
ORAL ARGUMENT SCHEDULED FOR JUNE 2, 2016

No. 15-1363, 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, 15-1483, 15-1488

IN THE 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,

Respondents.

On Petitions of Review of Final Action
by the United States Environmental Protection Agency

**UNOPPOSED MOTION OF ADOBE, INC., MARS, INCORPORATED,
IKEA NORTH AMERICA SERVICES LLC, AND BLUE CROSS AND
BLUE SHIELD OF MASSACHUSETTS, INC. FOR LEAVE TO
PARTICIPATE AS *AMICI CURIAE* IN SUPPORT OF RESPONDENTS**

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Dated: April 1, 2016

Adobe, Inc., Mars, Incorporated, IKEA North America Services LLC, and Blue Cross and Blue Shield of Massachusetts, Inc., (collectively the “Movants”) hereby submit this Unopposed Motion for Leave to Participate as *Amici Curiae* in Support of Respondents United States Environmental Protection Agency and Regina A. McCarthy, Administrator (collectively “EPA”) in the above captioned proceeding (the “Motion”) pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b).

Counsel for Movants asked counsel for the Parties to these consolidated cases their positions on this Motion. As of the time of this filing, no Party objected to this Motion. Respondent-Intervenors Calpine 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, consented to Movants’ participation. All other Parties took no position on this Motion.

In further support of this Motion, Movants state as follows:

- 1) This proceeding concerns the judicial review of EPA’s final carbon-pollution emission guidelines for existing power plants (the “Clean Power Plan”), promulgated pursuant to Section 111(d) of the Clean Air Act, 42 U.S.C. § 7411(d),

which established final emission guidelines for States' plans to reduce greenhouse gas emissions from existing electric generating units. See Carbon Pollution Emissions Guidelines for Existing Stationary Sources: Electric Utility Generating Units; Final Rule, 80 Fed. Reg. at 64,662 (Oct. 23, 2015). Under the Clean Power Plan, each State must submit a plan that establishes standards of performance for power plants and limitations on the emission of carbon dioxide ("CO₂") "achievable through the application of the best system of emission reduction." Id.; see also 42 U.S.C. § 7411(a).

2) EPA determined that the best system of emission reduction consists of three "building blocks" that States may employ to reduce CO₂ emissions: (1) increasing the efficiency of existing coal-fired power plants (80 Fed. Reg. at 64,787); (2) increasing electricity generation from lower-emitting natural-gas fired combined cycle plants (id. at 64,795); and (3) increasing electricity generation from zero-emitting renewable energy sources such as wind and solar power (id. at 64,803).

Thus, the Clean Power Plan is an emissions management program promulgated to secure vital CO₂ reductions from fossil-fuel-fired power plants. To drive these required reductions, the Clean Power Plan will promote, at least in part, increased electricity generation from low- and zero-emitting sources.

3) Movants are corporate electricity consumers and purchasers and include some of this nation's most prominent and recognizable consumer brands and

businesses. They represent a diverse set of industries from software product solutions, to furniture and home furnishings, food and other consumer goods, and insurance. Movants own and operate corporate assets and infrastructure such as office buildings, retail stores, manufacturing facilities, warehouses, data centers, and other infrastructure across the United States that demand significant amounts of electricity. These assets represent a considerable percentage of Movants' carbon footprint.

4) Because Movants believe that the Clean Power Plan, when compliance begins in 2022, will increase their ability to procure electricity from renewable energy sources more readily, Movants have a substantial interest in the outcome of this proceeding and its contribution is relevant to the disposition of this case. Therefore, Movants seek to participate to secure prompt and complete implementation of the Clean Power Plan.

5) Movants have made strong and vocal public pledges, commitments, declarations, promises, and stated goals to increase their sustainability efforts, reduce their carbon footprint, and procure their electricity from low- and zero-emitting sources and to otherwise support the advancement of cleaner energy. Further, they have incorporated these carbon reduction goals into some of their marketing campaigns, programs, services, and products. Movants made such

pledges to be good stewards of the environment and of the public health and welfare, and because these actions make good financial and business sense.

6) As significant electricity consumers and purchasers, Movants must plan for their current and future energy resource needs. Thus, Movants have a strong interest in the development of sound, measureable, reliable, and enforceable policy that reduces uncertainty in the marketplace. Today, Movants plan by monitoring the availability of and price of retail and wholesale electricity in a diversity of markets, including, increasingly, the market for renewable energy. Movants desire to invest in long-term renewable energy solutions to cut their own costs and reduce their exposure to electricity price fluctuation caused by a reliance on volatile fossil fuels.

7) Due to a limited selection of renewable sources in the energy mix today, Movants already face challenges in procuring electricity from renewable energy sources to meet their public goals and to strategically and financially plan for their energy resources needs. As noted above, the Clean Power Plan contemplates an increase in electricity generation from low- and zero-emitting sources. Movants will be a direct beneficiary of the Clean Power Plan in that they will have additional market choices, can make better energy-related cost decisions, and will find it easier to locate and purchase electricity from low- and zero-emitting sources. Consequently, if the Clean Power Plan is vacated or remanded and the

expected increase in electricity from renewable energy sources is delayed or never realized, Movants will be hindered in seeking to meet their stated goals. If this situation occurs, Movants will be subjected to increased reputational risk.

8) Movants have a substantial interest in reducing CO₂ and other greenhouse gas emissions from traditional fossil-fuel-fired power plants to reduce the threats to human health, the environment, and to their business operations. This interest stems from Movants' desire to be good stewards of the environment and of the public health and welfare. The Clean Power Plan helps enable Movants to meet these goals by reducing CO₂ emissions and other atmospheric pollutants such as sulfur dioxide, nitrogen oxides, and fine particles by replacing traditional fossil fuels with cleaner energy. See 80 Fed. Reg. at 64,670, 64,680-81.

9) Movants previously have not participated in climate related litigation, although some Movants participated in the Clean Power Plan administrative proceeding. Movants felt compelled to participate in this proceeding because they view the Clean Power Plan as a tremendous economic and social opportunity to both address and reduce the effects of climate change.

10) Movants are not aware of any Party or *amicus curiae* to this proceeding that could provide their industry perspective. Accordingly, Movants believe that their participation will not be repetitive of the facts or legal arguments made in the principal briefs. Instead, Movants will focus on points or issues not made or

adequately addressed that are unique to them and relevant to the Court's consideration.

11) Although EPA and Intervenors on behalf of EPA share an interest in seeing that the Clean Power Plan is upheld and implemented, Movants are providing the unique prospective of corporate energy consumers and purchasers. Respondent EPA, as a federal agency, represents the interest of the U.S. government.

Intervenors in support of EPA represent the interests of electricity service and product providers and trade organizations, environmental and public health advocacy organizations, and states implementing the Clean Power Plan. None of these Parties can be expected to adequately provide Movants' perspective as the ultimate purchasers of electricity from renewable energy sources that would more readily be available by implementation of the Clean Power Plan.

12) D.C. Circuit 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. Movants are filing this Motion as soon as practicable. If permitted to file a brief, Movants would file a document within the briefing schedule established by this Court on January 28, 2016 (Doc. #1595922) for all briefs, including those filed by *amicus* and within any proscribed word limitations.

13) Counsel for Movants represents that the companies listed below in the signature block consent to the filing of this Motion.

WHEREFORE, Movants 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.

Dated: April 1, 2016

Respectfully submitted,

/s/ Jerome C. Muys, Jr.

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CERTIFICATE OF COMPLIANCE

This Motion complies with Federal Rules of Appellate Procedure 27(d)(1)&(2) and 29(b) and D.C. Circuit Rule 27 and 29 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)(6) because it has been prepared using Microsoft Office Word 2010 in 14-point Times New Roman, a proportionally spaced typeface.

Dated: April 1, 2016

Respectfully submitted,

/s/ Jerome C. Muys, Jr.

Jerome C. Muys, Jr.

CORPORATE AND FINANCIAL DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1, D.C. Circuit Rule 26.1, and Fed. R. App. P. 29(c):

- Adobe, Inc. does not have a parent corporation. No publicly-held corporation owns 10% or more of the company's stock.
- Mars, Incorporated does not have a parent corporation. No publicly-held corporation owns 10% or more of the company's stock.
- INGKA Holding B.V. is the parent corporation of IKEA North America Services LLC. No publicly-held corporation owns 10% or more of the company's stock.
- Blue Cross and Blue Shield of Massachusetts, Inc. does not have a parent corporation. No publicly-held corporation owns 10% or more of the company's stock.

The Movants' general nature and purpose, insofar as relevant to this litigation, is provided above in this Motion.

Dated: April 1, 2016

Respectfully submitted,

/s/ Jerome C. Muys, Jr.

Jerome C. Muys, Jr.

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1)(A), counsel certifies as follows:
except for the *amici curiae* on this brief, all parties, intervenors, and *amici*
appearing in this Court are, to the best of my knowledge, listed in the Certificate as
to Parties, Rulings, and Related Cases to Respondent United States Environmental
Protection Agency's Initial Brief [Doc. #1605911].

Dated: April 1, 2016

Respectfully submitted,

/s/ Jerome C. Muys, Jr.

Jerome C. Muys, Jr.

CERTIFICATE OF SERVICE

I certify that on April 1, 2016, I electronically filed the foregoing document with the Clerk of Court for the United States Court of Appeals for the District of Columbia Circuit using the Court's CM/ECF system for service on all registered counsel of record in Case No. 15-1363, and consolidated cases.

Dated: April 1, 2016

/s/ Jerome C. Muys, Jr.

Jerome C. Muys, Jr.