

ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016

No. 15-1364, consolidated with Nos. 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432, 15-1442, 15-1451, 15-1459, 15-1464, 15-1470, 15-1472, 15-1474, 15-1475, 15-1477, 15-1478, 15-1479, 15-1483, 15-1485, 15-1488

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

State of West Virginia, *et al.*,

Petitioners,

v.

United States Environmental Protection Agency, and Regina A. McCarthy,
Administrator,

Respondent

**On Petition for Review of the Final Rule of the
United States Environmental Protection Agency**

**UNOPPOSED MOTION BY THE AMERICAN SUSTAINABLE BUSINESS
COUNCIL AND THE SOUTH CAROLINA SMALL BUSINESS CHAMBER OF
COMMERCE FOR LEAVE TO PARTICIPATE AS AMICI CURIAE**

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Dated: January 29, 2016

Pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b), the American Sustainable Business Council and the South Carolina Small Business Chamber of Commerce (collectively, “Business *amici*”) respectfully move for leave to participate as *amici curiae* in support of Respondents Environmental Protection Agency (“EPA”) and Regina A. McCarthy, EPA Administrator, in the above-captioned consolidated petitions challenging EPA’s final carbon-pollution emission guidelines for existing power plants (the “Clean Power Plan”). *See* 80 Fed. Reg. 64,662 (Oct. 23, 2015).

Counsel for federal respondents and for Non-Governmental Organization Respondent-Intervenors expressed the consent of their clients to this motion, as did counsel for several other movant intervenors in support of federal respondents, including Advanced Energy Economy, Capline Corporation, the City of Austin d/b/a Austin Energy, the City of Los Angeles, by and through its Department of Water and Power, The City of Seattle, by and through its City Light Department, National Grid Generation, LLC, New York Power Authority, Pacific Gas and Electric Company, Sacramento Municipal Utility District, and Southern California Edison Company. Counsel for state petitioners in case nos. 15-1363, 15-1364, 15-1380 and 15-1409, and counsel for industry petitioners in case nos. 15-1370, 15-1373, 15-1374, 15-1376, and 15-1415, stated that they take no position as to this motion. Counsel for other intervenors and the additional state and industry

petitioners in the other consolidated cases did not respond to the notice sent to liaison counsel requesting their consent as to the participation of the Business *amici*. That notice, which was sent to liaison counsel on January 25, 2016, as to the American Sustainable Business Council and the South Carolina Small Business Chamber of Commerce, provided that if no response was received by January 28, 2016, counsel for proposed Business *amici* would notify the Court that those parties took no position as to the proposed participation of the Business *amici*.

In support of this motion, the Business *amici* state as follows:

1. American businesses have a tremendous interest at stake in the man-made phenomena known as climate change aka global warming. Overwhelmingly, scientists agree that man-made climate change is occurring and that it presents the probability of increasingly severe and destructive events, including storms, sea level rise, drought, and disruptions to human and natural systems that will impose huge economic costs. Climate change will impose great costs on American businesses that can be avoided or minimized by sensible government action to mitigate the harm. At the same time, responding to the challenges of climate change presents great economic opportunities for American businesses to be leaders in promoting a sustainable future through energy technology and sources that do not contribute to harmful warming. The problem is so large and complex

that it cannot be effectively addressed except through effective government action at the federal, state, and local level.

2. The Clean Power Plan aims to “protect human health and the environment by reducing CO₂ emissions from fossil fuel-fired power plants in the U.S.” 80 Fed. Reg. 64,663. It “establishes for the first time emission guidelines for existing power plants,” which “will lead to significant reductions in CO₂ emissions, result in cleaner generation from the existing power plant fleet, and support continued investments by the industry in cleaner power generation to ensure reliable, affordable electricity now and into the future.” *Id.* at 64,664. These “emission guidelines reflect strategies, technologies and approaches already in widespread use by power companies and states.” *Id.*

3. States will be required to develop and implement plans that set emission standards for fossil fuel-fired power plants. They “will have the flexibility to choose from a range of plan approaches and measures,” and are encouraged “to adopt the most effective set of solutions for their circumstances, taking account of cost and other considerations.” *Id.* at 64,665. The Plan does not dictate but allows states to adopt market-based solutions to reduce CO₂ emissions. “Because affordability and electricity system reliability are of paramount importance, the [Plan] provides states and utilities with time for planning and investment, which is

instrumental to ensuring both manageable costs and system reliability, as well as to facilitating clean energy innovation.” *Id.*

4. Business *amici* believe that the Clean Power Plan represents a sensible initial approach to reducing CO₂ emissions that will be good for business and that postponing this action will be deleterious to the interest of American businesses.

5. Business *amici* seek to participate in this action to detail the important business interests that will be advanced by the Clean Power Plan, as well as to discuss the negative effect on business interests that would follow a failure to uphold the Plan. This information is distinct from arguments expected from other parties in these consolidated cases, and is critical for the Court’s understanding of the full scope of the public interest in implementation of the Clean Power Plan.

6. The American Sustainable Business Council is a coalition of business organizations and businesses committed to advancing policies for a vibrant, fair, and sustainable economy. The Council’s organizations represent over 100,000 businesses and more than 300,000 entrepreneurs, owners, executives, investors, and business professionals.

7. The South Carolina Small Business Chamber of Commerce is a statewide, 5,000+ member advocacy organization working to make government more small business friendly. Since its beginning in 2000, the Chamber has promoted the

general interests of small business in government, including on the subjects of taxes, economic development, energy, utility rates, and sustainability.

8. D.C. Cir. Rule 29 permits the filing of a motion for leave to participate as *amicus curiae* up to seven days after the filing of the principal brief of the party being supported, but encourages the filing of a notice of intent as soon as practicable. Business *amici* are filing this motion as soon as practicable and before the parties have filed briefs addressing the merits of the case. If permitted to file an *amicus* brief, *amici* would file a document within the briefing schedule established by this Court for all briefs and within any proscribed word limitations.

9. To the extent that other *amici* intend to participate in support of the federal respondents to discuss the relationship of the Clean Power Plan to the interest of American businesses, Business *amici* welcome joinder with those parties on a single *amicus* brief.

WHEREFORE, the proposed Business *amici* respectfully request leave to file a brief of *amici curiae* pursuant to the schedule and any other direction, including word limitations, established by the Court.

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Dated: January 29, 2016

CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rules of Appellate Procedure 27(d)(1) & (2) and 29(b) and D.C. Circuit Rule 29(c) because it meets the prescribed format requirements, does not exceed 20 pages, and is being filed as promptly as practicable after the case was docketed in this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(5) & (6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

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**CORPORATE AND FINANCIAL DISCLOSURE STATEMENT
PURSUANT TO FEDERAL RULES OF APPELLATE PROCEDURE 26.1,
29(c) AND D.C. CIRCUIT LOCAL RULE 26.1**

Amici curiae are non-profit organizations. *Amici* do not have parent corporations, and no publicly held corporation owns 10% or more of the stock of the *amici*.

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CERTIFICATE AS TO PARTIES AND AMICI CURIAE

Pursuant to D.C. Circuit Rule 28(a)(1)(A), counsel certifies as follows: except for the Business *amici* and the following, all parties, intervenors, and *amici* appearing in this Court are, to the best of my knowledge, listed in the Joint Certificate as to Parties, Rulings, and Related Cases [1587532] and the Unopposed Motion of the Institute for Policy Integrity at New York University School of Law for Leave to File Amicus Curiae Brief in Support of Respondents [1589260]:

(1) the National League of Cities; U.S. Conference of Mayors;

Baltimore, Maryland; Coral Gables, Florida; Grand Rapids,

Michigan; Houston, Texas; Jersey City, New Jersey; Los Angeles,

California; Minneapolis, Minnesota; Pinecrest, Florida; Portland,

Oregon; Providence, Rhode Island; Salt Lake City, Utah; and San

Francisco, California are *Amici Curiae* in support of Respondents;

(2) the Municipal Electric Authority of Georgia is *Amicus Curiae* in

support of Petitioners State of West Virginia, *et al.*, case no. 15-

1363;

(3) Pedernales Electric Cooperative, Inc. is *Amicus Curiae* in support of Petitioners National Rural Electric Cooperative Association, *et al.*, case no. 15-1376.

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Dated: January 29, 2016

CERTIFICATE OF SERVICE

I hereby certify that on January 29, 2016, I electronically filed the foregoing document with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system for service on all registered counsel in these consolidated cases.

s/ Stephen G. Harvey

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