

EN BANC ORAL ARGUMENT HELD SEPTEMBER 27, 2016**IN THE UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT****State of West Virginia, et al.,**

Petitioners,

v.

**United States Environmental  
Protection Agency, et al.,**

Respondents.

Case No. 15-1363 (and  
consolidated cases)On Petition for Review of Final Action of the  
United States Environmental Protection Agency**NOTICE OF ADDITIONAL SIGNATORIES TO STATE  
INTERVENORS' RESPONSE TO 28(j) LETTER**

Through this filing, state and municipal-intervenor respondents (“State Intervenors”) hereby provide notice that all State Intervenors join in the attached 28(j) letter filed by California, Massachusetts, and New York on September 26, 2016 in response to Petitioners’ September 23, 2016 28(j) letter addressing California’s August 5, 2016 proposed plan. Due to the limited time between Petitioners’ filing of their 28(j) letter on September 23, 2016 and oral argument on September 27, not all State Intervenors were able to obtain the necessary approvals to join the response prior to argument. All State Intervenors have now secured those approvals.

Pursuant to Circuit Rule 32(a)(2) and ECF-3(B), I represent that the parties listed below have consented to the filing of this document.

Dated: October 6, 2016

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Notice of Additional Signatories to State Intervenors' Response to 28(j) Letter was filed on October 6, 2016 using the Court's CM/ECF system, and that, therefore, service was accomplished upon counsel of record by the Court's system.

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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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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.

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