

D.C. Circuit Delays Oral Argument in Clean Power Plan Litigation

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On May 16, 2016, the U.S. Court of Appeals for the D.C. Circuit on its own motion issued an order delaying oral argument in *West Virginia v. EPA* to September 27, 2016. Oral argument in the case, which challenges the Clean Power Plan, was previously scheduled for June 2, 2016. In an unusual move, the court further ordered that the case be heard before the *en banc* court rather than the three-judge panel (Judges Henderson, Rogers, and Srinivasan) originally scheduled to hear the case. The order adds six of the court's other active judges to the *en banc* panel, as Judges Garland and Pillard have recused themselves from the case.

The order alters the potential timeline for Supreme Court review of the Clean Power Plan, which the Supreme Court stayed in February. If the D.C. Circuit issues its decision before January 2017, the losing party in the D.C. Circuit will likely petition the Supreme Court for review during the 2016-2017 term, with a decision anticipated by June 2017. If the D.C. Circuit does not issue its decision until later in 2017, after the Supreme Court's typical mid-January cutoff for review in that term, the Supreme Court likely will not hear the case until the 2017-2018 term, with a decision coming as late as June 2018. The timing for filling the vacancy on the Supreme Court could also affect the Supreme Court's timing for granting *certiorari* in the controversial case, as the Supreme Court is making an effort to avoid 4-4 decisions. Meanwhile, a number of states continue to prepare for implantation of the Clean Power Plan, notwithstanding the Supreme Court's stay of the rule.

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