

ORAL ARGUMENT NOT YET SCHEDULED

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

State of North Dakota,

Petitioners,

v.

**United States Environmental Protection
Agency,**

Respondent.

Case No. 15-1381,
consolidated with Cases
No. 15-1396 & 15-1397

On Petition for Review of Final Action of the
United States Environmental Protection Agency

**UNOPPOSED MOTION OF THE STATES OF CALIFORNIA,
CONNECTICUT, DELAWARE, HAWAII, ILLINOIS, IOWA, MAINE,
MARYLAND, 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 FOR LEAVE TO
INTERVENE AS RESPONDENTS**

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The States of California (by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Kamala D. Harris), Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, 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 (collectively, “State and Municipal Intervenors”) hereby move 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. State and Municipal Intervenors have a compelling interest in defending the Final Rule as a means to achieve their goal of preventing and mitigating climate change harms in their states and municipalities. In pursuit of this goal, State and Municipal Intervenors have taken significant steps to reduce greenhouse gas emissions, including emissions from new fossil-fueled power plants. Many states have enacted their own greenhouse gas emission limitations. *See, e.g.*, Cal. Code Regs. tit. 17, §§ 95801-96022; Conn. Gen. Stat. § 22a-200c & Conn. Agencies Regs. § 22a-174-31 (implementing nine-state Regional Greenhouse Gas Initiative)¹; N.Y. Comp. Codes R. & Regs. tit. 6, Part 251; Or. Rev. Stat. § 469.503(2); Wash. Rev.

¹ *See also* Del. Code Ann. tit. 7, § 6043 & Del. Admin. Code tit. 7, ch. 1147; Me. Rev. Stat. Ann. tit. 38, ch. 3-B; Md. Code Ann., Envir., § 2-1002(g); Mass. Gen. Laws ch. 21A, § 22 & 310 Mass. Code Regs. 7.70; N.H. Rev. Stat. Ann. § 125-O:21; R.I. Gen. Laws. § 23-82-4; Vt. Stat. Ann. tit. 30, § 255.

Code § 80.80.040(b). Many cities have similarly adopted measures to reduce their greenhouse gas emissions from the power sector. *See, e.g.*, City of New York, “One New York: The Plan for a Strong and Just City” (2015), 166-71 (committing to greenhouse gas reduction goal of 80 percent by 2050 and outlining reductions needed from the power sector to meet this goal).

Because the Final Rule would further the State and Municipal Intervenors’ goals and efforts, and would do so on a nationwide basis, State and Municipal Intervenors have a strong interest in defending it.

4. State and Municipal Intervenors also have an interest in these consolidated cases because they have participated extensively in the regulatory and judicial proceedings leading up to EPA’s adoption of the Final Rule. For example, several State and Municipal Intervenors brought the petition that led to *Massachusetts v. EPA*, and EPA’s subsequent finding that greenhouse gases may reasonably be anticipated to endanger public health and welfare. *See* 74 Fed. Reg. 66,496. Several State and Municipal Intervenors also brought public-nuisance claims against the largest owners of fossil-fueled power plants. *Am. Elec. Power v. Connecticut*, 131 S. Ct. 2527 (2011). Several State and Municipal Intervenors also sued EPA to promptly establish carbon dioxide emission standards for power plants under section 111 of the Clean Air Act, 42 U.S.C. § 7411. *New York v. EPA* (D.C.

Cir. No. 06-1322). Many State and Municipal Intervenors also submitted comments to EPA in response to the agency's proposal of the greenhouse gas emission standards at issue in these consolidated cases.

5. State and Municipal Intervenors' interests may not be adequately represented by the other parties to these consolidated cases. As representatives of the interests of their citizens, State and Municipal Intervenors' interests in these consolidated cases differ from those of other parties. In addition, State and Municipal Intervenors have 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 State and Municipal Intervenors to compel EPA to address climate change. In addition, because many of the undersigned states are charged with implementing the Final Rule's emissions limitations as part of their delegated permitting authority under Title V of the Clean Air Act, 42 U.S.C. §§ 7661-7661f, they have a unique interest in ensuring that those limitations can be implemented effectively and efficiently.

6. This motion is timely under Rule 15(d), because it is filed within 30 days of the petition for review in Case No. 15-1381. Pursuant to Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the challenged administrative action.

7. 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.

8. Counsel for State and Municipal Intervenors sought the position of respondents and petitioners in Case No. 15-1381 and the cases consolidated with it by electronic mail communication to counsel of record at 4:36 p.m. PST on November 2. Counsel for respondent EPA stated that it does not oppose the motion. Counsel for petitioner State of North Dakota stated that it takes no position at this time. Counsel for Energy & Environment Legal Institute (petitioner in Case No. 15-1397) stated that it does not oppose the motion. Counsel for Murray Energy Corporation (petitioner in Case No. 15-1396) had not stated a position as of the time of this filing.

9. Counsel for the State of California represents, pursuant to Circuit Rule 32(a)(2), that the other parties listed in the signature blocks below consent to the filing of this motion.

For the foregoing reasons, State and Municipal Intervenors respectfully request that this Court grant their motion to intervene.

Dated: November 4, 2015

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Unopposed Motion for Leave to Intervene as Respondents was filed on November 4, 2015, using the Court's CM/ECF system and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Timothy E. Sullivan
