

**ORAL ARGUMENT HEARD ON SEPTEMBER 27, 2016**

No. 15-1363 and Consolidated Cases

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

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STATE OF WEST VIRGINIA, et al.,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY, et al.,

*Respondents.*

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**RESPONDENT-INTERVENOR POWER COMPANIES' OPPOSITION  
TO MOTION TO SEVER AND CONSOLIDATE**

Five months after an *en banc* panel of this Court heard nearly seven hours of oral argument, a handful of petitioners in this case challenging the Environmental Protection Agency's Clean Power Plan (the Utility Air Regulatory Group, American Public Power Association, LG&E and KU Energy LLC, collectively "UARG Movants") are now seeking to have their separate petitions for review challenging EPA's January 2017 denial of their petitions for administrative reconsideration of the Clean Power Plan consolidated with this case, which has been briefed, argued and submitted to the Court for its decision since September 2016. *See* Joint Mot. to Sever & Consol., No. 15-1363, ECF No. 1663046 (D.C. Cir. Feb. 24, 2017). The UARG Movants also seek for the *en banc* Court to order supplemental briefing in the case

already submitted to the Court on a set of issues they previously identified in their statements of nonbinding issues, including some that they previously sought to have severed from this case and held in abeyance, a request which the Court denied them over a year ago. *See id.* at 7; Order, *West Virginia v. EPA*, No. 15-1363, ECF No. 1594951 (D.C. Cir. Jan. 21, 2016).

This Court should reject the UARG Movants' inefficient proposal, which would not serve judicial economy. The undersigned Respondent-Intervenors (hereinafter, "Power Companies") urge the Court to decide this case based upon the record, briefing and argument already before it, without consolidating the UARG Movants' newly filed petitions with this case and without ordering supplemental briefing on the discrete issues they raise. Those issues may more efficiently be considered by a three-judge panel in the ordinary course, along with the eleven other challenges to EPA's denial of reconsideration for which consolidation has not been requested.

Well over a year ago, the Power Companies did not oppose the Petitioners' original request for expedited adjudication of this case—a request which this Court subsequently granted<sup>1</sup>—because the Power Companies said they shared Petitioners' ultimate interest in its expeditious resolution. *See* Resp. of Power Cos. in Opposition to Pet. Jt. Mot. to Establish Briefing Format & Expedited Briefing Sched., at 2, No. 15-1363, ECF No. 1589896 (D.C. Cir. Dec. 21, 2015). The Power Companies continue to hold an interest in expedited resolution of this case and share that interest

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<sup>1</sup> *See* Order, *West Virginia v. EPA*, No. 15-1363, ECF No. 1594951, at 2 (D.C. Cir. Jan. 21, 2016) (ordering "that consideration of these appeals be expedited").

with many other parties. *See, e.g.*, Respondent-Intervenor Advanced Energy Economy's Opp. To Mot. to Sever & Consolidate, at 1, No. 15-1363, ECF No. 1664526 (D.C. Cir. Mar. 6, 2017). Because the UARG Movants' proposal would not be in service of that interest or judicial economy, the Power Companies urge the Court to reject it and instead decide this case based on the briefing and argument submitted to it since last September.

The UARG Movants' motion should be denied.

Dated: March 13, 2017

Respectfully submitted,

/s/ Kevin Poloncarz

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that certify that Respondent-Intervenor Power Companies' Opposition to Motion to Sever and Consolidate complies with the requirements of Fed. R. App. P. Rule 27(d)(2) because it contains 494 words as counted by the word-processing system used to prepare it.

Dated: March 13, 2017

/s/ Kevin Poloncarz

Kevin Poloncarz

**CERTIFICATE OF SERVICE**

I hereby certify that on this 13th day of March, 2017, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will serve electronic copies of such filing on all registered CM/ECF users.

/s/ Kevin Poloncarz

Kevin Poloncarz