

Nos. 14-1112 & 14-1151

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

IN RE: MURRAY ENERGY
CORPORATION,

Petitioner,

MURRAY ENERGY CORPORATION,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY AND REGINA A.
McCARTHY, ADMINISTRATOR,

Respondents.

MOTION TO INTERVENE IN SUPPORT OF PETITIONER

The State of Wisconsin (“State”) respectfully moves to intervene in support of Petitioner Murray Energy Corporation in Consolidated Case Nos. 14-1112 & 14-1151. The State wishes to join the States of West Virginia, Alabama, Alaska, Indiana, Kansas, Louisiana, Nebraska,

Ohio, Oklahoma, South Dakota, Wyoming, Arkansas, 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). Wisconsin should be permitted to intervene because 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 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).) Wisconsin is similarly situated to the Intervenor States and incorporates by reference the brief for petitioners in related Case No. 14-1146 and the supporting declarations. (*Id.*; see also **Exhibit 1**, Letter from Wisconsin Governor Scott Walker (Dec. 1, 2014); **Exhibit 2**, Letter from Wisconsin Public Service Commission and

Wisconsin Department of Natural Resources to Respondent McCarthy (Nov. 30, 2014).)

Specifically, under the proposed rule, Wisconsin's carbon reduction goal of 34% by 2030 will have a detrimental impact on our economy, particularly because of Wisconsin's large manufacturing sector. (See Exhibit 1.) Wisconsin's modeling of the proposed rule shows an energy-production cost increase of \$3.3 to \$13.4 billion, in addition to the significant cost of the additional infrastructure that will be necessary to reach this magnitude of carbon reduction. (See Exhibit 2 at 3, ¶ 2.) On a more general level, Intervenor States' brief, declarations, and the accompanying exhibits demonstrate how Wisconsin 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.* Like Arkansas, whose motion to intervene in this matter was filed on February 12, 2015, and granted by the Court on March 9, 2015,

Wisconsin Attorney General Brad Schimel became the Attorney General-elect on November 4, 2014. He took office on January 5, 2015. After taking office Attorney General Schimel reviewed the issues presented in this matter and the positions of the Petitioner, Respondents, and assorted Intervenors. He consulted with appropriate officials in Wisconsin concerning the issues presented in this case and sought authority to join as provided by the Wisconsin Statutes. Now that Attorney General Schimel has the legal authority to join on behalf of the State, he 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 v. Leonhart*, 741 F.3d 147, 151 (D.C. Cir. 2014). If permitted to intervene, the State will not file any further briefing on the matters pending before the Court or request time for oral argument at the hearing on April 16, 2015. The State will join the Intervenor States in resting upon the amicus brief filed in Case No. 14-1112 (ECF 1499435), the Intervenor States' brief in support of Petitioners filed in Case No. 14-1112 (ECF 1528700), and the briefing submitted in

related Case No. 14-1146 (ECF 1524569). 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 Case Nos 14-1112 & 14-1151. (*See* Order dated March 9, 2015 (granting intervention motion of the State of Arkansas).)

Counsel for Intervenor State of West Virginia has indicated that they support this motion.

Dated this 25th day of March, 2015.

Respectfully submitted,

BRAD D. SCHIMEL
Attorney General

s/Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE
Assistant Attorney General
State Bar #1070979

Attorneys for Intervenor
State of Wisconsin

Wisconsin Department of Justice
Post Office Box 7857
Madison, Wisconsin 53707-7857
(608) 266-7741 (JLV)
(608) 267-2223 (Fax)
vandermeusejl@doj.state.wi.us

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

Pursuant to Circuit Rules 27(a)(4) and 28(a)(1)(A), the movant states 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, Peabody Energy Corporation, the States of West Virginia, Alabama, Alaska, Indiana, Kansas, Louisiana, Nebraska, Ohio, Oklahoma, South Dakota, Wyoming, Arkansas, and the Commonwealth of Kentucky are Intervenors in support of Petitioner. The State of Wisconsin has filed the accompanying motion to intervene in support of Petitioner.

Intervenors for Respondent: Environmental Defense Fund, Natural Resources Defense Council, Sierra Club, States of Connecticut, California, 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, Metals Service Center Institute, State of South Carolina, and American Chemistry Council.

Amici Curiae for Respondents: State of New Hampshire, Clean Wisconsin, Michigan Environmental Council, Ohio Environmental Council, Calpine Corporation, Jody Freeman, and Richard J. Lazarus.

RELATED CASES

State of West Virginia, et al. v. Environmental Protection Agency,
No. 14-1146.

CERTIFICATE OF SERVICE

I hereby certify that on March 25, 2015, the foregoing motion to intervene for the State of Wisconsin was served electronically through CM/ECF system to all registered attorneys in Consolidated Case Nos. 14-1112 & 14-1151.

s/Jennifer L. Vandermeuse
JENNIFER L. VANDERMEUSE