

ORAL ARGUMENT SCHEDULED FOR APRIL 16, 2015

No. 14-1112 & No. 14-1151

**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 14-1112: IN RE MURRAY ENERGY CORPORATION
Petitioner.

No. 14-1151: MURRAY ENERGY CORPORATION
Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY and REGINA A.
MCCARTHY, Administrator, United States Environmental Protection Agency
Respondents.

On Petition for Writ of Prohibition & On Petition for Judicial Review

**JOINT MOTION OF PETITIONER AND INTERVENOR-
PETITIONERS REGARDING ORAL ARGUMENT FORMAT**

Pursuant to Federal Rules of Civil Procedure 2 and 27 and this Court's inherent authority to manage its docket, Petitioner Murray Energy Corporation and Intervenor-Petitioners (the National Federation of Independent Business, Utility Air Regulatory Group, Peabody Energy Corp., State of West Virginia, State of Alabama, State of Alaska, State of Indiana, State of Kansas, Commonwealth of Kentucky, State of Louisiana, State of Nebraska, State of Ohio, State of Oklahoma, State of South Dakota, and State of Wyoming),

collectively, “Movants,” respectfully request the oral argument format set forth below. Because related Case No. 14-1146, *West Virginia v. EPA*, is scheduled for oral argument on the same day before the same panel, Movants have consulted with counsel for Petitioners in Case No. 14-1146 regarding the sequencing of oral argument.

As the Court knows, the consolidated *Murray Energy* cases and the related *West Virginia* case have attracted briefing from multiple constituencies that include utility suppliers, utility customers, utilities, other businesses, States, and environmental interest groups. Movants seek to structure oral argument in a manner that is conducive to the Court’s consideration of all aspects of these important cases. Accordingly, Movants respectfully make the following requests:

1. Movants request that oral argument in the two consolidated cases, Nos. 14-1112 and 14-1151, be heard *before* the argument in which the same panel will hear case No. 14-1146, *West Virginia v. EPA*. While the requested order may occur automatically since the first *Murray Energy* case, No. 14-1112, has the lowest docket number, the *Murray Energy* cases also present a set of issues that logically should be heard prior to the issues presented in *West Virginia*.

Proceeding with the *Murray Energy* cases first will avoid unnecessary duplication of oral argument.

2. Movants propose a total of thirty-five (35) minutes per side in the two consolidated *Murray Energy* cases.
3. In the two consolidated *Murray Energy* cases, provided Petitioner's side is given a total of thirty-five (35) minutes, Movants propose the argument be structured as follows:
 - Petitioner Murray Energy Corporation, with argument presented by Geoffrey K. Barnes, should be allotted the largest portion of time, twenty (20) minutes.
 - Intervenor-Petitioners, with argument presented by Robert R. Gasaway, should be allotted ten (10) minutes with particular focus on the adverse and immediate impacts upon all Intervenor-Petitioners of the Clean Air Act rulemaking at issue in these cases.
 - Intervenor-Petitioner Peabody Energy, with argument presented by Professor Laurence Tribe, should be allotted five (5) minutes with particular focus on the constitutional principles implicated by Respondents' assertion of authority to proceed under Section 111(d) of the Clean Air Act.

Petitioners' counsel in No. 14-1146 concurs in Movants' proposed sequencing of the *Murray Energy* and *West Virginia* arguments.

Counsel for Petitioner Murray Energy Corporation has also contacted counsel for Respondents Environmental Protection Agency and Regina A.

McCarthy, and counsel for Intervenor-Respondents, in advance of this filing, and was informed that they oppose the requests embodied in this motion.

Dated: February 23, 2015

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing JOINT MOTION OF PETITIONER AND INTERVENOR-PETITIONERS REGARDING ORAL ARGUMENT FORMAT has been served electronically by Petitioner, Murray Energy Corporation, through the Court's CM/ECF system on all ECF registered counsel.

Dated: February 23, 2015

/s/ Geoffrey K. Barnes

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