

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

In Re: Murray Energy Corporation,

Petitioner,

--

National Federation of Independent
Business,

Intervenor.

Case No. 14-1112
Consolidated with 14-1151

MOTION TO INTERVENE IN SUPPORT OF THE PETITIONER

The States of West Virginia, Alabama, Alaska, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, Wyoming, and the Commonwealth of Kentucky (the “States”), respectfully move to intervene in support of petitioner Murray Energy Corporation (“Murray Energy”) in Consolidated Cases Numbers 14-1112 and 14-1151. Each of the States is an amicus in Case Number 14-1112, a petitioner in related Case Number 14-1146, or both an amicus in Case Number 14-1112 and a petitioner in related Case Number 14-1146. Accordingly, with regard to Case Number 14-1112, the States that are already amici—West Virginia, Alabama, Alaska, Nebraska, Ohio, Oklahoma, Wyoming, and the Commonwealth of Kentucky—also move to change their status from amici to intervenors.

Intervention should be permitted because the movants are both “directly affected by” the agency action and “timely” moving to intervene. *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 744-45 (D.C. Cir. 1986). The Brief for Petitioners in related Case Number 14-1146 and the supporting declarations—which the States incorporate into this Motion and attach as exhibits—explain how the States have been harmed by the 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* Brief for Petitioners, No. 14-1146, ECF 1524569 at 16-22, 26-29 (Exh.). Specifically, these submissions demonstrate that the States have been harmed by, and thus have standing to challenge, a settlement agreement that requires EPA to propose and then finalize the rule at issue. It necessarily follows that the States have standing to challenge, and are “directly affected” by, the proposed rule itself. In addition, this motion is timely in light of this Court’s Order of November 7, 2014 (ECF 1521289), and the States’ notice filed on November 21, 2014 (ECF 1523876).

If permitted to intervene, the States do not intend to file any further briefing in Consolidated Cases Numbers 14-1112 and 14-1151, and will rest upon the amicus brief filed in Case Number 14-1112 (ECF 1499435) and the briefing submitted in related Case Number 14-1146. While the States believe petitioner and present intervenor each possess standing, the States’ purpose in moving to

intervene is to support standing in Consolidated Cases Numbers 14-1112 and 14-1151, in order to permit this Court a full range of options to decide these related cases. Counsel for Respondent EPA, Petitioner Murray Energy, and Intervenor National Federation of Independent Business have indicated that they do not oppose this motion.

Dated: November 26, 2014

Respectfully submitted,

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CERTIFICATE AS TO PARTIES AND AMICI CURIAE

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

Parties, Intervenors, and Amici:

Murray Energy Corporation is the petitioner in these consolidated cases.

The National Federation of Independent Business is an intervenor in support of petitioner in No. 14-1112.

The Utility Air Regulatory Group has moved to intervene in support of petitioner in No. 14-1112. ECF 1523376. The States of West Virginia, Alabama, Alaska, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota,

Wyoming, and the Commonwealth of Kentucky have filed the accompanying motion to intervene in support of Petitioner in No. 14-1112.

The Respondents in these consolidated cases are the United States Environmental Protection Agency and Regina A. McCarthy, Administrator of the United States Environmental Protection Agency.

Amici curiae supporting petitioners in No. 14-1112 are the States of Alabama, Alaska, Kentucky, Nebraska, Ohio, Oklahoma, South Carolina, West Virginia, and Wyoming. Amici curiae supporting Respondents in No. 14-1112 are the States of California, Connecticut, Delaware, Maine, Maryland, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington; the Commonwealth of Massachusetts; and the District of Columbia.

The following parties have filed motions to participate in No. 14-1112 as amici curiae: the City of New York; Clean Wisconsin; Environmental Defense Fund; Michigan Environmental Council; Natural Resources Defense Council; Ohio Environmental Council; and Sierra Club.

There are no intervenors or amici curiae in No. 14-1151.

Dated: November 26, 2014

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on this 26th day of November, 2014, a copy of the foregoing *Motion To Intervene In Support Of The Petitioner* was served electronically through the Court's CM/ECF system on all registered counsel.

/s/ Elbert Lin

Elbert Lin