

Company LLC, and Sandow Power Company LLC; Petitioner Indiana Energy Association; Petitioner Indiana Utility Group; Petitioner Midwest Ozone Group; Petitioner Oklahoma Gas and Electric Company; Petitioners Ohio Utility Group and Its Member Companies (AEP Generation Resources Inc., Buckeye Power, Inc., The Dayton Power and Light Company, Duke Energy Ohio, Inc., Dynegy Commercial Asset Management, LLC, First Energy Solutions, and Ohio Valley Electric Corporation); Intervenor-Respondent Environmental Committee of the Florida Electric Power Coordinating Group, Inc.; and Intervenor-Respondents Duke Energy Carolinas, LLC, and Duke Energy Progress, LLC, consent to this extension.

Petitioner Prairie State Generating Company, LLC, will not oppose this extension.

Petitioner Conservation Groups, Petitioner State of Delaware, and Environmental Respondent-Intervenors do not oppose the requested extension, but are concerned about excessive delay and therefore reserve the right to oppose any further extension request. Petitioner Western Farmers Electric Cooperative; Petitioners Wisconsin Paper Council, Wisconsin Manufacturers and Commerce, Wisconsin Industrial Energy Group, and Wisconsin Cast Metals Association; and State Intervenors (Massachusetts, Maryland, New Hampshire, New York, Rhode Island, and Vermont), do not oppose this extension. Petitioner Mississippi Power Company takes no position on this extension.

In support of this Motion, the United States states:

1. The above-captioned matter consolidates eighteen petitions filed by Petitioners that challenge an EPA final action entitled, “Cross-State Air Pollution Rule Update for the 2008 Ozone NAAQS,” 81 Fed. Reg. 74,504 (Oct. 26, 2016).

2. On March 20, 2017, the parties filed three proposals for briefing format and schedule. *See* ECF Nos. 1666899, 1666895, & 1666872. In consideration of these proposals, the Court ordered on May 15, 2017, that Petitioners’ opening briefs be filed on or before August 21, 2017 (98 days); that EPA’s opening brief be filed on or before November 20, 2017 (91 days); that Respondent-Intervenor briefs be filed on or before December 20, 2017 (30 days); and that Petitioners’ reply briefs be filed on or before January 19, 2018 (30 days). The Joint Appendix was to be submitted on January 31, 2018, with Final Briefs due on February 7, 2018. ECF No. 1675267.

3. Thereafter, on August 7, 2017, a group of Industry Petitioners filed a motion to extend the briefing schedule by 120 days, to “allow additional time for Respondent [EPA] to review and consider, and make determinations regarding, petitions for administrative reconsideration of the EPA rule that is the subject of the petitions for review in these cases.” ECF No. 1687655 at 2. Environmental Petitioners and Petitioner the State of Delaware opposed the motion to extend the briefing schedule and filed, in the alternative, a motion to sever their petitions. ECF No. 1688918. The United States did not oppose Industry Petitioners’ request for additional time to complete their briefs, but disagreed that any additional time was

necessitated by EPA's consideration of the pending administrative petitions. ECF No. 1688478. The United States opposed the motion to sever. ECF No. 1689302.

4. On August 10, 2017, the Court temporarily suspended the May 15, 2017 briefing schedule, pending further order of the court, to allow for consideration of the pending motions. ECF No. 1688178.

5. The motions to extend the briefing schedule and to sever were denied by the Court in a September 6, 2017 Order. ECF No. 1691655. In that same Order, the Court reset the briefing schedule to provide an additional 28 days for filing of Petitioners' opening briefs (beyond the original deadline of August 21, 2017, which had passed) – until September 18, 2017. For the remaining deadlines, the September 6, 2017 Order retained the briefing intervals established in the original May 15, 2017 briefing schedule.

6. Under the September 6, 2017 Order, the United States' brief is currently due on December 18, 2017.

7. Counsel for the United States now request a 30-day extension of that date, until January 17, 2018. An extension is needed to allow sufficient time for review of the United States' extended-length brief (totaling 30,000 words) within the Department of Justice ("DOJ") and EPA over a period that includes the

Thanksgiving holiday.¹ An extension is also necessary in light of DOJ counsel's competing obligations. Ms. Kolman is engaged in several district court matters with overlapping deadlines, including *Columbia Riverkeeper, et al. v. Pruitt, et al.*, 2:17-cv-00289 (W.D. Wash.) (motion for summary judgment due November 3, 2017); *Sanitary Board of the City of Charleston v. U.S. EPA, et al.*, 2:16-cv-03060 (S.D. W. Va.) (motion for summary judgment due November 13, 2017); *United States v. Robert Brace, et al.*, 1:90-cv-00229 (W.D. Pa.) (deadline for all discovery extended on November 14 from November 30, 2017, to January 31, 2018); *United States v. Robert Brace, et al.*, 1:17-cv-00006 (W.D. Pa.) (all discovery to be completed by December 20, 2017). Meanwhile, on November 8, 2017, Ms. Dona argued cross-motions for summary judgment in Des Moines, Iowa, in *Wendling Quarries v. United States Army Corps of Engineers*, 3:16-cv-00083 (S.D. Iowa). At the conclusion of the hearing, the court ordered that the parties draft and submit supplemental filings, which are due on November 20, 2017.

8. No petitioner or intervenor in this matter opposes the relief requested in this Motion. The requested extension is also commensurate with the briefing interval ultimately afforded Petitioners to prepare their opening briefs, to which the United States is due to respond. As such, the requested extension will not prejudice any party or cause undue delay of proceedings in this Court.

¹ The United States' request for a 30-day extension includes the time necessary to ensure that review may proceed notwithstanding the Christmas and New Year's holidays.

9. Consistent with the Court's September 6, 2017 Order, the United States also requests that the remaining briefing deadlines be shifted by 30 days, as follows:

United States' Response Brief	January 17, 2018
Brief(s) of State and Environmental Respondent-Intervenors	February 16, 2018
Joint Brief of Industry Respondent-Intervenors	February 16, 2018
Reply Brief(s) of Petitioner Delaware and Environmental Petitioners	March 19, 2018 ²
Reply Brief(s) of Remaining Petitioners	March 19, 2018
Joint Appendix	April 2, 2018
Final Briefs	April 9, 2018

For these reasons, the United States respectfully requests a 30-day extension of the deadline for its Response Brief, until January 17, 2018, and requests that all remaining deadlines be shifted by the same interval.

DATED: November 14, 2017

Respectfully submitted,

JONATHAN BRIGHTBILL
Deputy Assistant Attorney General

/s/ Chloe H. Kolman

AMY J. DONA

² Thirty days from the current deadline for Respondent-Intervenor briefs would be Sunday, March 18, 2018, so the United States proposes a 31-day extension of this date to the Monday thereafter. To keep the remaining intervals the same (twelve days for preparation of the Joint Appendix and seven days for preparation of Final Briefs), dates for the Joint Appendix and Final Briefs have been shifted accordingly.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

I hereby certify that this document complies with the word limit of Fed. R. App. P. 27(d)(2) and 32(c)(1), excluding the parts of the document exempted by Fed. R. App. P. 32(f), because this document contains 1202 words.

I also hereby certify that this document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document was prepared in a proportionally spaced typeface using Microsoft Word 2013 in 14 point Garamond font.

DATED: November 14, 2017

/s/ Chloe H. Kolman

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2017, I electronically filed the foregoing Consent Motion for Extension of Time to File United States' Response Brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

/s/ Chloe H. Kolman