

ORAL ARGUMENT SCHEDULED FOR APRIL 17, 2017

No. 15-1381 (and consolidated cases)

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

STATE OF NORTH DAKOTA, *et al.*,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,

Respondents.

**STATE OF NORTH DAKOTA'S
MOTION TO EXTEND THE BRIEFING SCHEDULE**

Petitioner State of North Dakota hereby moves for an extension of time to file its Reply Brief from January 18, 2017 to February 24, 2017, with complementary extensions for the deferred joint appendix and final briefs.¹ With a new executive administration set to take office on January 20, 2017, North Dakota submits that the requested extension is necessary to allow the new administration to consider whether it wishes to advise the Court it is reviewing the Final Rule at issue in this case for possible reconsideration, or that the new administration intends to take other action that will significantly affect this litigation.

¹ North Dakota supports the proposed deadlines of March 3, 2017 for the deferred appendix, and March 10, 2017 for final briefs, as offered in Petitioners and Petitioner-Intervenors' Motion to Extend the Briefing Schedule.

North Dakota was granted its own brief in this case because it has a unique and compelling interest in the judicial review of the Final Rule. *See* Orders dated March 24 and August 30, 2016. North Dakota has abundant reserves of lignite—a distinctive form of coal—and the State has a statutory interest in developing new lignite-fueled electric generating plants in the future. The Final Rule imposes a performance standard for carbon dioxide emissions that is unachievable for lignite-fueled sources and, as a result, is a *de facto* ban on the use of North Dakota’s abundant lignite resources in new electric generating plants. Given the Final Rule’s immense and unique harm to the North Dakota, the State has no incentive to postpone judicial review of the Final Rule. Consistent with that, this Motion causes no undue delay. On the contrary, should litigation proceed after the change in administrations in January 2017, this requested extension would not interfere with the Court’s previously established April 17, 2017 oral argument date. However, should the new administration’s position on this litigation change—and should the new administration dictate a change in its course of action—this requested extension could drastically conserve party and judicial resources.

As discussed in the Motion to Extend the Briefing Schedule filed by other Petitioners and Petitioner-Intervenors, courts have routinely granted extensions during presidential transitions, acknowledging that it is common for new administrations to evaluate prior administrations’ regulations and direct new courses of action. *See, e.g., EPA v. New Jersey*, No. 08-512 (S. Ct. 2009) (obtaining numerous

extensions from the United States Supreme Court before voluntarily dismissing case). The Court should do the same here, not only because a changing administration has historically been recognized as an extraordinarily compelling reason under D.C. Cir. R. 28(e)(1), but also because granting this modest request will not unduly delay the proceedings and will not prejudice Respondents.²

CONCLUSION

For the foregoing reasons, the State of North Dakota respectfully requests that this Court extend the deadline to file reply briefs in this case to February 24, 2017 and proposes deadlines of March 3, 2017 for the deferred appendix, and March 10, 2017, for final briefs.

Dated: December 16, 2016

Respectfully submitted,

State of North Dakota
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/s/ Paul M. Seby

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² Even though the Final Rule has not been stayed and is presently in effect, Respondents would not agree to extend the due dates for all remaining briefs in judicial review of the Rule. Respondents have stated that they oppose the extension requested by this Motion.

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CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32(a)(7)(C) of the Federal Rules of Appellate Procedure and Circuit Rules 32(a)(1) and 32(a)(2)(C), I hereby certify that the foregoing Motion to Extend the Briefing Schedule contains 541 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.

Dated: December 16, 2016

/s/ Paul M. Seby

CERTIFICATE OF SERVICE

I hereby certify that on December 16, 2016, a copy of the foregoing State of North Dakota's Motion to Extend the Briefing Schedule was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Paul M. Seby