



**KAMALA D. HARRIS**  
**Attorney General**

**State of California**  
**DEPARTMENT OF JUSTICE**

455 GOLDEN GATE AVE., SUITE 11000  
SAN FRANCISCO, CA 94102-7004

Telephone: (415) 703-5969  
Facsimile: (415) 703-5480  
E-Mail: Jonathan.Wiener@doj.ca.gov

September 26, 2016

Mr. Mark Langer  
Clerk  
United States Court of Appeals for the District of Columbia Circuit  
333 Constitution Avenue, N.W.  
Washington, DC 20001

Re: *State of West Virginia v. EPA*, No. 15-1363 (and consolidated)  
Response to Rule 28(j) Letter of West Virginia, et al. (Doc. #1637396; filed  
September 23, 2016)

Dear Mr. Langer:

State Petitioners' letter regarding California's August 5, 2016, draft proposal for Clean Power Plan (CPP) implementation<sup>1</sup> mischaracterizes the proposal and its relevance to this case.

California's yet-to-be-finalized proposal does not refuse to link to other States' future plans. To the contrary, the proposal explicitly anticipates multistate trading, consistent with California's longstanding support for multistate collaboration to reduce emissions, including for CPP implementation. Proposal at 18, 21, 58.<sup>2</sup> California's interest in multistate trading hardly demonstrates that multistate trading will not develop.

In fact, California already links its cap-and-trade program with Quebec's existing program and is considering further linkage. *Id.* 16. Likewise, nine States

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<sup>1</sup> <https://www.arb.ca.gov/cc/powerplants/meetings/09222016/proposedplan.pdf>.

<sup>2</sup> See also Testimony of Mary Nichols to Senate EPW Committee, March 11, 2015, [https://www.arb.ca.gov/board/bio/marys\\_speeches/mdn\\_epwtestimony\\_march2015.pdf](https://www.arb.ca.gov/board/bio/marys_speeches/mdn_epwtestimony_march2015.pdf).

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participate in the Regional Greenhouse Gas Initiative's multistate-trading market for power-plant carbon emissions, the likely foundation for those States' CPP implementation plans. State Intervenor's Br. 27-28. Additional state linkages will likely form as other States develop implementation plans. EPA Br. 145-47. Indeed, before the CPP's stay, most States were discussing multistate-trading programs and other collaborative efforts.<sup>3</sup>

In any case, the CPP does not depend on trading, and Petitioners cannot show it is required for compliance. EPA Br. 18-19, 143-47. Sources can comply in many ways, even absent multistate trading, including by using the measures constituting the "best system of emission reduction." EPA Br. 143-44. For example, affected sources can—without multistate trading—reduce their emissions by shifting generation to new out-of-state renewables. 40 C.F.R. § 60.5800(a)(3). Moreover, the CPP's emission-reduction goals are readily achievable. U.S. power-sector emissions are already 21% below 2005 levels, nearly two-thirds of the way to the CPP's projected reduction of 32% by 2030.<sup>4</sup> Most Petitioner States are well on track to meet their CPP targets, without any credits from out-of-state programs.<sup>5</sup>

Respectfully submitted,

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<sup>3</sup> See, e.g., the Center for a New Energy Economy, (<http://www.westernstate111dplans.com/>) (West), the Great Plains Institute (<http://www.betterenergy.org/publications/highlights-midcontinent-states-workshop>) (Midwest), and the Nicholas Institute (<https://nicholasinstitute.duke.edu/focal-areas/clean-air-act-clean-power-plan>) (Southeast).

<sup>4</sup> Energy Information Administration, "Carbon dioxide emissions from electricity generation in 2015 were lowest since 1993," May 13, 2016, <http://www.eia.gov/todayinenergy/detail.cfm?id=26232>.

<sup>5</sup> Decl. of Diane Munns, Exhibits in Support of Respondent-Intervenors' Stay Responses, (Doc #1587530), B339-40, ¶ 9.

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MAURA HEALEY  
*Attorney General of Massachusetts*  
MELISSA A. HOFFER  
CHRISTOPHE COURCHESNE  
*Assistant Attorneys General*  
Environmental Protection Division  
One Ashburton Place  
Boston, MA 02108

ERIC T. SCHNEIDERMAN  
*Attorney General of New York*  
BARBARA D. UNDERWOOD  
*Solicitor General*  
STEVEN C. WU  
*Deputy Solicitor General*  
BETHANY A. DAVIS NOLL  
*Assistant Solicitor General*  
MICHAEL J. MYERS  
MORGAN A. COSTELLO  
BRIAN LUSIGNAN  
*Assistant Attorneys General*  
*Environmental Protection Bureau*  
120 Broadway, 25th Floor  
New York, NY 10271  
(212) 416-8020

KAMALA D. HARRIS  
*Attorney General of California*  
  
/s/ Jonathan Wiener  
JONATHAN WIENER  
M. ELAINE MECKENSTOCK  
*Deputy Attorneys General*  
California Department of Justice  
455 Golden Gate Ave. #11000  
San Francisco, CA 94102  
*Attorneys for the State of California,*  
*by and through Governor Edmund G.*  
*Brown, Jr., the California Air*  
*Resources Board, and Attorney*  
*General Kamala D. Harris*

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing letter was filed on September 26, 2016 using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ M. Elaine Meckenstock

M. ELAINE MECKENSTOCK