

ORAL ARGUMENT NOT YET SCHEDULED

Case No. 15-1434 and consolidated cases

(15-1381, 15-1396, 15-1397, 15-1399, 15-1438,
15-1448, 15-1456, 15-1458, 15-1463)

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

INTERNATIONAL BROTHERHOOD OF BOILERMAKERS

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

**UNOPPOSED MOTION OF THE COMMONWEALTH OF VIRGINIA
FOR LEAVE TO INTERVENE IN SUPPORT OF RESPONDENT**

The Commonwealth of Virginia hereby moves pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b) for leave to intervene in support of respondent Environmental Protection Agency (“EPA”) in these consolidated cases, for the reasons set forth below:

1) These consolidated cases petition this Court for review of EPA’s final action, published in the Federal Register at 80 Fed. Reg. 64,510, on October 23,

2015, and titled “Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units” (“the Final Rule”). EPA promulgated the Final Rule pursuant to its authority in section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b).

2) EPA’s Final Rule will require limits on greenhouse gas emissions from fossil-fueled power plants constructed after January 8, 2014 or modified or reconstructed after June 18, 2014. Those limits will help prevent and mitigate harms that climate change poses to human health and the environment, including increased heat-related deaths, damaged coastal areas, disrupted ecosystems, more severe weather events, and longer and more frequent droughts. *See Massachusetts v. EPA*, 549 U.S. 497, 521 (2007); Endangerment & Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,523-66,536 (Dec. 15, 2009).

3) The Commonwealth of Virginia has a compelling interest in defending the Final Rule as a means to achieve the Commonwealth’s goal of preventing and mitigating climate change harms in Virginia.

4) The Commonwealth’s interests may not be adequately represented by the other parties to these consolidated cases. As the representative of the interests of its citizens, the Commonwealth’s interests differ from those of other parties in the consolidated cases. In addition, the Commonwealth has unique sovereign interests in

limiting climate change pollution in order to prevent and mitigate loss and damage to publicly owned coastal property, to protect public infrastructure, and to limit emergency response costs borne by the public. *See Massachusetts v. EPA*, 549 U.S. at 521-23. These interests have not always aligned with those of EPA, as shown by the historical efforts of many public entities, including states, to compel EPA to address climate change. In addition, because the Commonwealth is charged with implementing the Final Rule's emissions limitations as part of its delegated permitting authority under Title V of the Clean Air Act, 42 U.S.C. §§ 7661–7661f, it has a unique interest in ensuring that those limitations can be implemented effectively and efficiently.

5) This motion is timely under Rule 15(d) because it is filed within 30 days of the petition for review in Case No. 15-1434. Pursuant to Circuit Rule 15(b), this motion constitutes a motion to intervene in all existing and future cases before this Court involving the same agency action.

6) The proposed intervention will also not unduly delay or prejudice the rights of any other party. This litigation is in its very early stages, and intervention will not interfere with any schedule set by the Court.

7) Undersigned counsel sought the position on the motion of respondents and petitioners in Case No. 15-1434 and the nine cases consolidated with it by electronic mail communication to counsel of record on December 21, 2015. Counsel for EPA,

respondent in all cases, stated that EPA consents to the granting of the motion. In Case No. 15-1434, counsel for petitioner International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO stated that it takes no position. In Case No. 15-1381, counsel for the State of North Dakota stated that it takes no position; counsel for Lignite Energy Council and Gulf Coast Lignite Coalition stated that they take no position; counsel for the public health and environmental groups consent to the motion; counsel for the state and municipal intervenors (the states of California, Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, Minnesota, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, and the City of New York) state that they support the motion. In Case No. 15-1399, counsel for the state petitioners state that they take no position on the motion. In Case No. 15-1456, petitioner National Mining Association takes no position on the motion. In Case No. 15-1463, counsel for petitioner United Mine Workers of America, AFL-CIO states that it takes no position on motion. Remaining parties had not indicated a position at the time of this filing.

For the foregoing reasons, the Commonwealth respectfully requests that this Court grant its motion to intervene.

Dated: December 24, 2015

Respectfully Submitted,

MARK HERRING
ATTORNEY GENERAL

John W. Daniel, II
Deputy Attorney General
Lynne Rhode
*Senior Assistant Attorney General and
Chief*
Matthew L. Gooch
Assistant Attorney General
Environmental Section
Office of the Attorney General
900 East Main Street
Richmond, VA 23219
(804) 225-3193

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Unopposed Motion for Leave to Intervene as Respondent was filed on December 24, 2015, using the Court's CM/ECF system and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Matthew L. Gooch