

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

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In Re: Murray Energy Corporation,)	
)	
Petitioner,)	NO. 14-1112
)	Consolidated with 14-1151
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)	
Murray Energy Corporation,)	
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Petitioner,)	
)	
v.)	
)	
United States Environmental)	
Protection Agency and Regina A.)	
McCarthy, Administrator, United)	
States Environmental Protection)	
Agency,)	
)	
Respondents)	
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MOTION TO INTERVENE IN SUPPORT OF PETITIONER

The State of Arkansas (“State”) respectfully moves to intervene in support of the petitioner Murray Energy Corporation (“Murray Energy”) in Consolidated Cases Number 14-1112 and Number 14-1151. The State wishes to join the States of West Virginia, Alabama, Alaska,

Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, Wyoming and the Commonwealth of Kentucky (“Intervenor States”) in their intervention in support of petitioner.

Intervention is appropriate if the movant is “directly affected by” the agency action and the motion is “timely.” See *Yakima Valley Cablevision, Inc. v. F.C.C.*, 794 F.2d 737, 744-45 (D.C. Cir. 1986). In this instance, the State should be permitted to intervene as it is “directly affected by” the agency action and the motion is timely.

The Intervenor States have demonstrated the numerous ways in which they have been harmed by the United States Environmental Protection Agency’s (“EPA”) unlawful attempt to impose requirements upon the States under Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d). See Motion of State of West Virginia *et al.*, No. 14-1112 (Consolidated) (ECF 1524570) and Brief for Petitioners, No. 14-1146 (ECF 1524569 at 16-22, 26-29 (Exh.)). The State of Arkansas is similarly situated to the Intervenor States and incorporates by reference the Brief for Petitioners in related Case Number 14-1146 and the supporting declarations. *Id.* See also Exhibit 1, Letter from Arkansas Attorney General Dustin McDaniel dated December 1, 2014

and Exhibit 2, Letter from the Arkansas Department of Environmental Quality and the Arkansas Public Service Commission dated November 26, 2014.

Specifically, under the proposed rule, Arkansas is required to meet the sixth most stringent goal of all states. See Exhibit 1, page 2, and Exhibit 2, page 2 (The EPA proposes emissions rate reductions of 41% and 44%, respectively, as interim and final goals for Arkansas). The drastic reductions required under the proposed rule will negatively impact existing industry, future economic development, and electric ratepayers in the State. See Exhibit 3, *Coal-Dependent Arkansas Faces Stiff Emissions Target and a Running Clock*, <http://news.nationalgeographic.com/news/energy/2014/08/140819-epa-clean-power-plan-arkansas-target> (Aug. 19, 2014). Intervenor States' brief, declaration and the accompanying exhibits demonstrate how the State is "directly affected" by the proposed rule.

While the State acknowledges that this Motion is filed after the deadline in the Court's Order of November 7, 2014 (ECF 1522086), the State believes the motion is timely and respectfully asks the Court to consider the circumstances that prevented the State from moving to

intervene along with the State of West Virginia, *et al.* Arkansas Attorney General Leslie Rutledge became the Attorney General-Elect on November 4, 2014. She took office on January 13, 2015. After taking office General Rutledge reviewed the issues presented in this matter and the positions of the Petitioner, Respondents and assorted Intervenors. Now that she has the legal authority to do so, she wishes to join with the Intervenor States in support of the Petitioner.

A motion to intervene is required to be timely in order to prevent disruption of existing litigation and causing detriment to existing parties. See *Roane et al. v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014) (citing Charles Alan Wright *et al.*, Federal Practice and Procedure § 1916, at 532 (3d ed. 2007)). If permitted to intervene, the State will not file any further briefing or request time for oral argument. The State will join the Intervenor States in resting upon the amicus brief filed in Case Number 14-1112 (ECF 1499435) and the briefing submitted in related Case Number 14-1146. Under the Court's Order of November 13, 2014 (ECF 1522086), the time for filing Respondents' brief, Reply briefs and Amici briefs has not yet passed. Thus, given the totality of the circumstances, this motion is timely in that it does not add any

issues to the case nor affect the briefing schedule already ordered by the Court.

The State respectfully requests that it be allowed to intervene in Consolidated Cases Number 14-1112 and Number 14-1151. Counsel for Intervenor State of West Virginia has indicated that they support this motion.

Respectfully submitted,

Leslie Rutledge
Arkansas Attorney General

/s/C. Joseph Cordi, Jr.

C. Joseph Cordi, Jr.

Senior Assistant Attorney General

Jamie L. Ewing

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Attorneys for State of Arkansas

Dated: February 13, 2015

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**CERTIFICATE AS TO PARTIES, AMICI CURIAE. AND
RELATED CASES**

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), the movants
state as follows:

Parties, Intervenors, and Amici:

Petitioner: Murray Energy Corporation

Respondent: The United States Environmental Protection Agency and Regina A. McCarthy, Administrator of the United States Environmental Protection Agency

Intervenors for Petitioner:

The National Federation of Independent Business, the Utility Air Regulatory Group, the States of West Virginia, Alabama, Alaska, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, Wyoming, and the Commonwealth of Kentucky are Intervenors in support of Petitioner. The State of Arkansas has filed the accompanying motion to intervene in support of Petitioner. Peabody Energy Corporation has filed a motion to intervene in support of the Petitioner.

Intervenors for Respondent:

Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, States of Connecticut, Delaware, Maine, Maryland, New Mexico, New York, Oregon, Rhode Island, Vermont, Washington, Commonwealth of Massachusetts, the District of Columbia, and the City of New York.

Amici curiae for Petitioner:

The National Mining Association, American Coalition for Clean Coal Electricity, American Coatings Association, Inc., American Fuel & Petrochemical Manufacturers, American Iron and Steel Institute, Chamber of Commerce of the United States of America, Council for Industrial Boiler Owners, Independent Petroleum Association of America, National Association of Manufacturers, State of South Carolina, and American Chemistry Council.

Amici curiae for Respondents:

State of New Hampshire, Clean Wisconsin, Michigan Environmental Council, and Ohio Environmental Council. Richard J. Lazarus, Jody Freeman and Calpine Corporation have moved to participate as *amici curiae* in support of the Respondents.

RELATED CASES:

State of West Virginia et al., v. EPA, Docket Number 14-1146.

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CERTIFICATE OF SERVICE

I hereby certify that on February 13, 2015, the foregoing Motion to Intervene for the State of Arkansas was served electronically through CM/ECF system to all registered attorneys in Consolidated Cases No. 14-1112 and No. 14-1151.

/s/ C. Joseph Cordi, Jr.
C. Joseph Cordi, Jr.

Dated: February 13, 2015