

To: Gunasekara, Mandy[Gunasekara.Mandy@epa.gov]
From: Wehrum, William L.
Sent: Thur 8/10/2017 7:06:23 PM
Subject: Order
[CPP Abeyance Order August 2017-c.pdf](#)

 **Bill Wehrum**

Partner

wwehrum@hunton.com

p 202.955.1637

[bio](#) | [vCard](#) | [blog](#) | [LinkedIn](#)

Hunton & Williams LLP
2200 Pennsylvania Avenue, NW
Washington, DC 20037

hunton.com

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1363

September Term, 2016

**EPA-80FR64662
EPA-82FR4864**

Filed On: August 8, 2017

State of West Virginia, et al.,

Petitioners

v.

Environmental Protection Agency and E. Scott
Pruitt, Administrator, United States Environmental
Protection Agency,

Respondents

American Wind Energy Association, et al.,
Intervenors

Consolidated with 15-1364, 15-1365, 15-1366,
15-1367, 15-1368, 15-1370, 15-1371, 15-1372,
15-1373, 15-1374, 15-1375, 15-1376, 15-1377,
15-1378, 15-1379, 15-1380, 15-1382, 15-1383,
15-1386, 15-1393, 15-1398, 15-1409, 15-1410,
15-1413, 15-1418, 15-1422, 15-1432, 15-1442,
15-1451, 15-1459, 15-1464, 15-1470, 15-1472,
15-1474, 15-1475, 15-1477, 15-1483, 15-1488

BEFORE: Garland*, Chief Judge, and Henderson, Rogers, Tatel**, Brown,
Griffith, Kavanaugh, Srinivasan, Millett**, Pillard, and Wilkins,
Circuit Judges

ORDER

It is **ORDERED**, on the court's own motion, that these consolidated cases remain in
abeyance for 60 days from the date of this order. EPA is directed to continue to file status
reports at 30-day intervals beginning 30 days from the date of this order.

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Ken Meadows
Deputy Clerk

* Chief Judge Garland did not participate in this matter.

** A statement by Circuit Judges Tatel and Millett, concurring in granting further abeyance is
attached.

United States Court of Appeals

FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 15-1363**September Term, 2016**

TATEL, *Circuit Judge*, and MILLETT, *Circuit Judge*, concurring in the order granting further abeyance:

The Supreme Court stayed the Rule under review here “pending disposition of the . . . petitions for review” in this court and, if certiorari were granted, in the Supreme Court. *West Virginia v. EPA*, 136 S. Ct. 1000 (2016). As this court has held the case in abeyance, the Supreme Court’s stay now operates to postpone application of the Clean Power Plan indefinitely while the agency reconsiders and perhaps repeals the Rule. That in and of itself might not be a problem but for the fact that, in 2009, EPA promulgated an endangerment finding, which we have sustained. *Coalition for Responsible Regulation, Inc. v. EPA*, 684 F.3d 102 (D.C. Cir. 2012) (*per curiam*), *aff’d in part and rev’d in part on other grounds*, *Utility Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427 (2014). That finding triggered an affirmative statutory obligation to regulate greenhouse gases. See *Massachusetts v. EPA*, 549 U.S. 497, 533 (2007) (“Under the clear terms of the Clean Air Act, EPA can avoid taking further action only if it determines that greenhouse gases do not contribute to climate change or if it provides some reasonable explanation as to why it cannot or will not exercise its discretion to determine whether they do.”). Combined with this court’s abeyance, the stay has the effect of relieving EPA of its obligation to comply with that statutory duty for the indefinite future. Questions regarding the continuing scope and effect of the Supreme Court’s stay, however, must be addressed to that Court.