

ORAL ARGUMENT NOT YET SCHEDULED

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

<hr/>)	
State of North Dakota, et al.,)	
)	
<i>Petitioners,</i>)	
)	
v.)	No. 15-1381 and
)	consolidated cases
)	
U.S. Environmental Protection Agency, et al.,)	
)	
)	
<i>Respondents.</i>)	
<hr/>)	

**JOINT PROPOSAL OF 24 STATE PETITIONERS
TO ESTABLISH A BRIEFING SCHEDULE AND FORMAT**

This Court directed the parties to submit a briefing proposal in these consolidated cases by February 22, 2016, ECF No. 1594939, but the parties have been unable to agree. This proposal is being filed by 24 of the 25 sovereign States that are Petitioners in these cases and that jointly filed a petition for review, *see* Case No. 15-1399 (“State Coalition” or “Coalition”). The 24 States in the State Coalition have carefully conferred and agree that they can jointly present their arguments in a manner acceptable to all of the Coalition, and now ask for a single opening brief of 12,000 words, due on July 15, 2016, and a reply brief of 6,000 words due at a reasonable time afterwards. The State Coalition takes no position on the brief(s) and word count this Court may grant to any other parties in these cases.

BACKGROUND

The consolidated cases challenge a final rule promulgated by the United States Environmental Protection Agency (“EPA”) under Section 111(b) of the Clean Air Act (“CAA”), “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) (“Rule”). The Rule establishes new source performance standards for carbon dioxide emissions from new, modified, and reconstructed coal-fired and gas-fired electric generating units. The Rule was finalized and published on the same day as EPA’s carbon dioxide emission standards for existing electric generating units, 80 Fed. Reg. 64,662 (Oct. 23, 2015)—the subject of another significant litigation in this Court involving substantially the same petitioners

(and their counsel) as in these consolidated cases. *See West Virginia et al. v. EPA*, No. 15-1363 (and consolidated cases) (the “Section 111(d) case”). That decision by EPA to publish both massive rules on the same day required challenges to both rules to be filed on the same schedule and is the reason why the litigation in both cases is proceeding at the same time.

DISCUSSION

1. Schedule. The State Coalition requests a briefing schedule that requires opening briefs on or after July 15, 2016, and a reasonable schedule for subsequent briefing. This start date is reasonable and necessary, for several reasons.

First, the State Coalition takes this Court’s concern with duplicative argument seriously. As such, the State Coalition requests enough time for each of its 24 members to coordinate with each other to ensure a streamlined brief. Those efforts require coordination within each individual State, as well, where input and feedback may be required from multiple state agencies or officials. Sufficient time is also needed for the Coalition to coordinate with any other petitioners who file their own briefs.

Second, each of the States on this proposal is also simultaneously litigating another challenge to a major EPA rulemaking before this Court on an expedited schedule, the Section 111(d) case, No. 15-1363 (and consolidated cases). Oral argument in the Section 111(d) case has been set by this Court for June 2, 2016, and

may extend for a second day due to the depth and scope of the issues presented. Order, No. 15-1363, ECF 1594951 (Jan. 21, 2016).

The 24 States, which have a strong interest in both these consolidated cases and in the Section 111(d) case, face unique challenges in simultaneously briefing and preparing for oral argument in both. These challenges include preparing for both cases with limited staff and resources, as well as the internal review and approval processes within state government. Those challenges are exacerbated by the size of the coalition, requiring each single brief to be vetted and approved by 24 sovereign States. Simultaneous briefing in both cases and preparation for oral argument in the Section 111(d) case would make it very difficult for the State Coalition to meet deadlines in both cases.¹

2. Words. The State Coalition requests one opening brief not to exceed 12,000 words and one brief in reply not to exceed 6,000 words. With a clear understanding that this Court “looks with extreme disfavor on the filing of duplicative briefs in consolidated cases” and has directed the parties “[t]o avoid repetitious arguments,” D.C. Circuit Handbook of Practice and Internal Procedures at 37, this request will

¹ Opening briefs in the Section 111(d) case were due this past Friday, February 19, 2016. EPA’s response brief is due March 28, replies are due just over two weeks later on April 15, and final briefs are due on April 22. As noted, oral argument, which may span two days, is scheduled to begin June 2, 2016.

ensure that the interests of all 24 States in the coalition are fully represented without needless duplication.

The word limits sought by the State Coalition are entirely consistent with the limits set forth in D.C. Circuit Rule 32. *See* D.C. Cir. Rule 32(a)(7), (e)(2)(C). Rule 32 provides for 14,000 words and a single brief to fully address the arguments of one Petitioner, and one-half of that amount for reply. D.C. Cir. Rule 32. The State Coalition represents 24 State petitioners. Therefore, the State Coalition's request for one opening and reply brief of 12,000 and 6,000 words respectively is more efficient than what D.C. Circuit Rule 32 generally provides. Balancing the number of State petitioners within the State Coalition and the numerous issues that the State Coalition members share, the word limits are a reasonable application of D.C. Circuit Rule 32 and will best allow the Coalition to thoroughly but efficiently present the issues to the Court.

The State Coalition takes no position on the brief(s) and word count for any other parties in this case. The Coalition simply requests that, having reached agreement among 24 sovereign States, it be provided the opportunity to submit briefing on behalf of those 24 States.

CONCLUSION

For the foregoing reasons, this Court should adopt the State Coalition's proposal.

Dated: February 22, 2016

Respectfully submitted,

/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

Charleston, WV 25305

Tel: (304) 558-2021

Fax: (304) 558-0140

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, TX 78711-2548

Tel: (512) 936-1700

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 Avenue

Montgomery, AL 36130

Tel: (334) 590-1029

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
john.lopez@azag.gov
dominic.draye@azag.gov
keith.miller@azag.gov

*Counsel for Petitioner Arizona Corporation
Commission*

/s/ Lee Rudofsky
Leslie Rutledge
ATTORNEY GENERAL OF ARKANSAS
Lee Rudofksy
Solicitor General
Counsel of Record
Jamie L. Ewing
Assistant Attorney General
323 Center Street, Suite 400
Little Rock, AR 72201
Tel: (501) 682-5310
jamie.ewing@arkansasag.gov

Counsel for Petitioner State of Arkansas

/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
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 S.W.
Atlanta, GA 30334
Tel: (404) 656-3300
Fax: (404) 463-9453
bgrant@law.ga.gov

Counsel for Petitioner State of Georgia

/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 S.W. 10th Avenue, 3rd Floor
Topeka, KS 66612
Tel: (785) 368-8435
Fax: (785) 291-3767
jeff.chanay@ag.ks.gov
bryan.clark@ag.ks.gov

Counsel for Petitioner State of Kansas

/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
tim.junk@atg.in.gov

Counsel for Petitioner State of Indiana

/s/ Gregory T. Dutton
Andy Beshear
ATTORNEY GENERAL OF KENTUCKY
Gregory T. Dutton
Assistant Attorney General
Counsel of Record
700 Capital Avenue
Suite 118
Frankfort, KY 40601
Tel: (502) 696-5453
gregory.dutton@ky.gov

Counsel for Petitioner Commonwealth of Kentucky

/s/ Steven B. "Beaux" Jones

Jeff Landry

ATTORNEY GENERAL OF LOUISIANA

Steven B. "Beaux" Jones

Counsel of Record

Duncan S. Kemp, IV

Assistant Attorneys General

Environmental Section – Civil Division

1885 N. Third Street

Baton Rouge, LA 70804

Tel: (225) 326-6085

Fax: (225) 326-6099

jonesst@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

donald.trahan@la.gov

elliott.vega@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

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, MO 65102
Tel: (573) 751-1800
Fax: (573) 751-0774
james.layton@ago.mo.gov

Counsel for Petitioner State of Missouri

/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
justin.lavene@nebraska.gov

Counsel for Petitioner State of Nebraska

/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, MT 59620-1401
Tel: (406) 444-7008
dales@mt.gov

Counsel for Petitioner State of Montana

/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

sam.hayes@ncdenr.gov

Counsel for Petitioner North Carolina

Department of Environmental Quality

/s/ Eric E. Murphy

Michael DeWine

ATTORNEY GENERAL OF OHIO

Eric E. Murphy

State Solicitor

Counsel of Record

30 E. Broad Street, 17th Floor

Columbus, OH 43215

Tel: (614) 466-8980

eric.murphy@ohioattorneygeneral.gov

Counsel for Petitioner State of Ohio

/s/ P. Clayton Eubanks

E. Scott Pruitt

ATTORNEY GENERAL OF OKLAHOMA

Patrick R. Wyrick

Solicitor General

P. Clayton Eubanks

Deputy Solicitor General

Counsel of Record

313 N.E. 21st Street

Oklahoma City, OK 73105

Tel: (405) 521-4396

Fax: (405) 522-0669

clayton.eubanks@oag.ok.gov

Counsel for Petitioners State of Oklahoma

/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
esmith@scag.gov

Counsel for Petitioner State of South Carolina

/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, UT 84114-2320
pdouglas@utah.gov

Counsel for Petitioner State of Utah

/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
steven.blair@state.sd.us

Counsel for Petitioner State of South Dakota

/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
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

2320 Capitol Avenue

Cheyenne, WY 82002

Tel: (307) 777-6946

Fax: (307) 777-3542

james.kaste@wyo.gov

Counsel for Petitioner State of Wyoming

CERTIFICATE OF SERVICE

I certify that on this 22nd day of February, 2016, a copy of the foregoing was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Elbert Lin

Elbert Lin