

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF NORTH DAKOTA, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	No. 15-1381 (and
)	consolidated cases)
v.)	
)	
UNITED STATES ENVIRONMENTAL)	
PROTECTION AGENCY, <i>et al.</i> ,)	
)	
<i>Respondents.</i>)	

**JOINT MOTION OF ALL PARTIES TO AMEND
BRIEFING SCHEDULE AND FORMAT**

On June 24, 2016, the Court entered an order suspending the briefing schedule in these consolidated cases. ECF No. 1621503. That order directed the parties to file by August 4, 2016, motions to amend the briefing schedule and format that had been previously ordered by the Court on March 24, 2016 (ECF No. 1605581). The Court further “strongly urged [the parties] to submit a joint motion.” ECF No. 1621503. In response to the Court’s order, the parties in these consolidated cases jointly submit this motion and state the following in support:

1. On October 23, 2015, EPA published in the Federal Register a final rule entitled “Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units.”

80 Fed. Reg. 64,510 (Oct. 23, 2015) (“New Source Rule”). This case involves petitions for review of the New Source Rule.

2. On March 24, 2016, the Court entered an order establishing a briefing format and schedule for the petitions for review of the New Source Rule. ECF No. 1605581.

3. On May 6, 2016, EPA published a notice in the Federal Register entitled “Reconsideration of Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units; Notice of final action denying petitions for reconsideration.” 81 Fed. Reg. 27,442 (May 6, 2016) (“Reconsideration Denial”). In the Reconsideration Denial, EPA announced it was denying five petitions that had been filed asking EPA to reconsider the New Source Rule.¹ *Id.*

4. On May 24, 2016, Petitioners and Petitioner-Intervenors filed a motion to suspend the briefing schedule in the case to allow time for: (i) the statutory period for filing petitions for review of the Reconsideration Denial to expire; (ii) any such petitions for review to be consolidated with the petitions for review of the New

¹ The Reconsideration Denial also announced EPA’s decision to defer action on the issue of treatment of biomass that was raised in a sixth petition for reconsideration that was filed by the Biogenic CO₂ Coalition and was raised in the State of Wisconsin’s petition for reconsideration (along with other issues that were denied). 81 Fed. Reg. at 27,442. The petition for review filed by the Biogenic CO₂ Coalition (No. 15-1480) has been severed from this case and is being held in abeyance. ECF No. 1605581.

Source Rule; and (iii) consideration by the parties of a new briefing schedule and what additions to the word allocations might be appropriate to accommodate the new issues arising from the Reconsideration Denial. ECF No. 1614749, ¶¶ 5, 7. The Court granted this motion on June 24, 2016. ECF No. 1621503.

5. Four petitions for review of the Reconsideration Denial were filed with the Court: Case No. 16-1218 (filed by Murray Energy Corporation); Case No. 16-1220 (filed by twenty-four States and state agencies led by the State of West Virginia), Case No. 16-1221 (filed by the Utility Air Regulatory Group and the American Public Power Association), and Case No. 16-1227 (filed by the Energy & Environment Legal Institute).

6. On July 12, 2016, Petitioners filed an unopposed motion to consolidate the petitions for review of the Reconsideration Denial with the petitions for review of the New Source Rule. ECF No. 1624282. The Court granted this motion on July 19, 2016. ECF No. 1625550.

7. The parties now seek to modify the briefing schedule and format as follows:

Document	Revised Due Date	Original Word Limit	Revised Word Limit
Brief for Petitioner State of North Dakota	October 13, 2016	4,000 words	4,000 words
Brief for State Petitioners	October 13, 2016	8,000 words	9,000 words

Document	Revised Due Date	Original Word Limit	Revised Word Limit
Brief for Non-State Petitioners	October 13, 2016	16,000 words	18,000 words
Brief for Petitioner-Intervenors	October 24, 2016	7,000 words	7,000 words
Brief for Respondent	December 14, 2016	28,000 words	31,000 words
Briefs for Respondent-Intervenors	December 21, 2016	No more than three briefs, not to exceed a combined total of 12,000 words	No more than three briefs, not to exceed a combined total of 13,300 words
Reply Brief for Petitioner State of North Dakota	January 19, 2017	2,000 words	2,000 words
Reply Brief for State Petitioners	January 19, 2017	4,000 words	4,500 words
Reply Brief for Non-State Petitioners	January 19, 2017	8,000 words	9,000 words
Reply Brief for Petitioner-Intervenors	January 19, 2017	Not included in initial order	3,500 words
Deferred Appendix	January 30, 2017	N/A	N/A
Final Briefs	February 6, 2017	N/A	N/A

8. With the exception of the Petitioner-Intervenors' reply brief (see paragraph 11 below), each of the documents listed in the table above is identical to the briefs the Court previously allowed, and the original word counts previously allowed by the Court are also listed. *See* ECF No. 1605581.

9. With respect to the schedule, the parties generally seek a 90-day shift of the deadlines in the previous briefing schedule. The only exceptions to this are that Respondent and Respondent-Intervenors are seeking to file their briefs earlier so as to avoid holidays, and the time for filing the deferred appendix and final briefs has been shortened.

10. With respect to the word limits of the briefs, the parties seek an increase of 1,000 words for State Petitioners' brief and an increase of 2,000 words for Non-State Petitioners' brief to address the additional issues raised by the Reconsideration Denial. The parties further seek a commensurate increase of 3,000 words for Respondents' brief and 1,300 words for Respondent-Intervenors' briefs. The parties also seek to add 500 words to State Petitioners' reply brief and 1,000 words to Non-State Petitioners' reply brief (one-half the requested increases for those parties' opening briefs).

11. Finally, the parties seek clarification regarding Petitioner-Intervenors' reply brief. Non-State Petitioners and Petitioner-Intervenors specifically requested such a brief in their Proposed Briefing Format and Schedule. ECF No. 1600188, at 3, 14. The Court's briefing order, however, did not include a reply brief for Petitioner-Intervenors and was silent with respect to the request. Petitioner-Intervenors seek a reply brief of 3,500 words (one-half the word limit of their opening brief) to be filed on the same date Petitioners file their reply briefs (proposed to be January 19, 2017),

which comports with this Court's rules. *See* Circuit Rule 28(d)(5). The other parties do not oppose this request.

WHEREFORE, the parties respectfully request that the Court amend the briefing format and schedule as shown in the table contained in paragraph 7 above.

Dated: August 4, 2016

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CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of August, 2016, the foregoing document was electronically filed with the Clerk of the Court using the Court's CM/ECF system. All registered CM/ECF counsel were electronically served by the Court's CM/ECF system.

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