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

CLEAN AIR COUNCIL, EARTHWORKS, ENVIRONMENTAL DEFENSE FUND, ENVIRONMENTAL INTEGRITY PROJECT, NATURAL RESOURCES DEFENSE COUNCIL, and SIERRA CLUB, *Petitioners*, v. SCOTT PRUITT, Administrator, UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, and UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *Respondents*.	Case No. 17-1145

MOTION TO INTERVENE IN SUPPORT OF RESPONDENTS

The States of West Virginia, Alabama, Kansas, Louisiana, Montana, Ohio, Oklahoma, South Carolina, Wisconsin, Commonwealth of Kentucky, Commonwealth of Kentucky Energy and Environment Cabinet, and Attorney General Bill Schuette for the People of Michigan ("State Intervenors"), respectfully move to intervene in support of respondents Scott Pruitt, Administrator, United States Environmental Protection Agency ("EPA") and EPA in Case Number 17-1145 concerning EPA's administrative stay of the rule entitled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources," 81 Fed. Reg. 35,824 (June 3, 2016). Petitioners have indicated

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that they take no position on motions to intervene provided that, should intervenors intend to respond in opposition to Petitioners' emergency motion, they file a joint response on the same schedule as the Court set for Respondents. Respondents do not oppose this motion to intervene.

Intervention should be permitted because the movants are "directly affected by" the administrative stay. *Yakima Valley Cablevision, Inc. v. FCC*, 794 F.2d 737, 744–45 (D.C. Cir. 1986). The States have challenged the rule as in excess of EPA's statutory authority and otherwise arbitrary, capricious, an abuse of discretion and not in accordance with law. *West Virginia v. EPA*, No. 16-1264 (D.C. Cir. filed Aug. 2, 2016). The rule is a legal prerequisite to any rule that might be issued by EPA under Section 111(d) of the Clean Air Act that would regulate existing oil and gas sector operations, which indisputably injures the States. Such rule under Section 111(d) would clearly harm the States, as they must formulate a state plan or submit to a federal plan. *See West Virginia v. EPA*, 362 F.3d 861, 868 (D.C. Cir. 2004). The rule harms State Intervenors' sovereignty by infringing on their authority over intrastate energy production and regulation. The rule also injures State Intervenors' quasi-sovereign interests in the value of their natural resources. Accordingly, the States are directly affected by EPA's decision to stay the rule and suspend the harm to the States pending reconsideration.

The present case also raises questions about EPA's authority to reconsider and administratively stay rules that directly affect the States. The litigation concerns whether EPA can prevent unlawful and harmful rules from taking effect during its reconsideration with implications for various other Clean Air Act rules in which the States also have an interest. *See, e.g.*, "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,662 (Oct. 23, 2015); "Standards for Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units," 80 Fed. Reg. 64,510 (Oct. 23, 2015); *see also*, *West Virginia v. EPA*, No. 15-1363 (and consolidated cases) (D.C. Cir.); *North Dakota v. EPA*, No. 15-1381 (and consolidated cases) (D.C. Cir.).

This motion is "timely," *Yakima Valley Cablevision*, 794 F.2d at 744, under Federal Rule of Appellate Procedure 15(d) because it was filed within 30 days after the June 5, 2017 filing of the petition for review, ECF No. 1678132.

Finally, in the event that the Court grants this motion to intervene, State Intervenors note that they agree with the arguments raised in Intervenors American Petroleum Institute, et al.'s Response in Opposition to Petitioners' Emergency Motion and respectfully request that the emergency motion be denied, for the reasons stated therein.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Rules 27(d)(2) and 32(g) of the Federal Rules of Appellate Procedure and Circuit Rules 32(a)(1) and 32(e)(1), I hereby certify that the foregoing document contains 548 words, as counted by a word processing system that includes headings, footnotes, quotations, and citations in the count, and therefore is within the word limits set by the Court.

Dated: June 15, 2017

/s/ Thomas M. Johnson, Jr.
Thomas M. Johnson, Jr.

CERTIFICATE OF SERVICE

I hereby certify that, on this 15th day of June 2017, a copy of the foregoing Motion to Intervene in Support of Respondents was served electronically through the Court's CM/ECF system on all ECF-registered counsel.

/s/ Thomas M. Johnson, Jr.
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