DISTRICT COURT, DENVER COUNTY, COLORADO 1437 BANNOCK STREET DENVER, COLORADO 80202 **Plaintiff:** FREEDOM TO DRIVE INC. v. **Defendant:** THE COLORADO AIR QUALITY CONTROL COMMISSION	**▲ COURT USE ONLY ▲**
Attorneys for Proposed Intervenor-Defendants Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, Southwest Energy Efficiency Project, and Western Resource Advocates: Thomas A. Bloomfield (Colo. Bar. No. 35281) Nathaniel H. Hunt (Colo. Bar. No. 49259) Sarah M. Keane (Colo. Bar. No. 51109) Samantha R. Caravello (Colo. Bar. No. 48793) Kaplan Kirsch & Rockwell LLP 1675 Broadway, Suite 2300 Denver, Colorado 80202 303-825-7000 303-825-7005 (fax) Email: tbloomfield@kaplankirsch.com nhunt@kaplankirsch.com skeane@kaplankirsch.com scaravello@kaplankirsch.com	Case No. 2019CV34156 Division: 259 Courtroom:
ENVIRONMENTAL DEFENSE FUND, NATURAL RESOURCES DEFENSE COUNCIL, SIERRA CLUB, SOUTHWEST ENERGY EFFICIENCY PROJECT, AND WESTERN RESOURCE ADVOCATES' UNOPPOSED MOTION TO INTERVENE AS DEFENDANTS AND TO EXTEND TIME TO ANSWER COMPLAINT	

Pursuant to C.R.C.P. 24(a)–(b), Environmental Defense Fund ("EDF"), Natural Resources Defense Council ("NRDC"), Sierra Club, Southwest Energy Efficiency Project ("SWEEP"), and Western Resource Advocates ("WRA" and collectively, the "Environmental Coalition" or "Coalition") hereby move to intervene as defendants in Freedom to Drive's ("FTD") challenge to revisions to Colorado Air Quality Control Commission ("AQCC" or "Commission") Regulation Number 20, adopting a zero emission vehicle ("ZEV") program in Colorado (the "ZEV Regulation"). Accompanying this motion is the Coalition's proposed response in support of the Commission's motion to hold this case in abeyance. Ex. 1, Proposed Intervenor-Defendants' Response in Support of Defendant's Motion to Hold Case in Abeyance (Dec. 12, 2019). The Coalition requests that in addition to granting the Coalition's motion for intervention, the Court accept the Coalition's proposed response as filed. The Coalition further moves, under C.R.C.P. 6(b) and 24(c), to extend the deadline to file its answer or other response to be the same date that the Commission's answer is due, should the Court deny the Commission's motions for an abeyance of this action or, in the alternative, to dismiss FTD's complaint.

In compliance with C.R.C.P. 121(c) § 1-15(8), the Environmental Coalition has conferred with the present parties to this lawsuit. The Commission does not oppose this motion. FTD takes no position on this motion.

BACKGROUND

Each member of the Environmental Coalition has a significant interest in promoting clean air and reducing local and climate pollution, and therefore in defending the ZEV Regulation. EDF is a national nonprofit organization that links science, economics, and law to create

innovative, equitable, and cost-effective solutions to urgent environmental problems. EDF has long pursued initiatives at the state and national levels designed to reduce emissions of health-harming and climate-altering air pollutants from all major sources, including sources from the transportation sector. EDF has over 400,000 members nationwide and 12,000 members in Colorado.

NRDC is a nonprofit environmental and public-health membership organization with hundreds of thousands of members nationwide and more than 12,000 in Colorado. Since its founding in 1970, NRDC has worked to reduce air pollution and improve air quality throughout the United States, including by advocating for and defending state laws and policies that reduce emissions from the transportation sector by providing consumers with cleaner vehicles.

Sierra Club is the nation's oldest and largest grassroots environmental organization, with hundreds of thousands of members nationwide and more than 22,000 in Colorado. For decades, Sierra Club has used the traditional tools of advocacy—organizing, lobbying, litigation, and public outreach—to support policies that seek to reduce emissions of pollution that harms public health and the environment and to provide consumers with clean vehicles.

SWEEP is a 501(c)(3) public-interest organization promoting greater energy efficiency and clean transportation in Arizona, Colorado, Nevada, New Mexico, Utah, and Wyoming. Founded in 2001, SWEEP works with state and local governments, electric utilities, transportation providers, and others to advance policies that save money and reduce pollution, including policies to accelerate the deployment of zero-emission vehicles.

WRA is a non-profit conservation organization dedicated to protecting the land, air, and water of the West. WRA advocates for a western electric system that provides affordable and

reliable energy, reduces economic risks, and protects the environment through the expanded use of energy efficiency, renewable energy resources, and other clean energy technologies. This includes advocating for electrification of the transportation sector.

Pursuant to Section 177 of the federal Clean Air Act ("CAA"), states may adopt California's vehicle emissions standards instead of those issued by the federal government, provided that "such standards are identical to the California standards for which a waiver has been granted," and the states afford manufacturers two years' lead time to comply. 42 U.S.C. § 7507; *see generally Chamber of Commerce v. EPA*, 642 F.3d 192, 197 (D.C. Cir. 2011). In 2013, the U.S. Environmental Protection Agency ("EPA") granted California a waiver of CAA preemption for its Low Emission Vehicle ("LEV") standards, which include greenhouse gas emissions limitations for passenger cars and light trucks, and for its ZEV program. *See* 78 Fed. Reg. 2112 (Jan. 9, 2013).

Other than Colorado, ten states have adopted California's ZEV program, and an additional three currently follow California's LEV standards. Under the ZEV program, automakers sell an increasing percentage of new zero-emission vehicles in those states each year, which can include full battery electric vehicles, plug-in hybrid electric vehicles, and hydrogen fuel cell vehicles. Because electric vehicles emit no local or climate pollutants at the tailpipe, and have considerably fewer life-cycle emissions, implementation of a ZEV program in Colorado will improve air quality in Colorado and help reduce the state's contribution to climate change as compared to the status quo.

Consequently, in order to "reduce vehicle emissions in Colorado," the Air Pollution Control Division (the "Division") of the Colorado Department of Public Health and Environment

initiated the rulemaking at issue here and proposed to adopt California's ZEV program. *See* C.C.R. eDocket Tracking Number 2019-00188, Proposed Rule § I.B (May 11, 2019). The Division proposed the ZEV Regulation because its analysis showed that adopting California's ZEV program would benefit Colorado's citizens by reducing greenhouse gas emissions, emissions of ozone and other local air pollutants, and by saving new vehicle purchasers money through avoided fuel costs and declining electric vehicle costs over time. *Id.*

To lend its expertise in the scientific, environmental, and public health implications of the ZEV Regulation, and to protect its members' interests in lowering air and climate pollution, the Environmental Coalition requested and was granted formal party status in the rulemaking proceeding. Ex. 2, Environmental Coalition Request for Party Status (May 30, 2019); Ex. 3, Revised Party List (June 28, 2019). The Coalition filed prehearing statements, expert reports, and other papers and offered witness testimony at the hearing before the Commission. *See, e.g.*, Ex. 4, Environmental Coalition's Prehearing Statement (July 10, 2019); Ex. 5, Environmental Coalition's Rebuttal Prehearing Statement (July 29, 2019).

Ultimately, the Commission relied on authority under the Colorado Air Pollution Prevention and Control Act, C.R.S. 25-7-105(1), and the authority provided by Section 177 of the CAA in voting to adopt the ZEV Regulation, including an alternate compliance mechanism originally proposed by different parties to the rulemaking. The Commission found that "utilization of [zero-emission] vehicles [is] an effective strategy to reduce air pollution" and that

the ZEV Regulation is "economically reasonable, technologically feasible and [will] provide the co-benefit of reducing costs for Colorado drivers." 42 Colo. Reg. 17 (Sep. 10, 2019).[1]

Shortly thereafter, in an action without precedent, EPA purported to withdraw part of California's 2013 waiver for the state's greenhouse gas emission standards and the ZEV program. 84 Fed. Reg. 51,310, 51,350 (Sept. 27, 2019). In addition, the National Highway Traffic Safety Administration ("NHTSA"), for the first time, issued regulations declaring the California regulations preempted under the Energy Policy and Conservation Act of 1975, Pub. L. No. 94-163, 89 Stat. 871. 84 Fed. Reg. at 51,361. California, other states, including Colorado, some of the movant organizations in the Environmental Coalition, and other entities, have challenged these actions in the D.C. Circuit[2] and the District Court for the District of Columbia.[3]

[1] https://www.sos.state.co.us/CCR/RegisterPdfContents.do?publicationDay=09/10/2019

[2] *California v. Wheeler*, No. 19-1239 (D.C. Cir. Pet. filed Nov. 15, 2019) (brought by the State of Colorado and others); *Sierra Club v. Wheeler*, No. 19-1243 (D.C. Cir. Pet. filed Nov. 22, 2019) (brought by EDF, NRDC, Sierra Club, and others); *Advanced Energy Econ. v. EPA*, No. 19-1249 (D.C. Cir. Pet. filed Nov. 25, 2019); *City & Cty. of San Francisco v. Wheeler*, No. 19-1246 (D.C. Cir. Pet. filed Nov. 25, 2019); *Calpine Corp. v. EPA*, No. 19-1245 (D.C. Cir. Pet. filed Nov. 25, 2019); *S. Coast Air Quality Mgmt. Dist. v. EPA*, No. 19-1241 (D.C. Cir. Pet. filed Nov. 15, 2019); *Nat'l Coal. for Advanced Transp. v. EPA*, No. 19-1242 (D.C. Cir. Pet. filed Nov. 15, 2019). The court consolidated these petitions with an NGO coalition's protective petition challenging NHTSA's preemption regulation promulgated in the same rulemaking on December 2, 2019. *See Union of Concerned Scientists v. Nat'l Highway Traffic Safety Admin.*, No. 19-1230 (D.C. Cir. Order Dec. 2, 2019).

[3] *California v. Chao*, No. 1:19-cv-02826-KBJ (D.D.C. filed Sept. 20, 2019) (brought by the State of Colorado and others); *Envtl. Def. Fund v. Chao*, No. 1:19-cv-02907-KBJ (D.D.C. filed Sept. 27, 2019) (brought by EDF, NRDC, Sierra Club, and others); *S. Coast Air Quality Mgmt. Dist. v. Chao*, No. 1:19-cv-03436 (D.D.C. filed Nov. 14, 2019). The Court plans to consolidate these cases. *See* Minute Order, *Envtl. Def. Fund v. Chao*, No. 1:19-cv-02907-KBJ (D.D.C. Dec. 9, 2019).

FTD now seeks to overturn the ZEV Regulation adopted by the Commission. The Environmental Coalition moves to intervene to defend the rule as reasonable and legally sound, and to defend the interests of each member of the Coalition.

ARGUMENT

I. The Environmental Coalition is entitled to intervene as of right.

The rules governing intervention "should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level." *Cherokee Metro. Dist. v. Meridian Serv. Metro. Dist.*, 266 P.3d 401, 404 (Colo. 2011) (quoting *Feigin v. Alexa Grp., Ltd.*, 19 P.3d 23, 28 (Colo. 2001)). A court must permit a party to intervene if (1) the party's motion is timely; (2) the party has an interest in the subject matter of the action; (3) the party's interest may be impaired by the disposition of the action; and (4) none of the existing parties to the lawsuit adequately represent the party's interest. *Id.* (citing C.R.C.P. 24(a)(2)). Each member of the Environmental Coalition meet each of those factors and therefore is entitled to intervene as of right.

In fact, earlier this year, in a materially similar lawsuit challenging the Commission's adoption of California's LEV standards, this court granted EDF, NRDC, and Sierra Club's motion to intervene. Order: Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club's Unopposed Motion to Intervene as Defendants and to Extend Time to Answer Complaint (w/attach), *Colo. Auto. Dealers Ass'n v. Colo. Dep't of Pub. Health & Env't*, No. 2019CV30343 (Denver Dist. Ct. Apr. 3, 2019).

A. The Environmental Coalition's motion is timely.

Rule 24 does not provide an express time limit for intervention, so "the timeliness of the attempted intervention is to be gathered from all the circumstances in the case." *Diamond Lumber, Inc. v. H.C.M.C., Ltd.*, 746 P.2d 76, 78 (Colo. App. 1987). Here, FTD filed its complaint on October 29, 2019 and its first amended complaint on October 30, 2019, and the Coalition is moving to intervene only six weeks later. The Commission has moved to hold FTD's complaint in abeyance pending resolution of related litigation or, in the alternative, to dismiss the complaint, and thus has not yet filed an answer. Because this suit still is at a very early stage, the Coalition's motion is timely.

B. The Environmental Coalition has a strong interest in this matter.

Each member of the Coalition has a strong interest in defending the environmental and public health benefits of the ZEV Regulation. "The existence of an interest under Colorado's Rule 24(a)(3) should be determined in a liberal manner" and "should not be viewed formalistically." *Feigin*, 19 P.3d at 29 (citing *O'Hara Grp. Denver, Ltd. v. Marcor Hous. Sys., Inc.*, 595 P.2d 679, 687 (Colo. 1979)). Protection of the environment and public health qualify as legally protected interests for the purposes of intervention. *See, e.g.*, *Rocky Mountain Animal Def. v. Colo. Div. of Wildlife*, 100 P.3d 508, 513 (Colo. App. 2004) (holding that "aesthetic and ecological interests are generally sufficient" to satisfy the interest prong of the intervention test); *Friends of the Black Forest Reg'l Park, Inc. v. Bd. of Cty. Comm'rs*, 80 P.3d 871, 877 (Colo. App. 2003) (same); *Utah Ass'n of Counties v. Clinton*, 255 F.3d 1246, 1253–54 (10th Cir. 2001) ("[O]rganizations whose purpose is the protection and conservation of wildlife and its habitat

have a protectable interest in litigation that threatens those goals.").[4] The Environmental Coalition members sought and were granted formal party status in the rulemaking based on their interests in the environmental and public health benefits of increasing the availability of ZEVs in Colorado, with the stated goal of increasing adoption of the only technology that will put Colorado on a trajectory to achieve the necessary deep reductions in carbon emissions from the transportation sector. Ex. 2, Request for Party Status; Ex. 3, Revised Party List. Those same interests support the Coalition's motion to intervene in this lawsuit. *Cf. Colo. Water Quality Control Comm'n v. Town of Frederick*, 641 P.2d 958, 961–63 (Colo. 1982) (explaining that "party status in an agency proceeding is a prerequisite to judicial review of agency action").

C. The Environmental Coalition's interests may be impaired by this lawsuit.

A party seeking intervention need only show that "disposition of the underlying action *may* as a practical matter impair its ability to protect its interest." *Cherokee Metro. Dist.*, 266 P.3d at 406 (citing C.R.C.P. 24(a)) (emphasis added). Because the rule refers to impairment "as a practical matter," the court may consider any significant effect that the outcome of the suit may have on the applicant's interests. C.R.C.P. 24(a). This element typically is satisfied so long as there is not "a *clear* alternative venue in which the proposed intervenor may pursue relief" or defend its interests. *Mauro v. State Farm Mut. Auto. Ins. Co.*, 410 P.3d 495, 499 (Colo. App. 2013); *see also Utah Ass'n of Counties*, 255 F.3d at 1253 (explaining that the movant must show

[4] C.R.C.P. 24(a) is substantively identical to Fed. R. Civ. P. 24(a). Colorado courts therefore may look to federal case law when interpreting and applying the intervention standards. *See People v. Dore*, 997 P.2d 1214, 1219 (Colo. App. 1999) (citing *Forbes v. Goldenhersh*, 899 P.2d 246 (Colo. App. 1994)).

only that impairment of its interest is possible and the court's analysis "is not limited to consequences of a strictly legal nature") (quoting *Nat. Res. Def. Council v. U.S. Nuclear Regulatory Comm'n*, 578 F.2d 1341, 1345 (10th Cir. 1978)).

Here, FTD requests the Court to "[h]old unlawful, set aside, and enjoin implementation and enforcement of the ZEV Regulation." First Am. Compl., Prayer for Relief ¶ A (Oct. 30, 2019). By challenging ZEV, FTD's goal is to ensure that automakers do not have to sell an increasing number of new electric vehicles in the state over time. Evidence submitted by the Environmental Coalition during the rulemaking process showed that the ZEV program in combination with the LEV regulation adopted the previous year would result in 152 million metric tons of carbon dioxide reductions, as well as reductions by 2030 of 207 metric tons of nitrogen oxides, 256 metric tons of volatile organic compounds, 15 metric tons of fine particulate matter and 121 metric tons of sulfur oxides. Ex. 5, Environmental Coalition's Rebuttal Prehearing Statement at 2, 7, 13–14. Indeed, securing such reductions of local and climate pollution is exactly what motivated the Coalition members to join the ZEV rulemaking in the first instance, as air and climate pollution reduction is core to the missions of each Coalition member. In addition, the Coalition provided evidence that adopting a ZEV program would result in $86 million to $260 million in avoided climate damage, using conservative estimates. *Id.* at 2, 12. Because FTD's objectives with this lawsuit threaten to eliminate the very climate and public health benefits that motivated the Coalition to participate in the rulemaking process, FTD's lawsuit threatens to impair the Coalition's interests. *See* Ex. 6, Stith Decl. ¶¶ 5–8, 10; Ex. 7, Tonachel Decl. ¶¶ 7–18, Attachs. A, B; Ex. 8, Linhardt Decl. ¶¶ 12–16, Attach. A; Ex. 9,

Madsen Decl. ¶¶ 7–14; Ex. 10, Nielsen Decl. ¶¶ 7–12. This lawsuit is the only venue available for the Coalition to defend those interests.

D. The Environmental Coalition's interests are not adequately represented.

No present party to this lawsuit adequately represents the Coalition members' interests. The U.S. Supreme Court has held that a prospective intervenor bears only a "minimal" burden to show that representation of its interests "may be" inadequate. *Trbovich v. United Mine Workers of Am.*, 404 U.S. 528, 538 & n.10 (1972). Once a prospective intervenor has demonstrated an interest that may be impaired, it "*should* be allowed to participate if it appears that all of its interests *may* not be adequately represented by those already parties to that lawsuit." *O'Hara Grp. Denver*, 595 P.2d at 688 (emphasis added). If a prospective intervenor's "interest is similar to, but not identical with, that of one of the parties . . . intervention ordinarily should be allowed unless it is clear that the party will provide adequate representation." *Cherokee Metro. Dist*, 266 P.3d at 407 (emphasis and internal quotation marks omitted); *see also WildEarth Guardians v. Nat'l Park Serv.*, 604 F.3d 1192, 1200 (10th Cir. 2010) (explaining that the possibility that "the interests of the applicant and the parties may diverge need not be great in order to satisfy this minimal burden").

The Commission does not adequately represent the Environmental Coalition's interests in this lawsuit. The Commission, as a body of the State of Colorado, represents a much broader spectrum of interests and viewpoints than does the Coalition. When formulating its position, the Commission must balance the concerns of stakeholders with divergent interests and reconcile the views of multiple participants and Division staff. As a result, the Commission may prioritize issues of administrative convenience or programmatic flexibility over environmental concerns.

Because the Coalition focuses exclusively on protecting the environment and public health, the Commission's and the Coalition's positions on some of the interpretive questions in this case may diverge. *See* Ex. 7, Tonachel Decl. ¶¶ 13–16; Ex. 9, Madsen Decl. ¶¶ 10–13; Ex. 10, Nielsen Decl. ¶¶ 10–11.

For example, FTD's complaint asserts a number of claims attacking the Division's Economic Impact Analysis and its endorsement of an alternate proposal issued by other parties. *See* First Am. Compl. ¶¶ 57–67, 86–91. During the rulemaking process, the Environmental Coalition's experts opined that the State's analyses in the Economic Impact Analysis included a host of conservative assumptions that tended to overstate the costs and understate the benefits of the ZEV Regulation. *See* Ex. 5, Environmental Coalition's Rebuttal Prehearing Statement at 1, 13–33. In addition, the Coalition uniquely monetized the carbon reduction benefits of the rule using the social cost of carbon metric and quantified how adopting the ZEV Regulation would produce the co-benefit of reducing other harmful emissions by lowering vehicle use of gasoline, which would lower the demand for gasoline refining and the emissions associated with such reduced demand. *See* Ex. 4, Environmental Coalition's Prehearing Statement at 11–13, 15–16. Finally, the Coalition did not specifically endorse the alternate proposal ultimately adopted by the Commission. The clear differences between the Coalition's analyses and those of the State actors during the rulemaking underscore the separate interests and readily satisfy the requirement that the Commission may not adequately represent the Coalition's interests in this litigation. *See Cherokee Metro. Dist.*, 266 P.3d at 407; *O'Hara Grp. Denver*, 595 P.2d at 688; *Trbovich*, 404 U.S. at 538 & n.10.

Courts often distinguish the interests of a state agency from the interests of environmental and other groups in granting intervention under similar circumstances. *See, e.g.*, Order: Environmental Defense Fund, Natural Resources Defense Council, and Sierra Club's Unopposed Motion to Intervene as Defendants and to Extend Time to Answer Complaint (w/attach), *Colo. Auto. Dealers Ass'n*, No. 2019CV30343; Order Granting Motion to Intervene, *Martinez v. Colo. Oil & Gas Conservation Comm'n*, No. 2014CV32637 (Denver Dist. Ct. Dec. 24, 2014) (granting industry trade groups' motion to intervene as defendants in case challenging Colorado Oil & Gas Conservation Commission's denial of rulemaking petition); Order re: Joint Motion to Intervene, *Colo. Mining Ass'n v. Urbina*, No. 11CV2044 (Denver Dist. Ct. Nov. 18, 2011) (granting environmental coalition's motion to intervene as defendants in case challenging rule issued by the Colorado Air Quality Control Commission).

Similarly, other courts that have explicitly considered the question have often recognized the divergent interests of governmental entities and would-be intervenors, holding that "governmental entities do not adequately represent the interests of aspiring intervenors." *Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 736–37 (D.C. Cir. 2003).[5] "[T]he government's prospective task of protecting 'not only the interest of the public but also the private interest of the petitioners in intervention' is 'on its face impossible' and creates the kind of conflict that 'satisfies the minimal burden of showing inadequacy of representation.'" *Utahns for Better*

[5] *Accord Kleissler v. U.S. Forest Serv.*, 157 F.3d 964, 973–74 (3d Cir. 1998); *Forest Conservation Council v. U.S. Forest Serv.*, 66 F.3d 1489, 1499 (9th Cir. 1995), *abrogated on other grounds by Wilderness Soc'y v. U.S. Forest Serv.*, 630 F.3d 1173 (9th Cir. 2011) (en banc); *Sierra Club v. Espy*, 18 F.3d 1202, 1208 (5th Cir. 1994); *Conservation Law Found. of New England v. Mosbacher*, 966 F.2d 39, 41–44 (1st Cir. 1992); *In re Sierra Club*, 945 F.2d 776, 779 (4th Cir. 1991).

Transp. v. U.S. Dep't of Transp., 295 F.3d 1111, 1117 (10th Cir. 2002) (quoting *Utah Ass'n of Counties*, 255 F.3d at 1255). Accordingly, "[a] public interest group is entitled as a matter of right to intervene in an action challenging the legality of a measure it has supported." *Idaho Farm Bureau Fed'n v. Babbitt*, 58 F.3d 1392, 1397 (9th Cir. 1995).

Here, the unique interests that qualified the Coalition members to become parties to the rulemaking did not suddenly merge with and become identical to the State's interests merely because the Commission voted to adopt the ZEV Regulation. To the contrary, the Coalition's unique scientific viewpoint and expertise entitle it to participate as a party in this lawsuit. *See Utahns for Better Transp.*, 295 F.3d at 1117 (explaining that the inadequacy-of-representation prong is met if the prospective intervenor "has expertise the government may not have"); *Sagebrush Rebellion, Inc. v. Watt*, 713 F.2d 525, 528 (9th Cir. 1983) (party entitled to intervene when it has "expertise apart from that of the [government], . . . [and] offers a perspective which differs materially from that of the present parties to this litigation").

For all those reasons, the Environmental Coalition members have significant interests in the environmental and public health impacts of the ZEV Regulation that could be impaired by the outcome of this lawsuit and that the State does not adequately represent. This Court therefore should grant the Coalition's unopposed motion to intervene as of right.

II. In the alternative, the Court should permit the Environmental Coalition to intervene.

The Environmental Coalition alternatively requests permission to intervene. Permissive intervention is available "when an application's claim or defense and the main action have a question of law or fact in common" and the applicant's intervention will not "unduly delay or prejudice the adjudication of the rights of the original parties." C.R.C.P. 24(b). Like the rule

governing intervention as of right, the rule governing permissive intervention "should be liberally interpreted to allow, whenever possible and compatible with efficiency and due process, issues related to the same transaction to be resolved in the same lawsuit and at the trial court level." *Moreland v. Alpert*, 124 P.3d 896, 904 (Colo. App. 2005). "When a trial court allows intervention pursuant to C.R.C.P. 24(b), its ruling [will] not be disturbed absent a showing of abuse of discretion." *CF&I Steel, L.P. v. Air Pollution Control Div.*, 77 P.3d 933, 939 (Colo. App. 2003).

The Environmental Coalition qualifies for permissive intervention because it seeks to join the Commission in defending the ZEV Regulation against the same legal claims that FTD asserts in its complaint and therefore the Coalition will not inject extraneous matters into the case. This Court will review FTD's claims based on the administrative record compiled during the underlying rulemaking proceeding, in which the Coalition members participated and submitted evidence and testimony. The Coalition's familiarity with that factual record and its expertise in the scientific underpinnings and ramifications of the ZEV Regulation will substantially assist the Court in adjudicating the issues raised by FTD. *See* C.R.C.P. 1(a).

The Coalition's participation also will not unduly delay this case or prejudice any existing party. The Coalition's intervention motion is timely and its arguments will concern the same core factual and legal issues addressed by the other parties. Although, as described above, the Coalition's substantive position on some of those issues may differ from the positions of other parties, permitting the Coalition members to advocate their unique position on the merits would not prejudice FTD or the Commission, as evidenced by both parties' non-opposition to this Motion. To the contrary, the *Coalition* would be prejudiced if it were unable to defend the

important interests that qualified it to participate as a party to the rulemaking. *Cf.* C.R.S.§ 24-4-106(4) (requiring person challenging rulemaking to "notify each person on the agency's docket of the fact that a suit has been commenced" so that parties to the rulemaking may consider intervening in the lawsuit).

Accordingly, the Environmental Coalition members respectfully request permission to intervene so that they can defend their unique interests and provide additional perspective and expertise that will assist the Court in properly adjudicating the claims at issue.

III. Aligning the Commission's and the Coalition's answer deadlines will promote judicial economy.

The Commission has moved to hold this case in abeyance, or in the alternative, to dismiss FTD's complaint, and therefore has not yet answered the complaint. Def.'s Mots. Hold Case in Abeyance or, Alternatively, Dismiss (Nov. 22, 2019); *see* C.R.C.P. 12(a)(1). Pursuant to C.R.C.P. 6(b) and 24(c), the Coalition respectfully requests that (if the Court denies the Commission's motion for an abeyance or dismissal), the Coalition's deadline to file its answer or other response to the complaint be the same date that the Commission's answer is due. Aligning the Commission's and the Coalition's answer deadlines will promote judicial economy by enabling the defendants to coordinate their responses to the complaint and potentially avoid duplicative filings.

CONCLUSION

For all the foregoing reasons, the Environmental Coalition respectfully requests that the Court grant the Coalition's unopposed motion to intervene, accept as filed the Coalition's proposed response to the Commission's motion to hold the case in abeyance, and extend the Coalition's deadline to answer the complaint or file a pre-answer motion.

Respectfully submitted,

December 12, 2019

Thomas A. Bloomfield (CO Bar. No. 35281)
Nathaniel H. Hunt (CO Bar. No. 49259)
Sarah M. Keane (CO Bar. No. 51109)
Samantha R. Caravello (CO Bar. No. 48793)
Kaplan Kirsch & Rockwell LLP

Attorneys for Proposed Intervenor-Defendants Environmental Coalition

INDEX OF EXHIBITS

CERTIFICATE OF SERVICE

I hereby certify that on December 12, 2019, I electronically filed the foregoing motion, together with its exhibits and a proposed order, with the Clerk of the Court via Colorado Courts E-Filing.

The participants in the case are registered Colorado Courts E-Filing users and service will be accomplished by the Colorado Courts E-Filing system.

December 12, 2019

/S/ William Trull
WILLIAM TRULL