ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF TEXAS, *et al.*, *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents.*	No. 22-1031 (and consolidated cases)

MOTION OF ADVANCED ENERGY ECONOMY, CALPINE CORPORATION, NATIONAL GRID USA, NEW YORK POWER AUTHORITY AND POWER COMPANIES CLIMATE COALITION FOR LEAVE TO INTERVENE IN SUPPORT OF RESPONDENT

Pursuant to Federal Rules of Appellate Procedure 15(d) and 27 and Circuit Rules 15(b) and 27, Advanced Energy Economy ("AEE"), Calpine Corporation, National Grid USA ("National Grid"), New York Power Authority ("NYPA"), and Power Companies Climate Coalition (collectively the "Movant-Intervenors") respectfully request leave to intervene in support of the United States Environmental Protection Agency ("EPA") and EPA Administrator Michael S. Regan (collectively "Respondents") in case No. 22-1031 and consolidated cases. Those consolidated cases concern several petitions for review that have been filed by a coalition of fourteen States, the State of Arizona, American Fuel & Petrochemical Manufacturers, Competitive Enterprise Institute, and producers of

renewable fuels and related associations (collectively, "Petitioners"), challenging the final action of Respondents entitled "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards" 86 Fed. Reg. 74,434 (Dec. 30, 2021) (the "Revised GHG Standards").

Counsel for Movant-Intervenors consulted with counsel for Petitioners and Respondents, requesting that they respond with their position on Movant-Intervenors' proposed motion by an appointed time. Respondents stated that they do not oppose this motion. Petitioners Texas and Ohio stated that they do not oppose this motion. Petitioners American Fuel & Petrochemical Manufacturers and the Competitive Enterprise Institute stated that they take no position on this motion at this time. All other Petitioners did not respond by the appointed time.

INTRODUCTION

The transportation sector is the largest source of greenhouse gas ("GHG") emissions in the United States and, as a consequence, one of the largest contributors to global climate change.[1] Meaningful limits on vehicle GHG emissions are therefore critical towards lowering transportation-sector emissions and preventing the worst effects of climate change.

The language of the Clean Air Act, the Supreme Court's decision in

[1] *See Fast Facts on Transportation Greenhouse Gas Emissions*, U.S. EPA, https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions (last accessed March 2022).

Massachusetts v. EPA, 549 U.S. 497 (2007), and decisions of this court make clear that the EPA must address GHG emissions from motor vehicles. Section 202(a) of the Clean Air Act states in relevant part that the EPA's Administrator,

> *shall* by regulation prescribe (and from time to time revise) in accordance with the provisions of this section, standards applicable to the emission of any air pollutant from any class or classes of new motor vehicles or new motor vehicle engines, which in his judgment cause, or contribute to, air pollution which may reasonably be anticipated to endanger public health or welfare

42 U.S.C. § 7521(a)(1) (emphasis added). In 2007, the Supreme Court held that greenhouse gases "unambiguous[ly]" may be regulated as an "air pollutant" under the Clean Air Act, including Section 202. *Massachusetts* 549 U.S. at 529. After this decision, the EPA made an "Endangerment Finding" for GHGs, in which it formally determined that GHGs constituted "air pollution which may reasonably be anticipated to endanger public health or welfare." 42 U.S.C. § 7521.[2]

In *Coalition for Responsible Regulation v. EPA*, this Court explained, "in the Endangerment Finding, EPA determined that motor-vehicle emissions contribute to greenhouse gas emissions that, in turn, endanger public health and welfare; the agency therefore was in no position to 'avoid taking further action,' by deferring promulgation of the Tailpipe Rule." 684 F.3d 102, 126–127 (D.C. Cir. 2012). The

[2] "Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act," 74 Fed. Reg. 66,495 (Dec. 15, 2009).

Court found that the EPA's interpretation of its responsibilities under the Clean Air Act to set emission standards for cars and light trucks was "unambiguously correct." *Id.* at 114.[3]

These decisions have resulted in a regulatory structure that incentivizes the production of lower-emitting vehicles. Starting in 2010, the EPA—acting jointly with the National Highway Traffic Safety Administration ("NHTSA"), which has independent authority to impose vehicle fuel economy standards, 49 U.S. Code § 32902—promulgated GHG emissions standards affecting model years 2012 through 2016.[4] In 2012, the EPA and NHTSA promulgated a second phase of standards for model years 2017 through 2025, which relied in part on agreement from auto manufacturers to achieve a 50 percent reduction in GHG emission from new light-duty vehicles by 2025, compared to 2010 levels.[5] These standards rewarded the production of vehicles that outperform the minimum standards and

[3] Additionally, D.C. Circuit judges who were on the en banc panel that heard oral argument in the cases concerning the Clean Power Plan reaffirmed this obligation when the Court partially granted EPA's request for abeyance of the litigation, reminding the agency that "in 2009, EPA promulgated an endangerment finding, which we have sustained . . . That finding triggered an affirmative statutory obligation to regulate greenhouse gases." Order, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Aug. 8, 2017) (Tatel, Cir. J., and Millett, Cir. J., concurring in the order granting further abeyance), Doc. #1687838.

[4] EPA, "Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards; Final Rule," 75 Fed. Reg. 25324 (May 7, 2010).

[5] EPA and NHTSA, "2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards; Final Rule," 77 Fed. Reg. 62624 (Oct. 15, 2012).

have played a critical role in driving investments in zero- or low-emissions transportation.

Soon after President Donald J. Trump assumed office, the EPA proposed and then finalized a revised determination known as the "Mid-Term Evaluation," which withdrew the agency's earlier determination that its GHG standards for model year 2022 through 2025 remained appropriate and found that those standards were *not* appropriate and should instead be revised because they were based on "outdated information" and recent information indicated they were "too stringent."[6] This revised determination then served as the basis for the EPA to propose and finalize a rule weakening its GHG standards for model years 2021 through 2026, which it promulgated jointly with NHTSA's rule relaxing its fuel-economy regulations for the same model years (the "SAFE II Rule").[7] Movant-Intervenors challenged that rule as arbitrary and capricious and unlawful.[8] In merits briefing filed less than a week before the change in administration, they argued that the agencies' decisions

[6] EPA, "Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light Duty Vehicles: Notice; Withdrawal," 83 Fed. Reg. 16,077 (Apr. 13, 2018).

[7] EPA & NHTSA, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks," 83 Fed. Reg. 42,986 (Aug. 24, 2018); EPA & NHTSA, "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, Final Rule," 85 Fed. Reg. 24,174 (Apr. 30, 2020).

[8] *Competitive Enterprise Institute, et al. v. NHTSA*, *et al*., ("The SAFE II Petition"), No. 20-1145 (D.C. Cir. petition docketed May 1, 2020) (consolidated cases).

to weaken their respective GHG and fuel-economy standards ignored key advances in vehicle technology and were premised upon erroneous conclusions regarding the lack of consumer acceptance of electric vehicles and expected penetration rates for electric vehicles.[9]

On his first day in office, President Joseph R. Biden, Jr. reversed course. He issued an executive order, directing, among other things, the EPA and NHTSA to reconsider the SAFE II Rule and for the Attorney General to seek to have the pending cases challenging the SAFE II Rule placed in abeyance pending the outcome of the agencies' reconsideration.[10] Those cases have been in abeyance since April 4, 2021, and remain so today.[11]

Although the EPA and NHTSA have previously acted jointly in promulgating GHG and fuel-economy standards for model years 2010 through 2026, the two agencies have independent statutory authority for adopting their

[9] Proof Brief of Petitioners National Coalition for Advanced Transportation, Advanced Energy Economy, Calpine Corporation, Consolidated Edison, Inc., National Grid USA, New York Power Authority, and Power Companies Climate Coalition, No. 20-1145 (D.C. Cir., Jan. 14, 2021), Doc. #1880207.

[10] *See* Exec. Order. No. 13,990 §§ 2(a)(ii), 2(d), 86 Fed. Reg. 7037 (Jan. 20, 2021).

[11] *See* Per Curiam Order, *The SAFE II Petition*, No. 20-1145 (D.C. Cir., Apr. 2, 2021) (holding cases in abeyance), Doc. #1892931.; *see also* Respondents' Motion to Govern Future Proceedings, *The SAFE II Petition*, No. 20-1145 (D.C. Cir., Jan. 26, 2022) (seeking cases to remain in abeyance pending NHTSA's completion of its reconsideration of its part of the SAFE II Rule), Doc. #1932485.

respective standards.[12] The Biden Administration, accordingly, decided to decouple the agencies' reconsideration proceedings. On December 30, 2021, the EPA independently finalized the Revised GHG Standards that are challenged by Petitioners in this case. Those standards require an annual increase in GHG emission reductions of between 5 and 10 percent for each of model years 2023 through 2026, which is significantly greater than the SAFE II Rule's 1.5 percent increase in annual stringency. This greater stringency will propel zero-emissions technology.

In this lawsuit, Petitioners are poised to challenge, not only the stringency of EPA's Revised GHG Standards, but the very statutory and constitutional authority of the agency to establish standards that reflect the actual makeup of the vehicle fleet projected by automakers. Contrary to the clear language of the Clean Air Act and rulings by the Supreme Court, Texas claims the Revised GHG Standards "micromanage greenhouse gas emissions for cars and trucks, far exceeding EPA's authority and violating the U.S. Constitution's separation-of-powers principles."[13]

[12] NTHSA derives its authority to implement fuel economy standards from the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act, 49 U.S.C. §§ 32901-32919, while EPA derives its authority to regulate GHG emissions from the Clean Air Act, 42 U.S.C. §§ 7521-7554.

[13] *Press Release: "AG Paxton Pushes Back Against Biden EPA's War Against Texas Oil & Gas,"* ATTORNEY GENERAL OF TEXAS, (Feb. 28, 2022) https://www.texasattorneygeneral.gov/news/releases/ag-paxton-pushes-back-against-biden-epas-war-against-texas-oil-gas (last accessed March 2022).

Similarly, other Petitioners variously claim that the EPA "lacks the legal authority to issue such a rule,"[14] that "EPA seeks to unilaterally alter the transportation mix in the United States, without Congressional authorization,"[15] and that the rule "exceeds EPA's authority, implicating serious separation of powers concerns by purporting to arrogate to EPA the authority to effectively mandate the production and sale of electric cars rather than cars powered by internal combustion engines."[16] Such assertions go to the heart of the EPA's authority affirmed by the Supreme Court and this Court. If correct, those assertions would bar the EPA from establishing standards that require reductions in GHG emissions equivalent to what most major automakers have already acknowledged they will achieve by mid-century, when they intend to produce only electric vehicles.

Texas further asserts that the "regulations will impose major economic harms and "stress[the] electric grid."[17] That assertion fails to consider the many benefits that electric vehicles can provide to the electricity grid and the significant

[14] Petition for Review, *Competitive Enterprise Institute, et al., v. EPA, et al.*, No. 22-1032 (D.C. Cir. petition docketed Feb. 28, 2022), Doc. #1937087.

[15] Petition for Review, *State Soybean Association of Illinois, et al., v. EPA, et al.*, (D.C. Cir. petition docketed Feb. 28, 2022), Doc. #1937109.

[16] Petition for Review, *Clean Fuels Development Coalition, et al., v. EPA, et al.*, (D.C. Cir. petition docketed Feb. 28, 2022), Doc. # 1937138.

[17] *Press Release: "AG Paxton Pushes Back Against Biden EPA's War Against Texas Oil & Gas,"* ATTORNEY GENERAL OF TEXAS, (Feb. 28, 2022) https://www.texasattorneygeneral.gov/news/releases/ag-paxton-pushes-back-against-biden-epas-war-against-texas-oil-gas (last accessed March 2022).

investments that many, including Movant-Intervenors, are making to support and facilitate vehicle electrification. Movant-Intervenors have made such investments to secure the benefits that vehicle electrification provides not only to customers, but to the reliability of the electricity grid. Movant-Intervenors, accordingly, have a unique perspective from which to contest Petitioners' arguments and support the EPA's Revised GHG Standards.

INTEREST OF MOVANT-INTERVENORS

Movant-Intervenors consist of a not-for-profit business association, whose membership includes some of the nation's largest technology companies, renewable energy producers, and electric vehicle manufacturers,[18] as well as a coalition of the largest and the tenth largest municipal electric utilities, the nation's largest state power authority, and other major producers and suppliers of electricity, all committed to generating clean electricity and supporting the widespread adoption of electric vehicles to combat climate change. Since 2017, members of this coalition have advocated against the prior administration's efforts to weaken stringent GHG standards for light-duty vehicles in agency rulemaking and this Court. By moving to intervene in this case, they seek to defend the EPA's restoration of strong GHG light-duty vehicle standards for model years 2023 through 2026.

[18] *See AEE Members & Advanced Energy Careers*, ADVANCED ENERGY ECONOMY, (identifying AEE members) aee.net/members (last accessed March 2022).

Movant-Intervenors and their members have made significant investments to support consumers' adoption of electric vehicles and the infrastructure necessary to integrate those vehicles to the grid. National Grid, for example, in addition to significant company- and service-area wide initiatives to support EVs, is investing over $300 million in Massachusetts and over $150 million in New York in charging infrastructure, incentives and other programs. National Grid also offers a voluntary time-of-use rate to incentivize off-peak charging. The Los Angeles Department of Water and Power ("LADWP") will invest nearly $150 million in the coming years on a variety of programs, including charging installation and rebates, electrification of ports, buses, and other heavy-duty vehicles, and education and awareness building for customers. NYPA, through its EVolve NY program, will invest up to $250 million through 2025 to build on its existing investments in electric vehicle infrastructure, service, and consumer awareness. Seattle City Light has already invested more than $12 million in installing public charging stations and is collaborating with the region's transit system, state ferry system and the Port of Seattle as they electrify their operations in the service territory. Through its Drive Clean Seattle Program, it is pursuing significant investments in charging infrastructure and innovative rate structures to effectuate its Transportation Electrification Strategy. AEE is also focused on the transition to advanced, clean cars. Its membership—which is comprised of leading companies in technology

development, vehicle and engine manufacturing, electric vehicle charging infrastructure, fleet ownership and operation, grid integration, and transportation system software management—has been at the leading edge of this transition.

Movant-Intervenors' activities and investments reflect their commitment to transportation electrification and the market's conclusion that, due to both technological and competitive factors, electric vehicles will continue to grow and play a critical part in the U.S. transportation sector. EPA's Revised GHG Standards help create a business and market environment that supports those investments.

Movant-Intervenors have opposed efforts by the prior administration to weaken the stringency of the EPA's standards for light-duty vehicles. They commented upon that administration's revised "Mid-Term Evaluation," which proposed to reverse the agency's earlier determination that its GHG standards for model years 2022 through 2025 remained appropriate.[19] Once the EPA finalized that proposal and found that its standards for such model years were no longer appropriate and must be revised, Movant-Intervenors petitioned for review and advocated against that revised final determination in this Court.[20] They then

[19] Joint Comments on Vehicle GHG Standards by Electric Power Companies and Utilities, EPA-HQ-OAR-2015-0827-9175 (Oct. 5, 2017);

[20] *California v. EPA*, 940 F.3d 1342 (D.C. Cir. 2019); Brief of Petitioners National Coalition for Advanced Transportation, Consolidated Edison Company of New York, Inc., National Grid USA, New York Power Authority and the City of Seattle, by and through Its City Light Department, No. 18-1114 D.C. Cir., Feb. 7,

commented upon the SAFE II Rule and, among other things, explained how their investments and efforts to integrate electric vehicles to the grid were premised upon a regulatory foundation that includes stringent GHG standards and urged EPA and NHTSA to maintain stringent federal GHG and fuel economy standards.[21] They ultimately challenged EPA's decision to weaken its GHG standards in the SAFE II Rule as arbitrary and capricious and unlawful.[22] In briefing filed with this Court, they explained how that SAFE II Rule "effectively require[d] no fuel economy improvements beyond what market forces were already projected to deliver . . . imped[ing] realization of the benefits of their investments."[23]

Movant-Intervenors also commented on the current administration's proposal to revise the EPA's GHG standards for model years 2023 through 2026, noting their commitment to zero-emissions technology and their conclusion that, due to both technological and competitive factors, electric vehicles will continue to

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2019), Doc. #1772465; Brief of Advanced Energy Economy as *Amicus Curiae* in Support of Petitioners, No. 18-1114 (D.C. Cir., Feb. 14, 2019), Doc. #1773518.

[21] *See* Comments of the Energy Strategy Coalition on The Safer Affordable Fuel-Efficient Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks, EPA-HQ-OAR-2018-0283-4197 (Oct. 26, 2018) (comment letter submitted on behalf of LADWP, National Grid, NYPA, and Seattle City Light, among others).

[22] Proof Brief of Petitioners National Coalition for Advanced Transportation, Advanced Energy Economy, Calpine Corporation, Consolidated Edison, Inc., National Grid USA, New York Power Authority, and Power Companies Climate Coalition, No. 20-1145 (D.C. Cir., Jan. 14, 2021), Doc. #1880207.

[23] *Id.* at 5.

grow and play a critical part in the U.S. transportations sector.[24] They noted the need for market and regulatory certainty to continue making investments to facilitate the electrification of the transportation sector, and suggested that EPA's proposed revised GHG standards would "help repair the regulatory environment and help spur additional critical private and public investment."[25] Decl. of Nancy Sutley ¶ 7. Movant-Intervenors therefore strongly supported the EPA's decision to increase the stringency levels of its GHG standards for model years 2023 through 2026 because such standards will incentivize and support continued investment in the development and deployment of electric vehicles, other advanced low-emission and zero-emission vehicles, and the infrastructure to support them. *Id*.

Movant-Intervenors' motion to intervene in support of the EPA in this proceeding is aimed at protecting their and their members' investments and interests. *See id*. ¶ 9. Despite the fact that the EPA's Revised GHG Standards are supported by the text of the Clean Air Act, years of regulatory experience, and market forces propelling the adoption of electric vehicles, Petitioners claim EPA is acting without authority to force a radical transformation of the transportation sector. Movant-Intervenors seek to intervene to defend the EPA's Revised GHG

[24] *See* Letter from Michael Bradley, EPA-HQ-OAR-2021-0208-0533 (Sept. 27, 2021) (comment letter submitted on behalf of Calpine Corporation, LADWP, National Grid, NYPA, and Seattle City Light, among others).

[25] *Id*. at 3.

Standards and counter any assertion that these standards are infeasible or otherwise threaten the reliability of the electrical grid.

GROUNDS FOR INTERVENTION

Under Circuit Rule 15(b), a motion to intervene "must be filed within 30 days after the petition for review is filed and must contain a concise statement of the interest of the moving party and the grounds for intervention." Fed. R. App. P. 15(d). This motion is timely because it was filed on the 30th day after the Petition was filed. Fed. R. App. P. 26(a)(1).

Movant-Intervenors have a substantial interest in ensuring that the EPA's Revised GHG Standards remain in effect and thereby continue to incentivize the development and deployment of low- and zero- emissions transportation technology. Premised upon a regulatory foundation that includes stringent GHG standards, Movant-Intervenors have made significant investments in electric vehicle technology and infrastructure, with the goal of realizing the significant economic and environmental benefits that integration of vehicles to the electricity grid can provide to vehicle owners, utility customers, and the electricity grid. *See* Decl. of Nancy Sutley ¶¶ 4, 7. By seeking review of the EPA's Revised GHG Standards, the Petitioners place Movant-Intervenors' and their members' expected return on their investments directly within the crosshairs of this proceeding. The Court's disposition of these consolidated cases may therefore impair or impede

Movant-Intervenors' ability to protect their interests. *See Huron Envtl. Activist League v. EPA*, 917 F. Supp. 34, 43 (D.D.C. 1996) (intervention of industry groups granted where relief could establish unfavorable rule of law). Accordingly, Movant-Intervenors clearly have standing sufficient for intervention to protect their interests and ensure they and their members realize the benefits of their investments in electric vehicle technology, infrastructure and deployment. *See Fund for Animals, Inc. v. Norton*, 322 F.3d 728, 733 (D.C. Cir. 2003) (intervention in administrative review proceedings is appropriate where movant would be harmed by successful challenge to regulatory action and that harm could be avoided by ruling denying relief sought by petitioner); *see also Crossroad Grassroots Policy Strategies v. FEC*, 788 F.3d 312, 316 (D.C. Cir. 2015) (standing shown where a party benefits from an agency action challenged in court and an unfavorable decision would remove that benefit). Additionally, Movant-Intervenors AEE and Power Companies Climate Coalition have standing to intervene on behalf of their members because at least one of their respective members would have standing to intervene in their own right, the interests they seek to protect are germane to their respective purpose, and neither the defense they intend to assert, nor the relief they request, requires the participation of an individual member. *Hearth Patio & Barbecue Ass'n v. EPA*, 11 F.4th 791, 802 (D.C. Cir. 2021); *see* Decl. of Nancy Sutley ¶¶ 4, 7, 9.

Movant-Intervenors' interests are unique and distinct from the interests of the EPA, whose interests are in the proper administration of the Clean Air Act and may be limited to defending the substance of its Revised GHG Standards. *See Dimond v. District of Columbia*, 792 F.2d 179, 192 (D.C. Cir. 1986) ("A government entity . . . is charged by law with representing the public interest of its citizens"). Given the EPA's changing positions on the stringency of its GHG standards over the course of two changes in administration, the agency has demonstrated that it does not share Movant-Intervenors' and their members' interest in both consistent and rigorous GHG standards. As power generators, electricity service providers, investors in electric vehicle charging infrastructure, and companies investing significant sums to support the replacement of electric vehicles for fossil fuel-powered vehicles, Movant-Intervenors' interests are also distinct from those of other movant-intervenors in this proceeding, which consist of state and local governments and non-governmental environmental organizations who will bring to bear a different perspective and seek to protect different interests than the business interests of Movant-Intervenors.

Given the early stage of this litigation, participation by the Movant-Intervenors will cause neither delay nor undue prejudice to the parties. Movant-Intervenors intend to cooperate and coordinate with the Government and any other Respondent-intervenors, including those whose interests and perspectives may not

align with those of Movant-Intervenors, and will follow any schedule issued by this Court.

CONCLUSION

For the foregoing reasons, Movant-Intervenors respectfully request that the Court enter an order granting leave to intervene in support of Respondents.

Dated: March 30, 2022

Respectfully submitted,

/s/ Kevin Poloncarz
Kevin Poloncarz
Martin Levy
COVINGTON & BURLING LLP
Salesforce Tower
415 Mission Street, 54th Floor
San Francisco, CA 94105-2533
(415) 591-7070
kpoloncarz@cov.com

Counsel for Advanced Energy Economy, Calpine Corporation, National Grid USA, New York Power Authority, and Power Companies Climate Coalition

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Proposed Intervenor-Respondent Advanced Energy Economy provides the following disclosure statements.

Advanced Energy Economy ("AEE") certifies that AEE is a not-for-profit business association dedicated to making energy secure, clean, and affordable. AEE does not have any parent companies or issue stock, and no publicly held company has a 10% or greater ownership interest in AEE.

Dated: March 30, 2022

/s/ Kevin Poloncarz
Kevin Poloncarz

/s/ Jeffery S. Dennis
Jeffery S. Dennis
Managing Director and General Counsel
Advanced Energy Economy
1000 Vermont Ave., NW, Suite 300
Washington, D.C. 20005
(202) 383-1950
jdennis@aee.net

Counsel for Advanced Energy Economy

RULE 26.1 DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Proposed Intervenor-Respondents Calpine Corporation, National Grid USA, New York Power Authority, and Power Companies Climate Coalition, provide the following disclosure statements.

Calpine Corporation ("Calpine") certifies that it is a privately held corporation. CPN Management, LP owns 100 percent of the common stock of Calpine. Volt Parent GP, LLC is the General Partner of CPN Management, LP. Energy Capital Partners III, LLC owns the controlling interest in Volt Parent GP, LLC. Calpine is among America's largest generators of electricity from natural gas and geothermal resources, with 78 power plants in operation or under construction in 16 U.S. states and Canada, amounting to nearly 26,000 megawatts of generating capacity. Calpine also provides retail electric service to customers in competitive markets throughout the U.S., including an additional seven states (beyond those in which it operates generation resources), through its subsidiaries Calpine Energy Solutions and Champion Energy Services.

National Grid USA states that it is a holding company with regulated direct and indirect subsidiaries engaged in the transmission, distribution and sale of electricity and natural gas and the generation of electricity. It is the direct or indirect corporate parent of several subsidiary electric distribution companies, including

Massachusetts Electric Company, Nantucket Electric Company, Niagara Mohawk Power Corporation and The Narragansett Electric Company. National Grid USA is also the direct corporate parent of National Grid Generation LLC, which supplies capacity to, and produces energy for, the use of customers of the Long Island Power Authority. All of the outstanding shares of common stock of National Grid USA are owned by National Grid North America Inc. All of the outstanding shares of common stock of National Grid North America Inc. are owned by National Grid (US) Partner 1 Limited. All of the outstanding ordinary shares of National Grid (US) Partner 1 Limited are owned by National Grid (US) Investments 4 Limited. All of the outstanding ordinary shares of National Grid (US) Investments 4 Limited are owned by National Grid (US) Holdings Limited. All of the outstanding ordinary shares of National Grid (US) Holdings Limited are owned by National Grid plc. National Grid plc is a public limited company organized under the laws of England and Wales, with ordinary shares listed on the London Stock Exchange, and American Depositary Shares listed on the New York Stock Exchange. No publicly held corporation directly owns more than 10 percent of National Grid plc's outstanding ordinary shares.

New York Power Authority ("NYPA") states that it is a New York State public-benefit corporation. It is the largest state public power utility in the United States, with 16 generating facilities and more than 1,400 circuit-miles of

transmission lines. NYPA sells electricity to more than 1,000 customers, including local and state government entities, municipal and rural cooperative electric systems, industry, large and small businesses and non-profit organizations. NYPA has no parent corporation and no publicly held company owns greater than 10 percent ownership interest in it.

Power Companies Climate Coalition states that it is an unincorporated association of companies engaged in the generation and distribution of electricity and natural gas, organized to advocate for responsible solutions to address climate change and reduce emissions of greenhouse gases and other pollutants, including through participation in litigation concerning federal regulation. Its members include the Los Angeles Department of Water and Power ("LADWP"), Seattle City Light, as well as the other entities providing disclosures in this disclosure statement.

LADWP states that it is a vertically integrated publicly-owned electric utility of the City of Los Angeles, serving a population of over 4 million people within a 465 square mile service territory covering the City of Los Angeles and portions of the Owens Valley. LADWP is the third largest electric utility in the state, one of five California balancing authorities, and the nation's largest municipal utility. LADWP owns and operates a diverse portfolio of generation, transmission, and distribution assets across several states. LADWP's diverse portfolio includes electricity produced from natural gas, hydropower, coal, nuclear, wind, biomass, geothermal,

and solar energy resources. LADWP owns and/or operates the majority of its conventional generating resources, with a net dependable generating capacity of 7,967 megawatts. Its transmission system, which includes more than 3,700 circuit-miles of transmission lines, transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and elsewhere within California to the City of Los Angeles. LADWP's mission is to provide clean, reliable water and power in a safe, environmentally responsible, and cost-effective manner.

Seattle City Light states that it is a public utility providing electricity service to Seattle, Washington, and parts of its metropolitan area and is a department of the City of Seattle.

Dated: March 30, 2022

/s/ Kevin Poloncarz
Kevin Poloncarz

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF TEXAS, *et al.*, *Petitioners*, v. ENVIRONMENTAL PROTECTION AGENCY, *et al.*, *Respondents.*	No. 22-1031 (and consolidated cases)

CERTIFICATE AS TO PARTIES AND *AMICI CURIAE*

Pursuant to Circuit Rules 15, 27(a)(4) and 28(a)(1)(A), Proposed Intervenor-Respondents submit the following Certificate as to Parties and *Amici Curiae*:

Petitioners: The States of Texas, Alabama, Alaska, Arkansas, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, and Utah (No. 22-1031); Competitive Enterprise Institute, Anthony Kreucher, Walter M. Kreucher, James Leedy, Marc Scribner, and the Domestic Energy Producers Alliance (No. 22-1032); The Illinois Soybean Association; Iowa Soybean Association; Indiana Soybean Alliance, Inc.; The Michigan Soybean Association; The Minnesota Soybean Growers Association; The North Dakota Soybean Growers Association; The Ohio Soybean Association; South Dakota Soybean Association; and Diamond Alternative Energy, LLC (No. 22-1033); American Fuel and Petrochemical Manufacturers (No. 22-1034); the State of

Arizona (No. 22-1035); Clean Fuels Development Coalition, ICM, Inc., Illinois Corn Growers Association, Indiana Corn Growers Association, Kansas Corn Growers Association, Kentucky Corn Growers Association, Michigan Corn Growers Association, Missouri Corn Growers Association, and Valero Renewable Fuels Company, LLC (No. 22-1036); and Energy Marketers of America (Case No. 22-1038).

Respondents: Environmental Protection Agency; Michael S. Regan, Administrator, United States Environmental Protection Agency.

Movant-Intervenors for Petitioners: None at this time.

Movant-Intervenors for Respondents: Conservation Law Foundation, Environmental Defense Fund, Environmental Law and Policy Center, Natural Resources Defense Council, Public Citizen, Sierra Club, and Union of Concerned Scientist (No. 22-1031 and consolidated cases); States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Michigan, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, Washington, and Wisconsin, the Commonwealths of Massachusetts and Pennsylvania, the District of Columbia, the Counties of Denver and San Francisco, and the Cities of Denver, Los Angeles, New York, and San Francisco (No. 22-1031 and consolidated cases).

Amici Curiae: None at this time.

CERTIFICATE OF COMPLIANCE

The foregoing motion contains 3,747 words and complies with the type-volume limit in Fed. R. App. P. 27(d)(2)(A). The document complies with the typeface and typestyle requirements of Fed. R. App. P. 27(d)(1)(E).

Dated: March 30, 2022

/s/ Kevin Poloncarz
Kevin Poloncarz

CERTIFICATE OF SERVICE

I hereby certify that on this 30th Day of March, 2022, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, and severed by certified mail, return receipt requested, on the following:

Dated: March 30, 2022

/s/ Kevin Poloncarz
Kevin Poloncarz