

review of that reconsideration denial have been filed and consolidated under lead case No. 17-1014. Each of the parties in this consolidated proceeding is also a party in *West Virginia*, which involves the closely related challenges to the underlying Clean Power Plan rule.

2. Because EPA's action to deny reconsideration of the Clean Power Plan rule has ripened several issues raised in the *West Virginia* litigation, some Petitioners have moved to sever their petitions for review from this proceeding and to consolidate them with *West Virginia*.¹ Those movants argue that supplemental briefing is required in *West Virginia* to resolve objections to the Clean Power Plan rule that the Court was previously barred from reviewing and that the Court can no longer fully dispose of the *West Virginia* litigation by resolving only those issues previously briefed and argued in that case. *See, e.g.*, Reply of Util. Air Regulatory Grp. et al. in Support of Joint Mot. to Sever and Consolidate at 4-5, ECF No. 1666890.

¹ As of the time of this filing, parties in eight of the seventeen challenges to EPA's reconsideration denial action have filed motions to sever their petitions for review: Utility Air Regulatory Group and American Public Power Association, No. 17-1018, ECF No. 1663047 (Feb. 24, 2017); LG&E and KU Energy LLC, No. 17-1019, ECF No. 1663047 (Feb. 24, 2017); Entergy Corporation, No. 17-1037, ECF No. 1668921 (Mar. 31, 2017); Westar Energy, Inc., No. 17-1062, ECF No. 1668921 (Mar. 31, 2017); NorthWestern Corporation, No. 17-1081, ECF No. 1668921 (Mar. 31, 2017); National Association of Home Builders, No. 17-1023, ECF No. 1668929 (Mar. 31, 2017); State of West Virginia et al., No. 17-1022, ECF No. 1668952 (Mar. 31, 2017); and State of North Dakota, No. 17-1014, ECF No. 1670187 (Apr. 7, 2017).

3. EPA has since published a notice in the *Federal Register* that it is reviewing the Clean Power Plan rule. 82 Fed. Reg. 16,329 (Apr. 4, 2017). “[B]y extension,” EPA is also reviewing the reconsideration denial at issue in this case. EPA Mot. at 1, 7, ECF No. 1668936. That review could lead to a substantial amendment or even repeal of the rule. Any such action would almost certainly moot both the reconsideration denial itself and the challenges to that action, obviating the basis and need for this litigation.

4. To avoid wasting judicial and party resources, the Court should follow its ordinary practice of placing these cases in abeyance during the pendency of EPA’s review. Petitioners’ response in support of EPA’s motion to put the Clean Power Plan rule litigation in abeyance notes that abeyance will not prejudice any party or harm the public interest, and will prevent the Court from issuing an advisory opinion that “would accomplish nothing.” Pet’rs’ & Pet-Intervenors’ Resp. in Supp. of EPA’s Mot. to Hold Cases in Abeyance at 6, *West Virginia*, ECF No. 1669984 (Apr. 6, 2017) (quoting *Akiachak Native Cmty. v. Dep’t of Interior*, 827 F.3d 100, 106 (D.C. Cir. 2016)). Petitioners incorporate here by reference the arguments made in support of abeyance in that response.

For the reasons stated above, Petitioners respectfully urge the Court to grant EPA’s motion to place these cases in abeyance pending EPA’s review of the Clean Power Plan rule.

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Pursuant to Rules 27(d)(2) and 32(g) of the Federal Rules of Appellate Procedure, I hereby certify that the foregoing document contains 662 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limit set by the Court. I also certify that this document complies with the typeface and type-style requirements of Rule 32(a)(5) and (6) of the Federal Rules of Appellate Procedure because it has been prepared in a proportionally spaced typeface using Microsoft Word 2010 with 14-point Garamond font.

Dated: April 10, 2017

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I hereby certify that, on this 10th day of April, 2017, a copy of the foregoing document was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

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