

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

STATE OF DELAWARE,)	
DEPARTMENT OF NATURAL)	
RESOURCES & ENVIRONMENTAL)	
CONTROL,)	
)	
Petitioner,)	Case No. 13-1093
)	
v.)	(consolidated with Case Nos.
)	13-1095, 13-1102 and 13-1104)
ENVIRONMENTAL)	
PROTECTION AGENCY,)	
)	
Respondent.)	
)	

**MOTION TO INTERVENE OF THE
ELECTRIC POWER SUPPLY ASSOCIATION**

Pursuant to Rule 15(d) of the Federal Rules of Appellate Procedure, the Electric Power Supply Association (“EPSA”) respectfully moves to intervene in these consolidated cases. Specifically, EPSA moves to intervene in support of petitioners in Case Nos. 13-1093, 13-1102, and 13-1104, and in support of respondent, United States Environmental Protection Agency (“EPA”), in Case No. 13-1095.

BACKGROUND

This consolidated case arises out of petitions filed on April 1, 2013 by (1) the State of Delaware, Department of Natural Resources & Environmental Control (“Delaware”) (docketed as Case No. 13-1093), (2) the National Rural Electric Cooperative Association (docketed as Case No. 13-1095); (3) FirstEnergy Solutions Corp., PSEG Power LLC, and Calpine Corporation (“FirstEnergy”) (docketed as Case No. 13-1102), and (4) the Conservation Law Foundation (docketed as Case No. 13-1104). On April 2, 2013, the Clerk of the Court consolidated these four petitions.

The consolidated petitions seek review of the following EPA final rule:

National Emission Standards for Hazardous Air Pollutants for Reciprocating Internal Combustion Engines; New Source Performance Standards for Stationary Internal Combustion Engines, Final Rule, 78 Fed. Reg. 6,674 (Jan. 30, 2013) (to be codified at 40 C.F.R. Pts. 60 & 63).

The final rule amends the national emission standards for hazardous air pollutants, and permits emergency stationary electric generating reciprocating internal combustion engines (“backup generators”) to make sales of electricity and related products without having to comply with the emissions standards applicable to other generating facilities.

EPSCA generally agrees with petitioners Delaware, FirstEnergy, and the Conservation Law Foundation that the exemption from emissions standards

granted to certain backup generators was unlawful, and, therefore, moves to intervene in support of the petitions filed in Case Nos. 13-1093, 13-1102 and 13-1104. EPSA does not agree with petitioner the National Rural Electric Cooperative Association that EPA should have granted further exemptions for certain backup generators operated for purposes of “peak shaving” and, therefore, moves to intervene in support of respondent EPA in Case No. 13-1095.

ARGUMENT

EPSA is a national trade association that represents competitive electric power suppliers, including independent power producers, merchant generators, and power marketers. EPSA’s members include 16 companies, along with numerous supporting members, and state and regional partners, that represent the competitive power industry in their respective regions.

EPSA has a direct and substantial interest in this case that cannot be adequately represented by any other party. *See Dimond v. District of Columbia*, 792 F2d 179, 192 (D.C. Cir. 1986) (intervention is appropriate if “representation” by other parties “‘may be’ inadequate”). EPSA and its members actively participated in the EPA rulemaking proceedings below. They submitted extensive comments, including expert testimony, and EPSA’s President testified at EPA’s public hearing.

If EPA's final rule is not struck down, or if the rule is extended to other backup generators, EPSA and its members will face concrete and substantial harms. Among other things, EPSA's members own and operate generation facilities that are discriminated against under EPA's final rule and will suffer competitive disadvantages if EPA's final rule is left standing. Because its members will be directly and indirectly affected by EPA's final rule, EPSA has a strong interest in ensuring that the final rule complies with all applicable legal requirements.

EPSA is therefore seeking leave to intervene in this case to ensure that it is in a position to have its unique perspectives on the issues presented to and heard by this Court. Because this motion is timely under the rules, permitting EPSA to intervene and participate in this appeal will not inconvenience any other party.

CONCLUSION

For these reasons, EPSA respectfully requests that it be permitted to intervene in these consolidated cases with full rights attendant thereto.

Respectfully submitted,

/s/ Ashley C. Parrish

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Counsel for the

Electric Power Supply Association

Dated: May 1, 2013

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that I have this 1st day of May, 2013, served a copy of the foregoing document electronically through the Court's CM/ECF system on all registered counsel.

Dated at Washington, D.C., this 1st day of May, 2013.

/s/ Ashley C. Parrish

Ashley C. Parrish

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Rule 26.1 of the Rules of this Court, Electric Power Supply Association (“EPSA”) states as follows:

EPSA is a national trade association that represents the competitive power industry and is incorporated under the laws of the District of Columbia. There is no parent corporation or any publicly held corporation that owns 10 percent or more of EPSA’s stock.

EPSA’s members include 16 companies, along with numerous supporting members, and state and regional partners, that represent the competitive power

industry in their respective regions. EPSA's members have significant financial investments in electric generation and electricity marketing operations across the country.

EPSA's organizational purpose, among other things, is to promote a favorable market environment for the competitive electric industry; to support the development of state and federal legislative and regulatory policies that encourage the development and implementation of competitive wholesale markets for electricity; and to improve the public's awareness of the competitive electric industry.

Respectfully submitted,

/s/ Ashley C. Parrish

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