ORAL ARGUMENT NOT YET SCHEDULED

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

State of North Dakota, *et al.*, Petitioners, **v.** **United States Environmental Protection Agency, *et al.*,** Respondents.	Case No. 16-1242, consolidated with Cases No. 16-1257, 16-1262, 16-1263, 16-1264, 16-1266, 16-1267, 16-1269, 16-1270

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

UNOPPOSED MOTION OF THE STATES OF CALIFORNIA, CONNECTICUT, ILLINOIS, NEW MEXICO, NEW YORK, OREGON, RHODE ISLAND, VERMONT, AND THE COMMONWEALTH OF MASSACHUSETTS AND THE CITY OF CHICAGO FOR LEAVE TO INTERVENE AS RESPONDENTS

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Additional counsel on signature pages

Docket No. 16-1242

CERTIFICATE AS TO PARTIES, RULINGS AND RELATED CASES

(D.C. Circuit Rules 27(a)(4) & 28(a)(1))

Pursuant to D.C. Circuit Rules 27(a)(4) and 28(a)(1), the States of California, Connecticut, Illinois, New Mexico, New York, Oregon, Rhode Island, Vermont, the Commonwealth of Massachusetts and the City of Chicago submit this provisional certificate of parties, rulings, and related cases:

(A) Parties and Proposed Intervenors. The parties to this petition for review are as follows:

Petitioners: The States of North Dakota, Texas, West Virginia, Alabama, Arizona, Kansas, Louisiana, Montana, Ohio, Oklahoma, South Carolina, Wisconsin, Michigan Attorney General Bill Schuette, the Commonwealth of Kentucky, the Commonwealth of Kentucky Energy and Environment Cabinet, the State of North Carolina Department of Environmental Quality, the Independent Petroleum Association of America, the American Exploration & Production Council, the Domestic Energy Producers Alliance, the Eastern Kansas Oil & Gas Association, the Illinois Oil & Gas Association, the Independent Oil and Gas Association of West Virginia, Inc., the Indiana Oil and Gas Association, the International

Association of Drilling Contractors, the Kansas Independent Oil & Gas Association, the Kentucky Oil & Gas Association, the Michigan Oil and Gas Association, the National Stripper Well Association, the North Dakota Petroleum Council, the Ohio Oil and Gas Association, the Oklahoma Independent Petroleum Association, the Pennsylvania Independent Oil & Gas Association, the Texas Alliance of Energy Producers, the Texas Independent Producers & Royalty Owners Association, the West Virginia Oil and Natural Gas Association, the Western Energy Alliance, GPA Midstream Association, American Petroleum Institute, Texas Oil and Gas Association, and Interstate Natural Gas Association of America (collectively, "Petitioners").

Respondents: The United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency (collectively, "EPA").

Proposed Intervenors: The States of California, Connecticut, Illinois, New Mexico, New York, Oregon, Rhode Island, Vermont, and the Commonwealth of Massachusetts, and the City of Chicago (collectively, "State and Municipal Intervenors").

(B) Rulings Under Review. Petitioners seek review of the final action of respondent United States Environmental Protection Agency published in

the Federal Register at 81 Fed. Reg. 35,824, *et seq*., (June 3, 2016), and titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule."

(C) To the best of the State and Municipal Intervenors' knowledge, all related cases have been consolidated with this action.

Dated: August 15, 2016

Respectfully Submitted,

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Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 15(b), the States of California (by and through the California Air Resources Board and Attorney General Kamala D. Harris), Connecticut, Illinois, New Mexico, New York, Oregon, Rhode Island, Vermont, and the Commonwealth of Massachusetts, and the City of Chicago (collectively, "State and Municipal Intervenors") hereby move for leave to intervene in support of respondents United States Environmental Protection Agency and Regina A. McCarthy, Administrator, United States Environmental Protection Agency (collectively, "EPA") in these consolidated cases, for the reasons set forth below:

1. These consolidated cases petition this Court for review of EPA's final action, published in the Federal Register at 81 Fed. Reg. 35,824 (June 3, 2016), titled "Oil and Natural Gas Sector: Emission Standards for New, Reconstructed, and Modified Sources; Final Rule" ("Final Rule"). EPA promulgated the Final Rule pursuant to its authority in section 111(b) of the Clean Air Act, 42 U.S.C. § 7411(b).

2. EPA's Final Rule will require limits on greenhouse gas emissions—specifically methane—from new, modified and reconstructed sources in the oil and natural gas sector. Those limits will help prevent and mitigate harms that climate change poses to human health and the

environment, including increased heat-related deaths, damaged coastal areas, disrupted ecosystems, more severe weather events, significant reduction in water storage in winter snowpack in mountainous regions, and longer and more frequent droughts. 81 Fed. Reg. at 35,834-35837; *see also Massachusetts v. EPA*, 549 U.S. 497, 521 (2007); Endangerment & Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,523-66,536 (Dec. 15, 2009). Although carbon dioxide is the most ubiquitous greenhouse gas, methane is far more potent on a per unit basis, with a 100-year global warming potential 28 to 36 times that of carbon dioxide according to studies cited by EPA. 81 Fed. Reg. at 35,837-838. In addition to reducing methane emissions, the Final Rule also places limits on volatile organic compound emissions and, as an additional benefit, reduces hazardous air pollutant emissions, which will help clean the air in many local communities near oil and gas operations. *Id.* at 35,827.

Moreover, this action is an important first step towards reducing emissions from existing sources of methane in the oil and gas sector under the Clean Air Act. Under section 111(d), once EPA regulates new sources of methane, as it has here, it must also regulate emissions from existing sources under the Act. (*Id.* at 35,831-832). Regulation of emissions from

existing sources is crucial because existing sources comprise the vast majority of the sector's emissions. *See* Environmental Defense Fund, *Rising Risk: Improving Methane Disclosure in the Oil and Gas Industry* (January 2016), https://www.edf.org/sites/default/files/content/rising_risk_full_report.pdf (stating that "roughly 90% of emissions in 2018 are forecast to come from existing sources.").

3. State and Municipal Intervenors have a compelling interest in defending the Final Rule as a means of furthering their goal of preventing and mitigating climate change harms in their states, as well as protecting their communities from other forms of dangerous air pollution. In pursuit of this goal, State and Municipal Intervenors have taken significant steps to reduce greenhouse gas emissions and other air pollutants from a large number of sources. Many states and cities have enacted their own greenhouse gas emission limitations across various sectors of their economies. *See, e.g.*, Cal. Code Regs. tit. 17, §§ 95801-96022; Conn. Gen. Stat. § 22a-200c & Conn. Agencies Regs. § 22a-174-31 (implementing nine-

state Regional Greenhouse Gas Initiative)[1]; N.Y. Comp. Codes R. & Regs. tit. 6, Part 251; Or. Rev. Stat. § 469.503(2).).

The Final Rule complements state regulation to control methane emissions from the oil and gas sector. For example, California has proposed a rule that will require new and existing oil and gas extraction and storage facilities to test for and control methane leaks and to restrict the flaring of natural gas. The Final Rule will support controls at many California oil and gas sector sources, including by reflecting control requirements in federally enforceable permits, thereby supplementing and reinforcing the proposed state rule for those sources. Moreover, the Final Rule includes mechanisms that are designed to integrate state and local control requirements into a common regulatory structure, further enhancing efficient enforcement and implementation efforts.

By providing a national minimum standard for new and modified oil and gas sources, the Final Rule represents an important step toward addressing a significant nationwide source of potent greenhouse gas emissions, forms a strong foundation for further EPA efforts to limit methane emissions, and helps supplement and strengthen state efforts.

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[1] *See also* Mass. Gen. Laws ch. 21A, § 22 & 310 Mass. Code Regs. 7.70; R.I. Gen. Laws. § 23-82-4; Vt. Stat. Ann. tit. 30, § 255.

Because the Final Rule would further the State and Municipal Intervenors' goals and efforts, and would do so on a nationwide basis, State and Municipal Intervenors have a strong interest in defending it.

4. State and Municipal Intervenors also have an interest in these consolidated cases because they have participated extensively in the regulatory and judicial proceedings leading to EPA's adoption of the Final Rule. For example, several of the states moving to intervene here brought the petition that led to *Massachusetts v. EPA*, which was the impetus for EPA's subsequent finding that greenhouse gases may reasonably be anticipated to endanger public health and welfare. *See* 74 Fed. Reg. 66,496. Many of the same states also submitted comments to EPA in response to the agency's proposed greenhouse gas emission standards at issue in these consolidated cases. *See*, *e.g.*, Letter from Attorneys General of New York, Massachusetts, Oregon, Rhode Island, and Vermont to United States Environmental Protection Agency, Docket ID No. EPA-HQ-OAR-2010-0505 (December 4, 2015).

5. State and Municipal Intervenors' interests may not be adequately represented by the other parties to these consolidated cases. As representatives of the interests of their citizens, State and Municipal Intervenors have unique sovereign interests in limiting climate change

pollution in order to prevent and mitigate loss and damage to publicly owned coastal property, to protect public infrastructure, and to limit emergency response costs borne by the public. *See Massachusetts v. EPA*, 549 U.S. at 521-23. These interests have not always aligned with those of EPA, as shown by the fact that many of the states moving to intervene here were forced to take action against EPA to compel it to address climate change. In addition, because many of the undersigned states are charged with implementing the Final Rule's emissions limitations as part of their delegated permitting authority under Title V of the Clean Air Act, 42 U.S.C. §§ 7661–7661f, they have a unique interest in ensuring that those limitations can be implemented effectively and efficiently.

6. This motion is timely under D.C. Circuit Rule 15(d), because it is filed within 30 days of the petition for review in Case No. 16-1242. Pursuant to D.C. Circuit Rule 15(b), this motion also constitutes a motion to intervene in all petitions for review of the challenged administrative action.

7. The proposed intervention will also not unduly delay or prejudice the rights of any other party. This litigation is in its very early stages, and intervention will not interfere with any schedule set by the Court.

8. Before filing this motion, counsel for the State of California contacted the parties to these consolidated cases: Respondent EPA stated

that it consented to the motion; petitioners State of North Dakota (No. 16-1242) and State of Texas (No. 16-1257) stated that they do not oppose the motion; petitioners Independent Petroleum Association of America, on behalf of all petitioners in the case it filed (No. 16-1262), Interstate Natural Gas Association of America (No. 16-1263), State of West Virginia, on behalf of all petitioners in the case it filed (No. 16-1264), Western Energy Alliance (No. 16-1266), GPA Midstream Association (No. 16-1267), Texas Oil and Gas Association (16-1269), and American Petroleum Institute (No. 16-1270) stated that they take no position on the motion.

9. Counsel for the State of California represents, pursuant to D.C. Circuit Rule 32(a)(2), that the other parties listed in the signature blocks below consent to the filing of this motion.

For the foregoing reasons, State and Municipal Intervenors respectfully request that this Court grant their motion to intervene.

Dated: August 15, 2016

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Unopposed Motion for Leave to Intervene as Respondents was filed on August 15, 2016, using the Court's CM/ECF system and that, therefore, service was accomplished upon counsel of record by the Court's system.

/s/ David A. Zonana