

ORAL ARGUMENT NOT YET SCHEDULED  
**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.

Case No. 15-1363, consolidated  
 with cases no.

15-1364, 15-1365, 15-1366,  
 15-1367, 15-1368, 15-1370,  
 15-1371, 15-1372, 15-1373,  
 15-1374, 15-1375, 15-1376,  
 15-1377, 15-1378, 15-1379,  
 15-1380, 15-1382, 15-1383,  
 15-1386, 15-1393 & 15-1398

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

**UNOPPOSED MOTION FOR LEAVE TO INTERVENE AS  
 RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 15(d) and Circuit Rule 15(b), the States of New York, 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, Minnesota (by and through the Minnesota Pollution Control Agency), New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, Washington, the Commonwealths of Massachusetts and Virginia, the District of Columbia, the Cities of Boulder, Chicago, New York, Philadelphia, and South Miami, and Broward County, Florida (collectively, “State and Municipal Intervenors”) hereby

move for leave to intervene in support of respondents Environmental Protection Agency, et al. (“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. 64,661 on October 23, 2015, and titled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” (the “Clean Power Plan”). EPA promulgated the Clean Power Plan pursuant to its authority in section 111(d) of the Clean Air Act. 42 U.S.C. § 7411(d).

2. The Clean Power Plan requires states to implement standards to reduce greenhouse gas emissions from fossil-fueled power plants, the country’s largest source of such emissions. These emission reductions 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); 74 Fed. Reg. 66,496, 66,523-66,536 (Dec. 15, 2009).

3. State and Municipal Intervenors have a compelling interest in defending the Clean Power Plan 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 existing fossil-fueled power plants, in a variety of ways. 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)<sup>1</sup>; N.Y. Comp. Codes R. & Regs. tit. 6, Part 251; Or. Rev. Stat. § 469.503(2); Wash. Rev. 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 Chicago, “Chicago Climate Action Plan” (2008), at 25-28 (committing to greenhouse gas reduction goal of 80 percent by 2050 and outlining reductions needed from the power sector to meet this goal); City of New York, “One New York: The Plan for a Strong and Just City” (2015), 166-71 (same). Because the Clean Power Plan 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 the Clean Power Plan.

4. State and Municipal Intervenors also have an interest in these consolidated cases because many of them have participated extensively in the regulatory and judicial proceedings leading up to EPA’s adoption of the Clean Power Plan. For

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<sup>1</sup> *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.

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 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 advance of—and, later, in response to—the agency's proposal of the greenhouse gas emission standards at issue in these consolidated cases. And when that proposal was challenged in the D.C. Circuit, many State and Municipal Intervenors intervened in support of the agency's authority to finalize that proposal. *In re: Murray Energy Corp.* (D.C. Cir. No. 14-1112); *Murray Energy v. EPA* (D.C. Cir. No. 14-1151); *West Virginia v. EPA* (D.C. Cir. No. 14-1146). Several states and New York City also brought public-nuisance claims against the largest owners of fossil-fueled power plants. *Am. Elec. Power v. Connecticut*, 131 S. Ct. 2527, 2537 (2011) (finding plaintiffs' federal common law nuisance claims displaced by section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d)).

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.

6. In addition, the Clean Power Plan imposes specific obligations on many of the undersigned states. As a result, State and Municipal Intervenors' interests in defending certain aspects of the Clean Power Plan, including the state-specific emission-reduction targets the Plan assigns and the compliance options it allows, are distinct from EPA's interests.

7. This motion is timely under Rule 15(d), because it is filed within 30 days of the petition for review in case no. 15-1363. Pursuant to Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the challenged administrative action.

8. 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.

9. Counsel for State and Municipal Intervenors sought the position of Respondents and Petitioners in Case No. 15-1363 and the cases consolidated therewith by electronic mail communication to counsel of record at 9 A.M. EST on November 3. Counsel for Respondents has stated that they do not oppose the motion. Counsel for Petitioners in Cases No. 15-1378, 15-1379, 15-1393 & 15-1398 have stated that they do not oppose the motion. Counsel for Petitioners in Cases No. 15-1363, 15-1367, 15-1368, 15-1370, 15-1373, 15-1374, 15-1380, 15-1382 and 15-1386 have stated that they take no position on the motion. Counsel for Petitioners in the remaining consolidated cases had not stated a position as of the time of this filing.

10. Counsel for the State of New York represents 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,

FOR THE STATE OF NEW YORK

ERIC T. SCHNEIDERMAN  
ATTORNEY GENERAL

By:            /s/ Brian Lusignan  
Barbara D. Underwood  
Solicitor General  
Steven C. Wu  
Deputy Solicitor General  
Karen Lin  
Bethany A. Davis Noll  
Assistant Solicitors General  
Michael J. Myers  
Morgan A. Costello  
Brian Lusignan  
Assistant Attorneys General  
Environmental Protection Bureau  
The Capitol  
Albany, NY 12224  
(518) 776-2400

FOR THE STATE OF  
CALIFORNIA

KAMALA D. HARRIS  
ATTORNEY GENERAL  
Robert W. Byrne  
Sally Magnani  
Senior Assistant Attorneys General  
Gavin G. McCabe  
David A. Zonana  
Supervising Deputy Attorneys  
General  
Jonathan Wiener  
M. Elaine Meckenstock  
Raissa Lerner  
Deputy Attorneys General  
1515 Clay Street  
Oakland, CA 94612  
(510) 622-2100

Attorneys for the State of California,  
by and through Governor Edmund G.  
Brown, Jr., the California Air  
Resources Board, and Attorney  
General Kamala D. Harris

FOR THE STATE OF  
CONNECTICUT

GEORGE JEPSEN  
ATTORNEY GENERAL  
Matthew I. Levine  
Kirsten S. P. Rigney  
Scott N. Koschwitz  
Assistant Attorneys General  
Office of the Attorney General  
P.O. Box 120, 55 Elm Street  
Hartford, CT 06141-0120  
(860) 808-5250

## FOR THE STATE OF DELAWARE

MATTHEW P. DENN  
ATTORNEY GENERAL  
Valerie S. Edge  
Deputy Attorney General  
Delaware Department of Justice  
102 West Water Street, 3d Floor  
Dover, DE 19904  
(302) 739-4636

## FOR THE STATE OF HAWAII

DOUGLAS S. CHIN  
ATTORNEY GENERAL  
William F. Cooper  
Deputy Attorney General  
425 Queen Street  
Honolulu, HI 96813  
(808) 586-1500

## FOR THE STATE OF ILLINOIS

LISA MADIGAN  
ATTORNEY GENERAL  
Matthew J. Dunn  
Gerald T. Karr  
James P. Gignac  
Assistant Attorneys General  
69 W. Washington St., 18th Floor  
Chicago, IL 60602  
(312) 814-0660

## FOR THE STATE OF IOWA

TOM MILLER  
ATTORNEY GENERAL  
Jacob Larson  
Assistant Attorney General  
Environmental Law Division  
Lucas State Office Building  
321 E. 12th St., Room 18  
Des Moines, Iowa 50319  
(515) 281-5351

## FOR THE STATE OF MAINE

JANET T. MILLS  
ATTORNEY GENERAL  
Gerald D. Reid  
Natural Resources Division Chief  
6 State House Station  
Augusta, ME 04333  
(207) 626-8800

FOR THE STATE OF  
MARYLAND

BRIAN E. FROSH  
ATTORNEY GENERAL  
Thiruvendran Vignarajah  
Deputy Attorney General  
200 St. Paul Place, 20<sup>th</sup> Floor  
Baltimore, MD 21202  
(410) 576-6328

FOR THE COMMONWEALTH OF  
MASSACHUSETTS

MAURA HEALEY  
ATTORNEY GENERAL  
Melissa A. Hoffer  
Christophe Courchesne  
Assistant Attorneys General  
Environmental Protection Division  
One Ashburton Place, 18<sup>th</sup> Floor  
Boston, MA 02108  
(617) 963-2423

FOR THE STATE OF  
MINNESOTA

LORI SWANSON  
ATTORNEY GENERAL  
Karen D. Olson  
Deputy Attorney General  
Max Kieley  
Assistant Attorney General  
445 Minnesota Street, Suite 900  
St. Paul, MN 55101-2127  
(651) 757-1244

Attorneys for Proposed Intervenor  
State of Minnesota, by and through  
the Minnesota Pollution Control  
Agency

FOR THE STATE OF NEW  
HAMPSHIRE

JOSEPH A. FOSTER  
ATTORNEY GENERAL  
K. Allen Brooks  
Senior Assistant Attorney General  
Chief, Environmental Bureau  
33 Capitol Street  
Concord, NH 03301  
(603) 271-3679

FOR THE STATE OF NEW  
MEXICO

HECTOR BALDERAS  
ATTORNEY GENERAL  
Tannis Fox  
Assistant Attorney General  
Office of the Attorney General  
408 Galisteo Street  
Villagra Building  
Santa Fe, NM 87501  
(505) 827-6000

## FOR THE STATE OF OREGON

ELLEN F. ROSENBLUM  
ATTORNEY GENERAL  
Paul Garrahan  
Attorney-in-Charge  
Natural Resources Section  
Oregon Department of Justice  
1162 Court Street NE  
Salem, OR 97301-4096  
(503) 947-4593

FOR THE STATE OF RHODE  
ISLAND

PETER F. KILMARTIN  
ATTORNEY GENERAL  
Gregory S. Schultz  
Special Assistant Attorney General  
Rhode Island Department of  
Attorney General  
150 South Main Street  
Providence, RI 02903  
(401) 274-4400

## FOR THE STATE OF VERMONT

WILLIAM H. SORRELL  
ATTORNEY GENERAL  
Thea Schwartz  
Assistant Attorney General  
Office of the Attorney General  
109 State Street  
Montpelier, VT 05609-1001  
(802) 828-2359

FOR THE COMMONWEALTH OF  
VIRGINIA

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

FOR THE STATE OF  
WASHINGTON

ROBERT W. FERGUSON  
ATTORNEY GENERAL  
Leslie R. Seffern  
Assistant Attorney General  
Office of the Attorney General  
P.O. Box 40117  
Olympia, WA 98504-0117  
(360) 586-4613

FOR THE DISTRICT OF  
COLUMBIA

KARL A. RACINE  
ATTORNEY GENERAL  
James C. McKay, Jr.  
Senior Assistant Attorney General  
Office of the Attorney General  
441 Fourth Street, NW  
Suite 630 South  
Washington, DC 20001  
(202) 724-5690

## FOR THE CITY OF BOULDER

TOM CARR  
CITY ATTORNEY  
Debra S. Kalish  
City Attorney's Office  
1777 Broadway, Second Floor  
Boulder, CO 80302  
(303) 441-3020

## FOR THE CITY OF CHICAGO

BENNA RUTH SOLOMON  
Deputy Corporation Counsel  
30 N. LaSalle Street, Suite 800  
Chicago, IL 60602  
(312) 744-7764

FOR THE CITY OF NEW YORK

ZACHARY W. CARTER  
CORPORATION COUNSEL  
Carrie Noteboom  
Senior Counsel  
New York City Law Department  
100 Church Street  
New York, NY 10007  
(212) 356-2319

FOR THE CITY OF  
PHILADELPHIA

SHELLEY R. SMITH  
CITY SOLICITOR  
Scott J. Schwarz  
Patrick K. O'Neill  
Divisional Deputy City Solicitors  
The City of Philadelphia  
Law Department  
One Parkway Building  
1515 Arch Street, 16<sup>th</sup> Floor  
Philadelphia, PA 19102-1595  
(215) 685-6135

FOR THE CITY OF SOUTH  
MIAMI

THOMAS F. PEPE  
CITY ATTORNEY  
City of South Miami  
1450 Madruga Avenue, Ste 202  
Coral Gables, Florida 33146  
(305) 667-2564

FOR BROWARD COUNTY,  
FLORIDA

JONI ARMSTRONG COFFEY  
COUNTY ATTORNEY  
Andrew J. Meyers  
Chief Deputy County Attorney  
Mark A. Journey  
Assistant County Attorney  
Broward County Attorney's Office  
155 S. Andrews Avenue, Room 423  
Fort Lauderdale, FL 33301  
(954) 357-7600