

ORAL ARGUMENT NOT YET SCHEDULED

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

---

CONSERVATION LAW )  
FOUNDATION, et al., )  
) )  
Petitioners, )  
) )  
v. )  
) )  
UNITED STATES )  
ENVIRONMENTAL PROTECTION )  
AGENCY, )  
) )  
Respondent. )

---

No. 13-1233; 14-1199

**RESPONDENT’S OPPOSED MOTION FOR A STAY OF THE BRIEFING  
SCHEDULE PENDING THE COURT’S DECISION REGARDING EPA’S  
MOTION FOR REMAND**

Respondent United States Environmental Protection Agency (“EPA”) hereby moves for a stay of the briefing schedule in this matter pending the Court’s decision regarding EPA’s motion for voluntary remand without vacatur, which was filed today. Additionally, if EPA’s motion for voluntary remand is granted, EPA also requests that the Court vacate the briefing schedule in this matter. In the event that the Court denies EPA’s motion for voluntary remand, EPA requests that the Court allow EPA sixty days from the date of the Court’s decision to file its preliminary brief. Counsel for all Petitioners and counsel for Intervenor for

Petitioners have represented to EPA that they oppose this motion. Counsel for Intervenors for EPA have represented that they consent to this motion.

In support of this motion, EPA states as follows:

1. Before holding proceedings in abeyance in a matter, the court must “balance[] the competing interests.” *Dellinger v. Mitchell*, 442 F.2d 782, 786 (D.C. Cir. 1971). Indeed, the court must determine whether the party seeking the abeyance has “made out a clear case of hardship or inequity in being required to go forward . . . .” *Landis v. N. Am. Co.*, 299 U.S. 248, 255 (1936). The court may also consider “economy of time” for the court, for counsel, and for the litigants. *Landis*, 299 U.S. at 254. The balance of competing interests at issue here weighs in favor of staying the briefing schedule during the Court’s consideration of EPA’s motion for voluntary remand, and vacating the briefing schedule if that motion is granted.

2. Specifically, earlier today, EPA filed a motion for voluntary remand without vacatur, explaining that EPA would like the opportunity to reconsider its final decision on reconsideration of its revision of the subcategory of “emergency engines” to include reciprocating internal combustion engines that operate for up to 50 hours to support reliability of the local transmission or distribution system under certain circumstances (“the 50-hour provision”), *see* 79 Fed. Reg. 48,072 (Aug. 15, 2014), in light of the Court’s May 1, 2015, highly relevant decision

regarding a closely related provision. *See Delaware Dep't of Natural Resources & Env't'l Control v. EPA*, 785 F.3d 1 (D.C. Cir. 2015) ("May 1, 2015 Decision").

3. In EPA's motion for voluntary remand, EPA explained that the Court's May 1, 2015 decision bears upon the related action under review here. EPA further explained that EPA action on remand could moot or narrow the issues for this Court's review, and could improve the record with respect to the concerns raised by the Court in vacating aspects of EPA's related action within its May 1, 2015 decision.

4. In light of the May 1, 2015 decision and EPA's pending request to reconsider the 50-hour provision on remand, continued litigation of the provision as it now stands would be a highly inefficient use of the Court's and the parties' resources. Indeed, the D.C. Circuit "commonly grants" motions for voluntary remand in order to preserve the Court's and parties' resources. *Ethyl Corp. v. Browner*, 989 F.2d 522, 524 (D.C. Cir. 1993).

Accordingly, EPA respectfully requests that the Court stay the briefing schedule in this matter until the Court issues a decision on EPA's motion for voluntary remand without vacatur. If the Court grants EPA's motion, EPA further requests that the Court vacate the briefing scheduling in this matter. If the Court denies EPA's motion, EPA requests that the Court set the deadline for EPA's preliminary brief sixty days from the Court's decision.

DATED: June 30, 2015

Respectfully submitted,

JOHN C. CRUDEN  
Assistant Attorney General  
Environment and Natural Resources  
Division

*/s/ Stephanie J. Talbert*

---

STEPHANIE J. TALBERT  
United States Department of Justice  
Environment and Natural Resources  
Division  
Environmental Defense Section  
999 18<sup>th</sup> Street  
South Terrace, Suite 370  
Denver, CO 80202  
303-844-7231  
E-mail: [stephanie.talbert@usdoj.gov](mailto:stephanie.talbert@usdoj.gov)

*Counsel for Respondents*

**CERTIFICATE OF SERVICE**

I hereby certify that I served a copy of RESPONDENT'S MOTION FOR A STAY OF THE BRIEFING SCHEDULE via Notice of Docket Activity by the Court's CM/ECF system, on June 30, 2015, on counsel of record:

Caitlin S. Peale Sloan	cpeale@clf.org
David W. DeBruin	ddebruin@jenner.com
Elizabeth C. Bullock	ebullock@jenner.com
Shanna M. Cleveland	scleveland@clf.org
Christopher M. Kilian	ckilian@clf.org
Matthew E. Price	mprice@jenner.com
Valerie M. Edge	Valerie.edge@state.de.us
Ashley C. Parrish	aparrish@kslaw.com
David G. Tewksbury	dtewksbury@kslaw.com
William L. Wehrum Jr.	wwehrum@hunton.com
Aaron M. Flynn	flynna@hunton.com
David M. Friedland	dfriedland@bdlaw.com
Lisa G. Dowden	lisa.dowden@spiegelmc.com
Melissa E. Birchard	Melissa.birchard@spiegelmc.com
Randolph L. Elliott	relliott@publicpower.org

Delia D. Patterson

dpatterson@publicpower.org

DATED: June 30, 2015

JOHN C. CRUDEN

Assistant Attorney General

Environment and Natural Resources

Division

*/s/ Stephanie J. Talbert*

---

STEPHANIE J. TALBERT

United States Department of Justice

Environment and Natural Resources

Division

Environmental Defense Section

999 18<sup>th</sup> Street

South Terrace, Suite 370

Denver, CO 80202

303-844-7231

E-mail: [stephanie.talbert@usdoj.gov](mailto:stephanie.talbert@usdoj.gov)

*Counsel for Respondents*