

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

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MURRAY ENERGY CORPORATION,	)	
	)	
Petitioner,	)	
	)	
v.	)	Nos. 14-1112, 14-1151
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY and REGINA	)	
A. MCCARTHY, Administrator,	)	
	)	
Respondents.	)	
	)	
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STATE OF WEST VIRGINIA, ET AL.,	)	
	)	
Petitioners,	)	No. 14-1146
	)	
v.	)	
	)	
UNITED STATES ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	
	)	
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**EPA's OPPOSITION TO MOTIONS REGARDING ORAL ARGUMENT  
and CROSS-MOTION TO SET ORAL ARGUMENT FORMAT**

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Respondents in these cases, the United States Environmental Protection Agency and Regina A. McCarthy (collectively, “EPA”) hereby oppose the two motions regarding oral argument format filed by Petitioners in these cases. EPA cross-moves the Court to instead set a simpler and more efficient format for argument of these related and overlapping cases: the collective allocation of 30 minutes per side, covering all three cases. This should be more than sufficient to allow each set of parties to present argument, while avoiding the unnecessary repetition that would otherwise result given that the key issues are common to all of the cases. EPA has consulted with Respondent-Intervenors, all of whom have indicated they are in agreement with EPA’s proposal.

### **BACKGROUND**

The consolidated petitions brought by Murray Energy Corp. (Nos. 14-1112 and 14-1151) and the petition filed by West Virginia and others (No. 14-1146) raise the same merits issue and ask the Court for the same remedy: a court-ordered halt to EPA’s ongoing rulemaking addressing carbon dioxide emissions from existing fossil fuel-fired power plants.<sup>1</sup> This Court therefore previously consolidated briefing in the two petitions brought by Murray Energy, and scheduled those cases for argument on the same day as the *West Virginia* petition.<sup>2</sup>

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<sup>1</sup> *Compare* Brief for Murray Energy Corp., Nos. 14-1112 & 14-1141 at pp. X with Brief for West Virginia et al., No. 14-1146, at p. XX.

<sup>2</sup> Nos. 14-1112, 14-1141, Doc. # 1534467; No. 14-1146, Doc. # 1534469.

Petitioners recently filed motions asking the Court to set a particular format for the April 16 argument. Murray Energy Corp. asks this Court for a total of 35 minutes per side for argument in Case Nos. 14-1112 and 14-1151 alone, to be divided in a certain way among Murray and its Interveners, and also asks that these cases be heard before the *West Virginia* matter. Doc. # 1538926. West Virginia and the other state petitioners in No. 14-1146 acquiesce to Murray Energy's request to go first, and ask the Court to allot an additional twenty minutes per side in their case, Case No. 14-1146. Doc. # 1538920. The grand total, should the Court adopt these proposals, would be an allotment of 55 minutes per side, broken into chunks and moving back and forth between jurisdictional and merits issues, many of which are common to all cases.

### **ARGUMENT**

There is a simpler, more efficient way to structure argument in these cases than the lengthy and redundant scheme proposed by Petitioners. All of these cases raise precisely the same merits issue: whether EPA has authority under 42 U.S.C. § 7411(d) to promulgate a rule addressing existing power plants' emissions of carbon dioxide. There is also significant overlap between the jurisdictional issues, as the question in each case is whether, for some reason or another, it is appropriate for this Court to review a proposed rule and halt an ongoing rulemaking. Thus, issues of standing, finality, and ripeness will be addressed in all cases.

EPA therefore believes that it makes sense to consolidate argument in No. 14-1146 with argument in Nos. 14-1112, 14-1151. In other words, rather than going through the jurisdictional and merits arguments in regard to the two related *Murray* cases, and then starting over again in regard to the related *West Virginia* case, EPA thinks it would make the most sense for the Court to simply allot one consolidated time period to all Petitioners in these related cases, and the same consolidated period to all Respondents. It would then be up to each group of like-minded parties to divide the total time allotted to their side amongst themselves and (if desired) their supporting Intervenors, and each side can then notify the Court as to which counsel will argue and for how much of the time allotted.

EPA suggests that 30 minutes per side<sup>3</sup> (30 minutes for all arguments by Petitioners and the parties aligned with Petitioners, then 30 minutes for all argument by Respondents and the parties aligned with Respondents) would be more than sufficient to cover the issues presented by these cases. While these cases have attracted a great deal of interest, only one merits issues is presented, and most of the jurisdictional issues (e.g., standing, finality, ripeness, etc.) are straightforward and well known to this Court.

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<sup>3</sup> If the Court does not wish to “consolidate” argument as suggested, EPA alternatively requests that it allocate fifteen minutes per side, per case.

## CONCLUSION

EPA therefore requests that, instead of the formats proposed by Petitioners, the Court establish the following consolidated argument format for these cases:

Argument for Petitioners in Nos. 14-1112, 14-1151 & 14-1146	30 minutes
Argument for Respondents in Nos. 14-1112, 14-1151 & 14-1146	30 minutes

Respectfully submitted,

/s/ Amanda Shafer Berman

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DATED: March 6, 2015

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Response and Cross-Motion was today served electronically through the court's CM/ECF system on all registered counsel.

/s/ Amanda Shafer Berman

DATED: March 6, 2015