

ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016

No. 15-1363 (and Consolidated Cases)

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

STATE OF WEST VIRGINIA, et al.,
Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, et al.,
Respondents.

**On Petition for Review of a Final Agency Action of the
United States Environmental Protection Agency
80 Fed. Reg. 64,662 (Oct. 23, 2015)**

**UNOPPOSED MOTION BY FORMER STATE ENERGY AND
ENVIRONMENTAL OFFICIALS FOR LEAVE TO PARTICIPATE
AS AMICI CURIAE**

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March 22, 2016

Pursuant to Fed. R. App. Pro. 29(b) and D.C. Cir. Rule 29(b), Matt Baker, Janet Gail Besser, Ron Binz, Michael H. Dworkin, Jeanne Fox, Dian Grueneich, Roger Hamilton, Paul Hibbard, Karl Rábago, Barbara Roberts, Cheryl Roberto, Jim Roth, Kelly Speakes-Backman, Larry Soward, Sue Tierney, Jon Wellinghoff, and Kathy Watson, former state energy and environmental officials (“Former State Officials”), respectfully move for leave to participate as amici curiae in support of the Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator.

Counsel for the federal respondents in these consolidated cases has provided the consent of their clients to amici participation by former state officials. Counsel for Petitioners Murray Energy Corporation and Denbury Onshore, L.L.C. has provided consent. Counsel for several movant intervenors in support of federal respondents, including State and Municipal Intervenors, Calpine Corporation, City of Austin d/b/a Austin Energy, City of Los Angeles, by and through its Department of Water and Power, City of Seattle by and through its City Light Department, National Grid Generation, L.L.C., New York Power Authority, Pacific Gas & Electric Company, Sacramento Municipal Utility District, Southern California Edison Company, Advanced Energy Economy, American Wind Energy Association, and Environmental Non-Governmental Organizations, also all expressed their consent to amici participation. Counsel for Petitioners North

American Coal Corporation and its subsidiaries, and Kansas City Board of Public Utilities do not object. Counsel for the petitioners in Case Nos. 15-1363, 15-1364, 15-1370, 15-1372, 15-1373, 15-1374, 15-1376, 15-1380, 15-1393, 15-1398, 15-1409, have stated that they take no position on the question whether this motion for leave to participate as amici curiae should be granted. No other counsel for any of the additional petitioners in this consolidated case or for any movant intervenors in support of petitioners responded to notice sent to liaison counsel on March 16, 2016 asking whether they consented, objected, or took no position on amici's proposed participation. No party has objected to the participation of Former State Officials as amici curiae.

In support of this motion, amici state as follows:

1. Petitioners and their amici have raised questions regarding the feasibility and costs of implementing the Clean Power Plan (CPP) on the schedule EPA has proposed. They argue that the CPP is an unprecedented exercise of Clean Air Act authority requiring radical changes in the way the electricity sector is regulated throughout the US; that it will force the precipitous shutdown of coal fired power plants; that it will compromise the reliability of the grid; that it will impose severe costs on consumers; and that it will cause serious economic dislocation in many states. Amici Former State Officials strongly disagree with these exaggerated claims and seek to provide the court with information and

insights gained through decades of experience integrating energy planning and pollution abatement while providing a reliable supply of affordable electricity through flexible, proven mechanisms.

2. Amici Former State Officials are uniquely positioned to offer this important, historical perspective on how energy and environmental goals have been successfully managed over the years to achieve positive outcomes for the American people. This perspective is distinct from the kinds of legal arguments expected from the parties.

3. A brief review of the qualifications and background of the amici demonstrates the value of their participation in this case.

- **Matt Baker** is the former Commissioner of the Public Utilities Commission for the State of Colorado (2008-2012) and Director of Environment Colorado (2003-2008). He is currently Energy and Climate Program Officer at The William and Flora Hewlett Foundation.
- **Janet Gail Besser** is the former Chair of the Massachusetts Department of Public Utilities and Vice President, Regulatory Strategy and Policy with National Grid. She is currently Vice President of Policy and Government Affairs with the Northeast Clean Energy Council.
- **Ron Binz** has held a number of important positions including Member and Chairman of the Colorado Public Utilities Commission; Chairman, Western

Conference of Public Service Commissioners; Chairman, National Association of Regulatory Utility Commissions Taskforce on Climate Policy; and Director of the Colorado Office of Consumer Counsel; and Member, Clean Air Act Advisory Committee to EPA Administrator.

- **Gary Brown** has served as the former NY Public Service Commissioner (2007–2015); Vice President, External Affairs and Vice President, Strategic Development New York Independent System Operator (2003–2007); Senior Policy Analyst New York State Energy Office (1978–1995).
- **Michael H. Dworkin** has served as Chairman of the Vermont Public Service Board (1999–2005); General Counsel to the Vermont Public Service Board (1988–1995); Chair of National Association of Regulatory Utility Commissioners Committee on Energy Resources and the Environment; President of the New England Conference of Public Utility Commissioners, and member of the Executive Committee of the Board the Electric Power Research Institute.
- **Jeanne Fox** has held a number of important positions in state and federal government including President of the New Jersey Board of Public Utilities from 2002–2010; Commissioner of the BPU from 2002–2014; Acting Commissioner and Deputy Commissioner of the New Jersey Department of

Environmental Protection from 1991–1994; and Regional Administrator for the U.S. EPA for Region II from 1994–2001.

- **Dian Grueneich** is a nationally and internationally recognized energy expert, with 37 years' experience. Her expertise covers energy efficiency, demand response, smart grid, renewable energy resources, transmission, and climate change. She served as Commissioner of the California Public Utilities Commission (2005–2010).
- **Paul Hibbard** is the former Chairman of the Massachusetts Department of Public Utilities. Mr. Hibbard served as a member on the Massachusetts Energy Facilities Siting Board, the New England Governors' Conference Power Planning Committee, and the National Association of Regulatory Utility Commissions Electricity Committee and Procurement Work Group.
- **Karl Rábago** has over twenty five years of experience in energy and climate policy markets. His past positions include Commissioner, Texas Public Utility Commission; Deputy Assistant Secretary at the U.S. Department of Energy; Vice President of Distributed Energy Services at Austin Energy; Director of Regulatory Affairs for the AES Corporation; and Vice Chair of the National Association of Regulatory Utility Commissioners Committee on Energy Conservation.

- **Cheryl Roberto** is the former Commissioner of the Public Utilities Commission of Ohio (2013–2015); lead commissioner for PUCO partnership with the United States Department of Energy; Co-Chair 2012 National Electricity Forum; and Co-Chair, State and Local Energy Efficiency Action Network Driving Ratepayer-Funded Efficiency Working Group.
- **Barbara Roberts** has over thirty years of experience working on air quality planning and management and energy policy. Past positions include Chair of the Colorado Air Quality Control Commission (2009–2013); Assistant Attorney General of Utah for the Division of Oil, Gas and Mining; and Senior Policy Advisor to the Assistant Administrator for the EPA Office of Air and Radiation (1982–1990).
- **Jim Roth** served as a commissioner on the Oklahoma Corporation Commission which regulates the economic and environmental aspects of public utilities. Mr. Roth is currently a partner with the Phillips Murrah law firm in Oklahoma City and Chair of the firm’s Clean Energy Practice Group. He currently serves on the Advisory Board for The Institute for Energy Law.
- **Larry R. Soward** has held a number of important positions in the State of Texas. He was appointed by Governor Rick Perry to serve as Commissioner of the Texas Commission on Environmental Quality (TCEQ) in 2003, one of

the largest environmental agencies in the United States. Mr. Soward also served as Executive Director of the Texas Water Commission, a predecessor to the TCEQ, as well as its Chief Hearings Examiner and General Counsel. From 1990–1992 he served as the Deputy Executive of the Public Utility Commission of Texas.

- **Kelly Speakes-Backman** served as a Commissioner on the Maryland Public Service Commission (2011 to 2015). She also served as chair of the Board of Directors of the Regional Greenhouse Gas Initiative; co-vice chair of the NARUC Committee on Energy Resources and the Environment; and as a member of the EPRI Energy Efficiency & Grid Modernization Public Advisory Group.
- **Sue Tierney** has held a number of important positions with the Commonwealth of Massachusetts including Secretary of Environmental Affairs, Commissioner of the Department of Public Utilities, Executive Director of the Energy Facilities Siting Council, and Senior Economist for the Executive Office of Energy Resources. She also served as Assistant Secretary for Policy at the U.S. Department of Energy.
- **Kathryn A. Watson** has over thirty years of experience practicing environmental law and managing state regulatory programs. She served as Branch Chief for air program planning in the Indiana Department of

Environmental Management (1999 –2007) with responsibility for developing state plans to meet Clean Air Act requirements, including overseeing the development of new rules, air quality modeling, and ensuring public participation.

- **Jon Wellinghoff** is an internationally recognized energy law attorney and clean tech energy expert. He is the immediate past Chairman of the Federal Energy Regulatory Commission. He previously served as General Counsel at the Nevada Public Utilities Commission (1998–2000), and served two terms as the State of Nevada's first Advocate for Customers of Public Utilities. As Consumer Advocate, he authored the first comprehensive state utility integrated planning statute. That statute became a model for utility integrated planning processes across the country.

4. If permitted to file an amicus brief, amici would file a document within the briefing schedule and word limitations pursuant to this Court's order dated January 28, 2016.

WHEREFORE, the proposed amici Former State officials respectfully request leave to file a brief of amici curiae pursuant to the schedule and any other direction, including word limitations, established by the Court.

Respectfully submitted this 28th day of March 2016.

/s/ Patrick Parenteau

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CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rules of Appellate Procedure 27(d)(1)&(2) and 29(b) and D.C. Circuit Rule 29(c) because it meets the prescribed format requirements, does not exceed 20 pages, and is being filed as promptly as practicable after the case was docketed in this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5)&(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

Dated: March 28, 2016

/s/ Patrick Parenteau

Patrick Parenteau

CERTIFICATE OF SERVICE

I hereby certify that on March 28, 2016, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system, which will send notice of such filing to all counsel who are registered CM/ECF users.

/s/ Patrick Parenteau

Patrick Parenteau