in the Joint Non-State Briefing Reply, bifurcation would facilitate such a prompt briefing schedule. But even if this Court is not inclined to grant bifurcation, State Petitioners stand ready to brief all ripe issues on any schedule this Court would set to make a May 2016 argument possible, requesting only that sufficient pages be afforded to address the unprecedented number of issues that the Power Plan raises. *See* Joint Non-State Briefing Reply 2-3 & n.2.

---

<sup>1</sup> White House Factsheet, Exh. B at 1, Joint States Stay Motion, ECF 1579999, No. 15-1363.

<sup>2</sup> *See* Joint States Stay Mot., ECF 1579999, No. 15-1363; Ok. Stay Mot., ECF 1580577, No. 15-1364; ND Stay Mot., ECF 1580920, No. 15-1380; Miss. DEQ Stay Mot., ECF 1582333, No. 15-1409; All States Stay Reply, ECF 1590286, No. 15-1363 (and consolidated cases).

EPA argues that the request for an expedited merits briefing schedule is “premature” in light of the pending stay motions, EPA Opp. 4, but the agency has it backwards. Were the States to wait until after resolution of the stay motions to request expedited merits briefing, EPA would argue then that it is too late to be asking this Court for a schedule permitting oral argument before the end of this Court’s term in May 2016. Moreover, a May 2016 argument would become even more critical to the States if this Court were to deny their stay motions, given that this Court would not return from summer recess until September 2016. In that circumstance, the States would be forced to suffer many additional months of irreparable harm before they could obtain a resolution on the merits of their Petitions.

The States’ request for expedited merits briefing thus has not been made “without regard to the pendency of the nine stay motions,” EPA Opp. 1, but rather is fully consistent and should be considered together with those pleas for immediate relief from this Court. State Petitioners’ stay motions ask this Court to stop the ongoing harms entirely. In contrast, expedited merits briefing would not stop the irreparable harms, but would reduce by potentially many months the length of the States’ suffering in the event the stay is not granted. If this Court were to issue a stay, however, the need for an argument this term would, as EPA suggests, become less urgent.

Dated: December 31, 2015

Respectfully submitted,

No. 15-1363:

/s/ Elbert Lin

Patrick Morrissey

Attorney General of West Virginia

Elbert Lin

Solicitor General

*Counsel of Record*

J. Zak Ritchie

Assistant Attorney General

State Capitol Building 1, Room 26-E

Tel. (304) 558-2021

Fax (304) 558-0140

Email: elbert.lin@wvago.gov

***Counsel for Petitioner State of West Virginia***

/s/ Scott A. Keller

Ken Paxton

Attorney General of Texas

Charles E. Roy

First Assistant Attorney General

Scott A. Keller

Solicitor General

*Counsel of Record*

P.O. Box 12548

Austin, Texas 78711-2548

Tel. (512) 936-1700

Email: Scott.Keller@texasattorneygeneral.gov

***Counsel for Petitioner State of Texas***

/s/ Andrew Brasher

Luther Strange  
Attorney General of Alabama  
Andrew Brasher  
Solicitor General  
*Counsel of Record*  
501 Washington Ave.  
Montgomery, AL 36130  
Tel. (334) 590-1029  
Email: abrasher@ago.state.al.us  
***Counsel for Petitioner State of Alabama***

/s/ John R. Lopez IV

Mark Brnovich  
Attorney General of Arizona  
John R. Lopez IV  
*Counsel of Record*  
Dominic E. Draye  
Keith Miller  
Assistant Attorneys General  
Maureen Scott  
Janet Wagner  
Janice Alward  
Arizona Corp. Commission,  
Staff Attorneys  
1275 West Washington  
Phoenix, AZ 85007  
Tel. (602) 542-5025  
Email: john.lopez@azag.gov  
***Counsel for Petitioner Arizona  
Corporation Commission***

/s/ Jamie L. Ewing

Leslie Rutledge  
Attorney General of Arkansas  
Lee Rudofsky  
Solicitor General  
Jamie L. Ewing  
Assistant Attorney General  
*Counsel of Record*  
323 Center Street, Ste. 400  
Little Rock, AR 72201  
Tel. (501) 682-5310  
Email: jamie.ewing@arkansasag.gov  
***Counsel for Petitioner State of Arkansas***

/s/ Frederick Yarger

Cynthia H. Coffman  
Attorney General of Colorado  
Frederick Yarger  
Solicitor General  
*Counsel of Record*  
1300 Broadway, 10th Floor  
Denver, CO 80203  
Tel. (720) 508-6168  
Email: fred.yarger@state.co.us  
***Counsel for Petitioner State of Colorado***

/s/ Allen Winsor

Pamela Jo Bondi  
Attorney General of Florida  
Allen Winsor  
Solicitor General of Florida  
*Counsel of Record*  
Office of the Attorney General  
PL-01, The Capitol  
Tallahassee, FL 32399-1050  
Tel. (850) 414-3681  
Fax (850) 410-2672  
Email: allen.winsor@myfloridalegal.com  
***Counsel for Petitioner State of Florida***

/s/ Britt C. Grant

Samuel S. Olens  
Attorney General of Georgia  
Britt C. Grant  
Solicitor General  
*Counsel of Record*  
40 Capitol Square SW  
Atlanta, GA 30334  
Tel. (404) 656-3300  
Fax (404) 463-9453  
Email: bgrant@law.ga.gov  
***Counsel for Petitioner State of Georgia***

/s/ Timothy Junk

Gregory F. Zoeller  
Attorney General of Indiana  
Timothy Junk  
Deputy Attorney General  
*Counsel of Record*  
Indiana Government Ctr. South, Fifth Floor  
302 West Washington Street  
Indianapolis, IN 46205  
Tel. (317) 232-6247  
Email: tim.junk@atg.in.gov  
***Counsel for Petitioner State of Indiana***

/s/ Jeffrey A. Chanay

Derek Schmidt  
Attorney General of Kansas  
Jeffrey A. Chanay  
Chief Deputy Attorney General  
*Counsel of Record*  
Bryan C. Clark  
Assistant Solicitor General  
120 SW 10th Avenue, 3d Floor  
Topeka, KS 66612  
Tel. (785) 368-8435  
Fax (785) 291-3767  
Email: jeff.chanay@ag.ks.gov  
***Counsel for Petitioner State of Kansas***

/s/ Jack Conway

Jack Conway

Attorney General of Kentucky

*Counsel of Record*

700 Capital Avenue

Suite 118

Frankfort, KY 40601

Tel: (502) 696-5650

Email: Sean.Riley@ky.gov

***Counsel for Petitioner Commonwealth of  
Kentucky***

/s/ Megan K. Terrell

James D. "Buddy" Caldwell

Attorney General of Louisiana

Megan K. Terrell

Deputy Director, Civil Division

*Counsel of Record*

1885 N. Third Street

Baton Rouge, LA 70804

Tel. (225) 326-6705

Email: TerrellM@ag.state.la.us

***Counsel for Petitioner State of Louisiana***

/s/ Donald Trahan

Herman Robinson

Executive Counsel

Donald Trahan

*Counsel of Record*

Elliott Vega

Louisiana Department of Environmental  
Quality

Legal Division

P.O. Box 4302

Baton Rouge, LA 70821-4302

Tel: (225) 219-3985

Fax: (225) 219-4068

Email: Donald.Trahan@La.Gov

***Counsel for Petitioner State of Louisiana  
Department of Environmental Quality***



/s/ Aaron D. Lindstrom

Bill Schuette

Attorney General for the People of  
Michigan

Aaron D. Lindstrom

Michigan Solicitor General

*Counsel of Record*

P.O. Box 30212

Lansing, MI 48909

Tel. (515) 373-1124

Fax (517) 373-3042

Email: LindstromA@michigan.gov

***Counsel for Petitioner People of the State  
of Michigan***

/s/ James R. Layton

Chris Koster

Attorney General of Missouri

James R. Layton

Solicitor General

*Counsel of Record*

P.O. Box 899

207 W. High Street

Jefferson City, Missouri 65102

Tel. (573) 751-1800

Fax (573) 751-0774

Email: james.layton@ago.mo.gov

***Counsel for Petitioner State of Missouri***

/s/ Dale Schowengerdt

Timothy C. Fox

Attorney General of Montana

Alan Joscelyn

Chief Deputy Attorney General

Dale Schowengerdt

Solicitor General

*Counsel of Record*

215 North Sanders

Helena, Montana 59620-1401

Tel: (406) 444-7008

Email: dales@mt.gov

***Counsel for Petitioner State of Montana***

/s/ Justin D. Lavene

Doug Peterson

Attorney General of Nebraska

Dave Bydlaek

Chief Deputy Attorney General

Justin D. Lavene

Assistant Attorney General

*Counsel of Record*

2115 State Capitol

Lincoln, NE 68509

Tel. (402) 471-2834

Email: justin.lavene@nebraska.gov

***Counsel for Petitioner State of Nebraska***

/s/ Robert J. Kinney  
John J. Hoffman  
Acting Attorney General of New Jersey  
David C. Apy  
Assistant Attorney General  
Robert J. Kinney  
Deputy Attorney General  
*Counsel of Record*  
Division of Law  
R.J. Hughes Justice Complex  
P.O. Box 093  
25 Market Street  
Trenton, NJ 08625-0093  
Tel. (609) 292-6945  
Fax (609)341-5030  
Email: Robert.Kinney@dol.lps.state.nj.us  
***Counsel for Petitioner State of New Jersey***

/s/ Eric E. Murphy  
Michael DeWine  
Attorney General of Ohio  
Eric E. Murphy  
State Solicitor  
*Counsel of Record*  
30 E. Broad St., 17th Floor  
Columbus, OH 43215  
Tel. (614) 466-8980  
Email: eric.murphy@ohioattorneygeneral.gov  
***Counsel for Petitioner State of Ohio***

/s/ James Emory Smith, Jr. \_\_\_\_\_

Alan Wilson

Attorney General of South Carolina

Robert D. Cook

Solicitor General

James Emory Smith, Jr.

Deputy Solicitor General

*Counsel of Record*

P.O. Box 11549

Columbia, SC 29211

Tel. (803) 734-3680

Fax (803) 734-3677

Email: ESmith@scag.gov

***Counsel for Petitioner State of South  
Carolina***

/s/ Steven R. Blair \_\_\_\_\_

Marty J. Jackley

Attorney General of South Dakota

Steven R. Blair

Assistant Attorney General

*Counsel of Record*

1302 E. Highway 14, Suite 1

Pierre, SD 57501

Tel. (605) 773-3215

Email: steven.blair@state.sd.us

***Counsel for Petitioner State of South  
Dakota***

/s/ Tyler R. Green

Sean Reyes

Attorney General of Utah

Tyler R. Green

Solicitor General

*Counsel of Record*

Parker Douglas

Federal Solicitor

Utah State Capitol Complex

350 North State Street, Suite 230

Salt Lake City, Utah 84114-2320

Email: pdouglas@utah.gov

***Counsel for Petitioner State of Utah***

/s/ Misha Tseytlin

Brad Schimel

Attorney General of Wisconsin

Misha Tseytlin

Solicitor General

*Counsel of Record*

Andrew Cook

Deputy Attorney General

Delanie M. Breuer

Assistant Deputy Attorney General

Wisconsin Department of Justice

17 West Main Street

Madison, WI 53707

Tel: (608) 267-9323

Email: tseytlinm@doj.state.wi.us

***Counsel for Petitioner State of Wisconsin***

/s/ James Kaste  
Peter K. Michael  
Attorney General of Wyoming  
James Kaste  
Deputy Attorney General  
*Counsel of Record*  
Michael J. McGrady  
Erik Petersen  
Senior Assistant Attorneys General  
Elizabeth Morrisseau  
Assistant Attorney General  
123 State Capitol  
Cheyenne, WY 82002  
Tel. (307) 777-6946  
Fax (307) 777-3542  
Email: james.kaste@wyo.gov  
***Counsel for Petitioner State of Wyoming***

/s/ Sam M. Hayes  
Sam M. Hayes  
General Counsel  
*Counsel of Record*  
Craig Bromby  
Deputy General Counsel  
Andrew Norton  
Deputy General Counsel  
North Carolina Department of  
Environmental Quality  
1601 Mail Service Center  
Raleigh, NC 27699-1601  
Tel. (919) 707-8616  
Email: sam.hayes@ncdenr.gov  
***Counsel for Petitioner North Carolina  
Department of Environmental Quality***

No. 15-1364:

/s/ David B. Rivkin, Jr.  
David B. Rivkin, Jr.  
Mark W. DeLaquil  
Andrew M. Grossman  
Baker & Hostetler LLP  
Washington Square, Suite 1100  
1050 Connecticut Avenue, N.W.  
Washington, D.C. 20036  
(202) 861-1731  
drivkin@bakerlaw.com

E. Scott Pruitt  
Attorney General Of Oklahoma  
Patrick R. Wyrick  
Solicitor General  
313 NE 21st Street  
Oklahoma City, OK 73105  
(405) 521-4396  
(405) 522-0669 (facsimile)  
Service email: fc.docket@oag.state.ok.us  
Scott.Pruitt@oag.ok.gov

***Counsel for Petitioners State of Oklahoma and Oklahoma Department of  
Environmental Quality***

No. 15-1380:

STATE OF NORTH DAKOTA  
WAYNE STENEHJEM  
ATTORNEY GENERAL

/s/ Paul M. Seby

Paul M. Seby  
Special Assistant Attorney General  
State of North Dakota  
Greenberg Traurig LLP  
1200 17<sup>th</sup> Street, Suite 2400  
Denver, CO 80202  
Tel: (303)572-6500  
Fax: (303)572-6540  
Email: sebyp@gtlaw.com

Margaret I. Olson  
Assistant Attorney General  
North Dakota Attorney General  
600 E. Boulevard Avenue, #125  
Bismarck, ND 58505  
Tel: (701)328-3640  
Email: maiolson@nd.gov

***Counsel for Petitioner State of North  
Dakota***



No. 15-1409:

/s/ Donna J. Hodges  
Donna J. Hodges  
Senior Counsel  
*Counsel of Record*  
Mississippi Department of  
Environmental Quality  
P.O. Box 2261  
Jackson, MS 39225-2261  
Tel. (601) 961-5369  
Fax (601) 961-5349  
Email: donna\_hodges@deq.state.ms.us  
***Counsel for Petitioner Mississippi  
Department of Environmental Quality***

**CERTIFICATE OF SERVICE**

I hereby certify that on this 31st day of December, 2015, I caused the foregoing document 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. The following non-CM/ECF counsel will be served by U.S. mail:

Janice M. Alward  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2927

Kelvin Allen Brooks  
Office of the Attorney General  
State of New Hampshire  
33 Capitol Street  
Concord, NH 03301-6397

Patrick Burchette  
Holland & Knight LLP  
800 17th Street, N.W., Suite 1100  
Washington, D.C. 20006-6801

William F. Cooper  
State of Hawaii  
Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813

David F. Crabtree  
Deseret Power  
10714 South Jordan Gateway  
South Jordan, UT 84092

Tannis Fox  
Office of the Attorney General  
408 Galisteo Street  
Villagra Building  
Santa Fe, NM 87501

Karen R. Harned  
National Federation of Independent  
Business  
1201 F Street, N.W., Suite 200  
Washington, D.C. 20004

Jacob Larson  
Environmental Law Division  
321 E. 13th Street, Room 18  
Des Moines, IA 50319

Karl R. Moor  
Southern Company Services, Inc.  
42 Inverness Center Parkway, Bin B231  
Birmingham, AL 35242

Carrie Noteboom  
New York City Law Department  
100 Church Street  
New York, NY 10007

Steven J. Oberg  
Lynn, Jackson, Shultz & Lebrun, P.C.  
P.O. Box 8250  
Rapid City, SC 57709

Bill Spears  
Segrest & Segrest, P.C.  
18015 West Highway 84  
McGregor, TX 76657

Luther J. Strange III  
Office of the Attorney General  
State of Alabama  
501 Washington Avenue  
Montgomery, AL 36130

Thiruvendran Vignarajah  
Office of the Attorney General  
State of Maryland  
200 St. Paul Place, 20th Floor  
Baltimore, MD 21202-2021

Philip Zoebisch  
18 W. Madison Avenue  
Collingswood, NJ 08108

Gary V. Perko  
Hopping Green & Sams  
119 South Monroe Street, Suite 300  
Tallahassee, FL 32301

Ben H. Stone  
Balch & Bingham LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931

Laurence H. Tribe  
Harvard Law School  
1563 Massachusetts Avenue  
Cambridge, MA 02138

Janet F. Wagner  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2927

/s/ Elbert Lin

Elbert Lin