

ORAL ARGUMENT NOT YET SCHEDULED

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

State of North Dakota, *et al.*

Petitioners,

v.

**United States Environmental Protection
Agency, *et al.*,**

Respondents.

Case No. 16-1242,
consolidated with Cases
No. 16-1257, 16-1262, 16-
1263, 16-1264, 16-1266,
16-1267, 16-1269, 16-1270

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

**UNOPPOSED MOTION OF THE STATES OF MARYLAND AND
WASHINGTON FOR LEAVE TO INTERVENE AS RESPONDENTS
OR IN THE ALTERNATIVE TO JOIN IN THE UNOPPOSED
MOTION OF THE STATES OF CALIFORNIA,
CONNECTICUT, ILLINOIS, NEW MEXICO, NEW YORK,
OREGON, RHODE ISLAND, VERMONT, AND THE
COMMONWEALTH OF MASSACHUSETTS AND THE CITY OF
CHICAGO**

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Additional counsel on signature pages

Docket No. 16-1242**CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES****(D.C. Circuit Rules 27(a)(4) & 28(a)(1))**

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1), the States of Maryland and Washington submit this provisional certificate of parties, rulings, and related cases:

(A) Parties and Proposed Intervenors. The parties to this petition for review are as follows:

Petitioners: The States of North Dakota, Texas, West Virginia, Alabama, Arizona, Kansas, Louisiana, Montana, Ohio, Oklahoma, South Carolina, Wisconsin, Michigan Attorney General Bill Schuette, the Commonwealth of Kentucky, the Commonwealth of Kentucky Energy and Environment Cabinet, the State of North Carolina Department of Environmental Quality, the Independent Petroleum Association of America, the American Exploration & Production Council, the Domestic Energy Producers Alliance, the Eastern Kansas Oil & Gas Association, the Illinois Oil & Gas Association, the Independent Oil and Gas Association of West Virginia, Inc., the Indiana Oil and Gas Association, the International Association of Drilling Contractors, the Kansas Independent Oil & Gas

Association, the Kentucky Oil & Gas Association, the Michigan Oil and Gas Association, the National Stripper Well Association, the North Dakota Petroleum Council, the Ohio Oil and Gas Association, the Oklahoma Independent Petroleum Association, the Pennsylvania Independent Oil & Gas Association, the Texas Alliance of Energy Producers, the Texas Independent Producers & Royalty Owners Association, the West Virginia Oil and Natural Gas Association, the Western Energy Alliance, GPA Midstream Association, American Petroleum Institute, Texas Oil and Gas Association, and Interstate Natural Gas Association of America (collectively, “Petitioners”).

Respondents: The United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency (collectively, “EPA”).

Proposed Intervenors: The States of Maryland and Washington (collectively, “State Intervenors”).

(B) Rulings Under Review. Petitioners seek review of the final action of respondent United States Environmental Protection Agency published in the Federal Register at 81 Fed. Reg. 35,824, *et seq.*, (June 3, 2016), and titled “Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule.”

(C) To the best of the State Intervenors' knowledge, all related cases have been consolidated with this action.

Dated: September 2, 2016

Respectfully Submitted,

BRIAN E. FROSH
Attorney General of Maryland

/s/ Roberta R. James
ROBERTA R. JAMES
Senior Assistant Attorney General

Attorneys for the State of Maryland, by and through the Maryland Department of the Environment and Attorney General Brian E. Frosh

I. Unopposed Motion for Leave to Intervene

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 15(b), the States of Maryland (by and through the Maryland Department of the Environment and Attorney General Brian E. Frosh) and Washington (collectively, “State Intervenors”) hereby move for leave to intervene in support of respondents United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency (collectively, “EPA”) in these consolidated cases, for the reasons set forth below.

1. This motion is timely under D.C. Circuit Rule 15(d), because it is filed within thirty days of one of the last petitions being filed, as mandated by the Rules. *See* Fed. R. App. P. 15(d). Pursuant to D.C. Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the challenged administrative action.

2. 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. Thus, the requirements for permissive intervention are met.

3. Before filing this motion, counsel for the State of Maryland contacted the parties to these consolidated cases: Respondent EPA stated

that it consented to the motion; petitioners State of North Dakota (No. 16-1242) and State of Texas (No. 16-1257) stated that they do not oppose the motion; petitioners Independent Petroleum Association of America, on behalf of all petitioners in the case it filed (No. 16-1262), Interstate Natural Gas Association of America (No. 16-1263), State of West Virginia, on behalf of all petitioners in the case it filed (No. 16-1264), Western Energy Alliance (No. 16-1266), GPA Midstream Association (No. 16-1267), Texas Oil and Gas Association (16-1269), and American Petroleum Institute (No. 16-1270) stated that they take no position on the motion.

4. These consolidated cases petition this Court for review of EPA's final action, published in the Federal Register at 81 Fed. Reg. 35,824 (June 3, 2016), titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule" ("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).

5. EPA's Final Rule will require limits on greenhouse gas emissions—specifically methane—from new, modified and reconstructed sources in the oil and natural gas sector. 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, significant reduction in water storage in winter snowpack in mountainous regions, and longer and more frequent droughts. 81 Fed. Reg. at 35,834-35837; *see also 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). Although carbon dioxide is the most ubiquitous greenhouse gas, methane is far more potent on a per unit basis, with a 100-year global warming potential 28 to 36 times that of carbon dioxide according to studies cited by EPA. 81 Fed. Reg. at 35,837-838. In addition to reducing methane emissions, the Final Rule also places limits on volatile organic compound emissions and, as an additional benefit, reduces hazardous air pollutant emissions, which will help clean the air in many local communities near oil and gas operations. *Id.* at 35,827.

6. Moreover, this action is an important first step towards reducing emissions from existing sources of methane in the oil and gas sector under the Clean Air Act. Under section 111(d), once EPA regulates new sources of methane, as it has here, it must also regulate emissions from existing sources under the Act. (*Id.* at 35,831-832). Regulation of emissions from existing sources is crucial because existing sources comprise the vast

majority of the sector's emissions. *See* Environmental Defense Fund, *Rising Risk: Improving Methane Disclosure in the Oil and Gas Industry* (January 2016), https://www.edf.org/sites/default/files/content/rising_risk_full_report.pdf (stating that “roughly 90% of emissions in 2018 are forecast to come from existing sources.”).

7. State Intervenors have a compelling interest in defending the Final Rule as a means of furthering their goal of preventing and mitigating climate change harms in their states, as well as to protect their communities from other forms of dangerous air pollution. In pursuit of this goal, State Intervenors have taken significant steps to reduce greenhouse gas emissions and other air pollutants from a large number of sources. Maryland and Washington have enacted their own greenhouse gas emission limitations across various sectors of their economies. *See, e.g.*, Md. Code Ann., Envir., § 2-1204 (requiring Maryland to reduce statewide greenhouse gas emissions by 25% from 2006 levels by 2020), Md. Code Ann., Envir., §§ 2-1102 and 1103 (requiring the Maryland Department of the Environment to establish a low emissions vehicle program by adopting California's emissions standards), Md. Code Ann., Pub. Utilities § 7-703 (Maryland's renewable energy portfolio standard), Md. Code Ann., Envir., § 2-1301 (establishing the Maryland Commission on Climate Change), § 7-211 (requiring

Maryland gas and electric companies to develop and implement programs and services to encourage and promote energy efficiency and conservation of energy); Md. Code Ann., Envir., § 2-1002(g); Wash. Rev. Code 70.235 (requiring Washington to reduce statewide greenhouse gas emissions to 50% below 1990 levels by 2050); Wash. Rev. Code 70.120A (adopting California car emission standards); Wash. Rev. Code 80.80 setting greenhouse gas emission performance standards for certain baseload electric generation facilities); Wash. Rev. Code 80.70 (setting greenhouse gas mitigation requirements for fossil fueled electric generation facilities); Wash. Rev. Code 19.285 (establishing Washington's renewable energy portfolio standard).

8. The Final Rule includes mechanisms that are designed to integrate state and local control requirements into a common regulatory structure, further enhancing efficient enforcement and implementation efforts. By providing a national minimum standard for new and modified oil and gas sources, the Final Rule represents an important step toward addressing a significant nationwide source of potent greenhouse gas emissions, forms a strong foundation for further EPA efforts to limit methane emissions, and helps supplement and strengthen state efforts. Because the Final Rule would

further the State Intervenors' goals and efforts, and would do so on a nationwide basis, State Intervenors have a strong interest in defending it.

9. State Intervenors also have an interest in these consolidated cases because they have participated extensively in the regulatory and judicial proceedings leading to EPA's adoption of the Final Rule. For example, Washington was among the states that brought the petition that led to *Massachusetts v. EPA*, which was the impetus for EPA's subsequent finding that greenhouse gases may reasonably be anticipated to endanger public health and welfare. *See* 74 Fed. Reg. 66,496.

10. State Intervenors' interests may not be adequately represented by the other parties to these consolidated cases. As representatives of the interests of their citizens, State 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 fact that many State Intervenors were forced to take action against EPA to compel it to address climate change. In *Massachusetts v. EPA*, the Supreme Court decided that States have standing with regard to federal regulatory decisions related to global

warming, such as here. See 549 U.S. at 516-26; see also *Connecticut v. Am. Elec. Power Co.*, 582 F.3d 309, 332-49 (2nd Cir. 2009) (holding that California and other States sufficiently pled facts showing standing to sue power companies for federal common law nuisance for global warming) affirmed by equally divided court 131 S.Ct. 2527, 2535 (2011). The Supreme Court has recognized that “[t]he harms associated with climate change are serious and well recognized.” *Massachusetts v. EPA*, 549 U.S. at 521. These harms include: [A] precipitate rise in sea levels by the end of the century, severe and irreversible changes to natural ecosystems, a significant reduction in water storage in winter snowpack in mountainous regions with direct and important economic consequences, and an increase in the spread of disease. *Id.* In particular, the Court discussed the loss and damage to coastal property and infrastructure owned by Massachusetts (the lead petitioner). *Id.* at 522-23. EPA has long recognized that all “[s]tate governments will be affected by the environmental impacts of climate change.” *State Activities To Quantify and Reduce Greenhouse Gas Emissions: Assistance Competition*, 66 Fed. Reg. 18,245, 18,246 (April 6, 2001) (discussing threats to state infrastructure, damage to state natural resources, and increased number of ozone exceedances).

11. As coastal states, both Maryland and Washington have considerable interest in the implementation of this rule. With more than 3,000 miles of coastline, Maryland's coast is particularly vulnerable to rising sea levels and the more extreme weather events associated with climate change: shoreline erosion, coastal flooding, storm surges, inundation, and saltwater intrusion into groundwater supplies. *See* Maryland Commission on Climate Change, Climate Action Plan (Dec. 2015)(available at <http://www.mde.state.md.us/programs/Marylander/Pages/mccc.aspx>). In Washington State assessments of climate change impacts include predictions of water shortages for agriculture, together with reduced salmon habitat and increased challenges meeting water supply needs for cities and towns; more heat and air pollution-related deaths; increased size of wildfires in areas normally burned by fire and more frequent mountain pine beetle outbreaks; erosion at coastal beaches; and substantial increases in summer energy demand. *See* Washington Climate Change Impacts Assessment: Evaluating Washington's Future in a Changing Climate, Executive Summary (J.S. Littell, M. McGuire Elsner, L.C. Whitely Binder, and A.K. Snover eds. 2009) (available at: www.cses.washington.edu/db/pdf/wacciaexecsummary638.pdf).

12. In addition, Maryland and Washington 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.

II. Alternatively, Motion to Join in the Unopposed Motion of the States of California, Connecticut, Illinois, New Mexico, New York, Oregon, Rhode Island, Vermont and the Commonwealth of Massachusetts and the City of Chicago

In the alternative, the State Intervenors, hereby move to join in the Unopposed Motion of the States of California, Connecticut, Illinois, New Mexico, New York, Oregon, Rhode Island, Vermont and the Commonwealth of Massachusetts and the City of Chicago (collectively, “State and Municipal Intervenors”) which moved 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 (“Motion to Intervene”). For the reasons set forth in the Motion to Intervene, the State Intervenors respectfully request that this Court allow it to join in the State and Municipal Intervenors’ Motion to Intervene filed on August 15, 2016, Document No. 1630473.

Counsel for the State of Maryland represents, pursuant to D.C. 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 Intervenors respectfully request that this Court grant their motion to intervene.

Dated: September 2, 2016

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 September 2, 2016, using the Court's CM/ECF system and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ Roberta R. James
