ORAL ARGUMENT NOT YET SCHEDULED
No. 22-1031 (and consolidated cases)

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.

On Petition For Review from the United States Environmental Protection Agency
(No. EPA-HQ-OAR-2021-0208)

INITIAL BRIEF FOR INDUSTRY RESPONDENT-INTERVENORS

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), the undersigned counsel certify as follows:

A. Parties

Except for the following, all parties, intervenors, and amici appearing in these consolidated cases are listed in Respondents' Brief:

Amici for Respondents: The National League of Cities and The U.S. Conference of Mayors; Frank Pallone, Jr. and Thomas R. Carper; Consumer Reports; American Thoracic Society, American Medical Association, American Public Health Association, American College of Occupational and Environmental Medicine, American Academy of Pediatrics, American Association for Respiratory Care, Climate Psychiatry Alliance, American College of Physicians, American College of Chest Physicians, Academic Pediatric Association and American Academy of Allergy, Asthma, & Immunology; Constitutional Accountability Center; Institute for Policy Integrity at New York University School of Law; and Margo Oge and John Hannon.

B. Rulings Under Review

The agency action under review is entitled "Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards," 86 Fed. Reg. 74,434 (Dec. 30, 2021).

C. Related Cases

There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

/s/ Kevin Poloncarz
Kevin Poloncarz

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and this Court's Rule 26.1, Industry Respondent-Intervenors respectfully submit the following corporate disclosure statement:

The National Coalition for Advanced Transportation is an unincorporated association and does not have a parent corporation. No publicly-held entity owns 10 percent or more of the National Coalition for Advanced Transportation. The National Coalition for Advanced Transportation has the following members[1]: Constellation Energy Corporation, Edison International, EVgo, Exelon Corporation and its affiliate operating companies (Atlantic City Electric, Baltimore Gas & Electric, Commonwealth Edison Company, Delmarva Power, PECO, and PEPCO), Lucid USA, Inc., Pacific Gas and Electric Company, Plug In America, Portland General Electric, Rivian Automotive, Sacramento Municipal Utility District, and Tesla, Inc.

[1] National Coalition for Advanced Transportation member Center for Climate and Energy Solutions is not participating in this litigation as this organization does not participate in litigation as a matter of general practice.

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

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 77 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 United States, 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, and Niagara Mohawk Power Corporation. 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 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 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. New York Power Authority 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. New York Power Authority 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, The City of Seattle, by and through its City Light Department ("Seattle City Light"), as well as Calpine, National Grid USA and New York Power Authority.

Los Angeles Department of Water and Power 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. Los Angeles Department of Water and Power is the third largest electric utility in the state, one of five California balancing authorities, and the nation's largest municipal utility. Los Angeles Department of Water and Power owns and operates a diverse portfolio of generation, transmission, and distribution assets across several states. Los Angeles Department of Water and Power's diverse portfolio includes electricity produced from natural gas, hydropower, coal, nuclear, wind, biomass, geothermal, and solar energy resources. Los Angeles Department of Water and Power 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. Los Angeles Department of Water and Power'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 municipal electric utility providing retail electricity service to nearly 455,000 customers in the Seattle metropolitan area serving nearly 1 million Seattle-area residents. Seattle's power resources are over 90 percent hydropower, much of which is owned and operated by Seattle. Additionally, Seattle operates its hydroelectric projects to support flood control, instream flows for fish, and reservoir recreation. As of 2016, Seattle's total system generation capability was 2,014.1 MW.

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EPA	U.S. Environmental Protection Agency
EPA Br.	Brief of Respondents U.S. Environmental Protection Agency and Michael S. Regan
Fuel Br.	Brief of Private Petitioners
Private Petitioners	American Fuel & Petrochemical Manufacturers, Clean Fuels Development Coalition, Competitive Enterprise Institute, Diamond Alternative Energy, LLC, Domestic Energy Producers Alliance, Energy Marketers of America, ICM, Inc., Illinois Corn Growers Association, Illinois Soybean Association, Indiana Corn Growers Association, Indiana Soybean Alliance, Inc., Iowa Soybean Association, Kansas Corn Growers Association, Kentucky Corn Growers Association, Anthony Kreucher, Walter M. Kreucher, James Leedy, Michigan Corn Growers Association, Michigan Soybean Association, Minnesota Soybean Growers Association, Missouri Corn Growers Association, North Dakota Soybean Growers Association, Ohio Soybean Association, Marc Scribner, South Dakota Soybean Association, and Valero Renewable Fuels Company, LLC
State Br.	Brief of State Petitioners
State Petitioners	Texas, Alabama, Alaska, Arkansas, Arizona, Indiana, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, and Utah

INTRODUCTION

Under Section 202 of the Clean Air Act, EPA must set emission standards for new motor vehicles and account for development and application of the requisite technology when doing so. Since 1971, EPA has regulated tailpipe pollutants emitted by light-duty vehicles.

For decades, Congress and EPA have considered reducing emissions through vehicle electrification. This technology has become financially feasible and popular with consumers. In 2021, EPA set emission standards for light-duty vehicles based on the feasible emission-control technologies available, including vehicle electrification. *See* 86 Fed. Reg. 74,434 (Dec. 30, 2021) ("Standards"). Under these Standards, EPA projected that electric vehicles and plug-in hybrid electric vehicles will reach up to a 17 percent market-share of new vehicles in Model Year 2026.

Industry Respondent-Intervenors (hereinafter "Respondent-Intervenors") agree with all of EPA's arguments that the Court need not reach the merits of the petitions and that the Standards are reasonable and do not pose a major question. Respondent-Intervenors amplify three of EPA's arguments to clarify why the Standards do not pose a major

question. First, Petitioners' fact-based arguments cannot form the basis of a cognizable challenge under the major-questions doctrine. Second, even if viewed through the lens of the major-questions doctrine, the anticipated vehicle electrification is well within the capabilities of the electric grid. Third, the vehicle electrification contemplated by the Standards does not implicate supply-chain issues affecting national security. EPA acted well within its statutory authority and did so reasonably.

STATEMENTS OF JURISDICTION AND THE ISSUES

Respondent-Intervenors adopt Respondents' Statements of Jurisdiction and Issues Presented.

STATUTES AND REGULATIONS

Pertinent statutes and regulations that are not reproduced in the addendum to Respondents' brief are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

Respondent-Intervenors adopt Respondents' Statement of the Case, and add the following.

Respondent-Intervenors include coalitions and companies across a range of industries focused on manufacturing electric vehicles, deploying

the charging infrastructure needed to integrate them to the electrity grid, and providing affordable and reliable low-carbon electricity to customers to power such vehicles.

SUMMARY OF ARGUMENT

I. The major-questions doctrine is inapplicable as a matter of law. Petitioners challenge the fact-based assessments EPA made based on the record before it, arguing that the Standards will adversely *affect* the electric grid or national security. But that in no way demonstrates the "extraordinary" case of an agency transforming its power in "unheralded" ways. Where, as here, an agency is exercising its delegated statutory authority, courts must review a challenge under the deferential arbitrary and capricious standard. Such a challenge would fail because EPA appropriately considered grid reliability and supply-chain security, as well as related considerations of cost, energy and safety. Regardless, Petitioners have forfeited an arbitrary-and-capricious claim because their arguments are based solely on the major-questions doctrine.

II. Even when viewed through the lens of the major-questions doctrine, the Standards' alleged impacts on the electric grid do not implicate that doctrine. First, State Petitioners may not raise a grid-

reliability argument before this Court because they did not raise it before EPA. Second, the facts clearly establish that the Standards will not impair grid reliability. EPA properly relied upon a Department of Energy report demonstrating that the anticipated demand from electric vehicles is well within the grid's capabilities. Moreover, electric vehicles promote innovative grid-management services, which are intended to improve reliability. Recent large federal investments to accelerate deployment of low-carbon generation and grid resiliency only confirm that the expected rate of vehicle electrification can be managed by the grid.

III. Nor could the Standards implicate the major-questions doctrine on the basis that electric vehicle battery supply chains allegedly jeopardize national security. EPA sufficiently considered battery and supply chain issues and was satisfied that automakers are addressing demand for the critical minerals used in electric vehicles. Moreover, by reducing the Nation's consumption of foreign oil, the Standards will improve national security.

ARGUMENT

I. Petitioners' Fact-Based Arguments Cannot Form a Cognizable Challenge Under the Major-Questions Doctrine

Petitioners' challenges to EPA's fact-based assessment of grid-reliability and supply-chain issues are not legally cognizable under the major-questions doctrine. The doctrine is limited to "extraordinary cases" in which an agency construes a vague or seldom used statutory term in a way that gives it "'unheralded' regulatory power over 'a significant portion of the American economy.'" *West Virginia v. EPA*, 142 S. Ct. 2587, 2608 (2022) (citations omitted). Petitioners do not argue that EPA claimed the power to regulate the Nation's entire electric grid or foreign manufacturing. Rather, they argue that EPA "T[ook] Action That Diminishes Electric Grid Reliability," State Br. 20, and that electric vehicle battery supply chains jeopardize the United States' national security interests. *See* State Br. 22–24; Fuel Br. 30–31. Both arguments raise only ordinary questions about whether the facts in the record support the Standards. Where the agency is exercising its delegated statutory authority, consonant with its exercise of that authority for decades, courts must review a fact-based challenge under the deferential arbitrary and capricious standard. *See, e.g.*, *Multicultural Media,*

Telecom & Internet Council v. FCC, 873 F.3d 932, 934–36 (D.C. Cir. 2017).

Had Petitioners correctly brought an arbitrary-and-capricious claim raising either issue, it would fail. EPA did not "entirely fail[] to consider an important aspect of the problem." *See Mingo Logan Coal Co. v. EPA*, 829 F.3d 710, 718 (D.C. Cir. 2016) (citations omitted). EPA appropriately considered relevant factors under Section 202(a), including lead-time for "development and application of the requisite technology" and "cost." *See* 42 U.S.C. § 7521(a)(2). As explained in more detail below, EPA reasonably considered grid-reliability and supply-chain issues. EPA acknowledged and responded to comments about the grid, reasonably relying on a Department of Energy analysis of grid capabilities. EPA_Resp._to_Comments, at 12-82 to 83. It noted potential technologies that may improve grid reliability in the future, again relying on a study by the Department of Energy. *See* 86 Fed. Reg. at 74,487 & n.152.

With respect to supply-chain security, EPA appropriately considered all relevant factors. EPA acknowledged and accounted for uncertainty in costs due to supply chain issues. *See*, *e.g.*, 86 Fed. Reg. at 74,478–79; EPA_Resp._to_Comments, at 12-78 to 79, 12-87 to 88, 12-90,

19-18 to 21; Regul._Impact_Analysis at 2-14, 4-7 to 11. And EPA reasonably responded to comments about geopolitical risks. *See* EPA_Resp._to_Comments at 12-79, 12-88, 19-18 to 21.

In any event, as EPA explains, Petitioners forfeited an arbitrary-and-capricious argument concerning grid impacts and supply chains because their complaints on these subjects are based solely on the major-questions doctrine. EPA Br. 59 n.14.

II. Concerns About Grid Reliability Do Not Implicate the Major-Questions Doctrine

Even when viewed through the lens of the major-questions doctrine, State Petitioners' grid-reliability argument falls short. State Petitioners cannot raise the argument now because they neglected to raise it to EPA, and the argument lacks support in (or out of) the record.

A. Petitioners Are Barred From Raising This Argument

Section 307 of the Clean Air Act precludes State Petitioners from arguing that grid-reliability concerns implicate the major-questions doctrine. That provision states that "[o]nly an objection to a rule or procedure which was raised with reasonable specificity during the period for public comment . . . may be raised during judicial review." 42 U.S.C.

§ 7607(d)(7)(B). This rule is "strictly enforced." *Growth Energy v. EPA*, 5 F.4th 1, 24 (D.C. Cir. 2021).

State Petitioners purport that they (as States) have "the greatest knowledge regarding questions of grid reliability" and that these issues "are of particularly significant import to Texas." State Br. 17 & n.2 (quoting *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016)). But when two groups of State Petitioners submitted comments on the Standards—including 13 and 18 pages of single-spaced text—neither mentioned the electric grid, much less that the anticipated vehicle electrification might so affect the grid that it poses a "major question" beyond EPA's authority. *See* Missouri_Comments_EPA-HQ-OAR-2021-0208-0288; Ohio_Comments_EPA-HQ-OAR-2021-0208-0258. As State Petitioners did not raise this issue, much less with "reasonable specificity," their challenge is foreclosed under Section 307.

The comments quoted in State Petitioners' brief are all by stakeholders who either *support* the Standards or preferred even *greater* levels of electric-vehicle deployment. State Br. 19 (citing comments of Environmental Protection Network, Stellantis, and the Maryland

Department of the Environment).[2] To the extent these comments raised concerns about the grid, they merely noted the benefits of further private and governmental investments in electric-vehicle charging infrastructure and other complementary policies. *See* Stellantis_EPA-HQ-OAR-2021-0208-0532, at 23–26; Maryland_EPA-HQ-OAR-2021-0208-0241-A1, at 1–2; EPN_EPA-HQ-OAR-2021-0208-0213-A1, at 6–7. EPA responded to these comments in detail proportionate to the concerns raised. In particular, EPA noted that charging infrastructure would not act as a barrier to the electric-vehicle penetration contemplated by the final rule "[g]iven the level of activity, investment, and progress in [electric-vehicle] charging infrastructure to date and planned . . . ." EPA_Resp._to_Comments, 12–74 to 12–76 (noting $7.5 billion in investments in electric-vehicle charging).

[2] As State Petitioners note, Maryland has intervened in support of EPA's standards. *See, e.g.*, State Br. 19. Stellantis is a member of the Alliance for Automotive Innovation, which also intervened in support of EPA. Stellantis also noted in its comments its desire to "achieve a 40-50% EV mix in the U.S. by 2030." Stellantis_Comments_EPA-HQ-OAR-2021-0208-0532 at 3. The Environmental Protection Network's comments were in support of even *greater* levels of electric vehicle deployment, including 100% electric vehicle sales by 2035. EPN_EPA-HQ-OAR-2021-0208-0213-A1, at 14.

Had State Petitioners expressed their distinct concerns about impacts to the grid, EPA would have responded accordingly. But they cannot expect EPA to anticipate and address unarticulated concerns.

B. The Standards Pose No Risk to Grid Reliability

Regardless, the additional vehicle electrification anticipated by the Standards will not impair grid reliability. The Standards contemplate only a modest increase in electric-vehicle market share: from 7 percent in Model Year 2023 to 17 percent in Model Year 2026. *See* 86 Fed. Reg. at 74,485 & tbl. 33. This amounts to a 3.3 percent market-share increase each year, and it aligns with voluntary commitments by automakers. *Id.* at 74,485–86.[3]

In responding to comments about electric-vehicle impacts on the grid, EPA relied on a 2019 Department of Energy report ("Report") modeling how different trends of electric-vehicle deployment would affect the grid. *See* EPA_Resp._to_Comments, at 12-83 & n.39, 12-87 n.46

[3] For example, General Motors intends to sell exclusively zero-emission light duty vehicles by 2035, Volvo has announced plans to sell only electric cars by 2030, Volkswagen announced that half of its U.S. sales will be all electric by 2030, and Fiat announced all-electric sales by 2030. *See* 86 Fed. Reg. at 74,486.

(citing DOE_Report_EPA-HQ-OAR-2021-0208-0790). EPA quoted the Report's conclusion that "sufficient energy generation and generation capacity is expected to be available to support a growing [electric-vehicle] fleet as it evolves over time, *even with high [] market growth*." *Id.* (quoting DOE_Report, at v (emphasis added)). Under that "high" market-growth scenario, the Department had assumed that 40 percent of new vehicles sold would be electric by 2030. DOE_Report, at 2. This high-growth scenario far outpaces the 17 percent electric-vehicle market-share by 2026 anticipated by EPA. Extrapolating the annual 3.3 percent increase through 2030 would result in an electric-vehicle market share of just 30 percent of new-vehicle sales—well under the 40 percent that the Department concluded the grid can accommodate. *See* DOE_Report, at 11–12. And as explained *infra* (at 13–18), the Department's 40 percent figure underestimates the grid's capacity to support electric vehicles because it did not account for demand-management services and new policies that will accelerate deployment of new generation.

State Petitioners misread this Report in claiming that it "illustrates that there are serious reliability concerns." *See* State Br. 20. In interpreting the Report's data from the past ten years, State Petitioners

appear to confuse energy generation (i.e., the amount of electricity delivered to the grid) with energy capacity (i.e., the amount of electricity that could have been generated if demand had existed). They insist that the grid will struggle to maintain reliability because (1) over the last decade, the grid averaged less than 5 terawatt-hours of new generation per year; and (2) a 12 percent electric-vehicle-share in 2030 (i.e., the "medium" growth scenario) would require 8 terawatt-hours of new generation per year. *Id.* But as the Department explained, although *generation* increased 5 terawatt-hours each year over the last decade, dispatchable generating *capacity* increased more than is necessary to meet projected electric-vehicle market growth. DOE_Report, at 9–11. On this basis, the Report concluded that the grid could support a "high" growth scenario in which 40 percent of new vehicles are electric in 2030. *See supra*.

In claiming that "the grid cannot accommodate this demand without massive new investment," State Br. 19, State Petitioners ignore the extensive evidence that power companies and utilities have already been making these investments. As Respondent-Intervenors explained during this rulemaking, "[u]tilities have long-term planning horizons for

considering investments in improvements to the electricity grid to support transportation electrification." NCAT_Comment_EPA-HQ-OAR-2021-0208, at 14. Power companies have been bringing a substantial amount of renewable energy generation online, and (as the Department of Energy noted) this trend is expected to continue. *See id.* at 16 (citing U.S. Energy Information Administration's Annual Energy Outlook 2021, projecting that "[r]enewable electricity generation increases more rapidly than overall electricity demand through 2050"); *accord* DOE_Report, at 11.

Additionally, the Department of Energy Report underestimates the grid's capabilities for at least two reasons. First, the Department assumed "an unmanaged charging scenario" that was "intentionally chosen as an illustrative worst case." DOE_Report, at iv. But it noted that this worst-case scenario was "unlikely to occur given the current work on managed charging solutions and the monetary benefits of their implementation." *Id.* at 10. Second, the Department could not have known in 2019 about upcoming major policy changes that will further support grid reliability.

First, as the Department noted (but did not incorporate into its models), utilities have been innovating to smooth energy demand through managed-charging solutions. Many utilities now vary energy prices to encourage electric-vehicle customers to charge at off-peak times. NCAT_Comment, at 17–18. As of March 2020, about half of U.S. investor-owned utilities had optional time-of-use rates that price energy based on the day, time, and season. *Id.* Another form of smart charging delays vehicle charging until the vehicle receives a signal from the grid that demand has declined. *Id.* at 17. In improving utilization of the existing power grid, these innovations benefit "all customers[,] whose rates could decline as electric vehicles help to shift demand." *Id.*; *see* DOE_Report, at 7 (noting that managed charging may mean "very little new capacity for [electric vehicles] is required").[4]

As explained in another Department of Energy study, electric vehicles may soon further enhance grid resilience by storing and transferring energy back to buildings and the grid. *See* 86 Fed. Reg. at

[4] For these reasons, State Amici supporting Petitioners are mistaken in believing that the ongoing decline of coal generation will hurt the grid. *See* State Amici Br. 22-23. That's especially so because other dispatchable resources like natural gas are alive and well.

74,487; Grid_Resilience_Report_EPA-HQ-OAR-2021-0208-0087, at 1–2. This could take the form either of "vehicle-to-building" charging (i.e., providing back-up energy for homes and businesses) or "vehicle-to-grid" charging (i.e., providing the grid with energy storage to balance the distribution system). *Id.* at 2.

To realize these demand-management benefits, utilities have exponentially accelerated investments in electric-vehicle infrastructure—and much of that growth postdates the Department's study. *See* NCAT_Comments, at 14 (noting that industry investment in 2020 was three times higher than in 2019);. Energy_Coalition_Comments_EPA-HQ-OAR-2021-0208-0533, at 3 (noting increased investments of power companies and utilities in charging infrastructure). For instance, Southern California Edison has a $437 million program to install approximately 38,000 charging ports in California. NCAT_Comments, at 14. State Petitioners complain that "[c]harging infrastructure is enormously expensive," State Br. 19, but they ignore that these investments are happening at a scale commensurate to the expected market penetration of electric vehicles.

Second, recent changes in the law confirm that the grid will outperform expectations from 2019. The Department of Energy based its analysis on "historical growth rates" of energy generation and generation capacity. DOE_Report, at v. But it acknowledged that favorable policy environments have resulted in annual generation growth rates "equivalent to the electrical consumption of as many as 25 million new light duty EVs (the equivalent of roughly 150% of all new light-duty vehicle sales in the U.S. today)." *Id.* at iv. Such high growth occurred in the 1970s and 1990s when policy encouraged increased investments in nuclear and fossil generation. *Id.* As in those periods, federal policy is once again prioritizing investments in energy generation and transmission, and the private sector is moving in the same direction.

State Petitioners emphasize the Environmental Protection Network's statement (in favor of the Standards) about the "critical need for complementary federal policies to support a fast transition to [electric vehicles]," but they fail to acknowledge that many of those policies have materialized. *See* State Br. 19 (citing EPA_Resp._to_Comments, at 12-36). As EPA noted in response, in the Infrastructure Investment and Jobs Act, Congress supported grid resilience and electric vehicle

deployment. *See* EPA_Resp._to_Comments, at 12-74, 12-76; *see, e.g.*, Infrastructure Investment and Jobs Act, Pub. L. No. 117-58, § 40101, 135 Stat. 429, 923–28 (2021) ($5 billion in competitive grants to enhance grid resilience); § 40323, 135 Stat. at 1019–22 ($6 billion to support nuclear generation).

Federal policy has advanced further since EPA finalized the Standards. The Inflation Reduction Act of 2022, which became law last August, provides an additional $370 billion in energy tax credits, incentivizing the deployment of renewable generation and a suite of zero- and low-carbon generation technologies. *See* Pub. L. No. 117-169, 136 Stat. 1818 (2022). To improve transmission, the Inflation Reduction Act provides $40 billion in loan authority to support transmission projects and emerging technologies, including deployment of high-voltage direct current. *See* § 50141, 136 Stat. at 2042–44. An independent analysis by Credit Suisse concludes that the Inflation Reduction Act will draw even more private sector investment, leading to a combined $1.7 trillion over the next 10 years. *See* Credit Suisse, Treeprint: US Inflation Reduction Act - A Tipping Point in Climate Action, at 5 (2022), https://www.credit-suisse.com/treeprintusinflationreductionact. These developments

confirm that the grid will be able to support greater levels of electric-vehicle penetration than the Department of Energy contemplated in 2019, let alone the more modest levels contemplated by EPA's Standards.[5]

State Petitioners also erroneously argue that alleged impacts on the grid cause the Standards to have "economic significance." Their only support is an extra-record 2008 estimate that $298 billion in transmission investments would be needed from 2010 to 2030, which they allege "puts grid reliability in 'major question' territory." *See* State Br. 15 (citing a 2008 figure noted in *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 51 (D.C. Cir. 2014)). They make no assertion, however, that those total transmission-system costs are attributable to vehicle electrification, let alone the Standards. Technological innovation, consumer demand, and investor pressure are all stimulating vehicle

[5] State Petitioners also cite to the Energy Policy Act of 1992, arguing that, because it included demonstration programs encouraging both electric vehicles and charging infrastructure, Congress "recognized that grid investment and reliability was [sic] essential to the success of electric vehicles." State Br. 18. But that in no way demonstrates that the Standards, which spur the adoption of electric vehicles (and incidentally affect the grid), reflect a transformative expansion of EPA's Clean Air Act authority.

electrification, so only the *marginal costs to the grid* of vehicle electrification could be traceable to the Standards. Those costs would be limited to costs that (1) will occur after 2023; (2) will result from electric vehicles; and (3) would not have occurred but for these Standards. These costs would amount to only a fraction of State Petitioners' 2008 estimate of investments in new transmission facilities needed from 2010 to 2030.

At most, the Standards "may end up causing an incidental" effect on the grid, but this does not trigger the major-questions doctrine. *See West Virginia*, 142 S. Ct. at 2613 n.4.

III. The Electric Vehicle Supply Chain Does Not Implicate the Major-Questions Doctrine

There is also no basis for Petitioners' argument that the major-questions doctrine is triggered by Petitioners' allegation that electric vehicle battery supply chains jeopardize the United States' national security interests. *See* State Br. 22–24; Fuel Br. 30–31. First, even if the Standards have some effect on national security, that in no way demonstrates that EPA has arrogated decisions beyond its authority to establish emissions standards for light-duty vehicles. Moreover, as EPA has explained, the Standards will *improve* national security by reducing the United States' consumption of foreign oil. *See* EPA Br. 58;

EPA_Resp._to_Comments, at 19-16 to 23 (reduction in oil consumption from this rule results in 91 percent reduction in U.S. oil imports).

Importantly, EPA considered battery and supply-chain issues and was satisfied that automakers, including those among this Respondent-Intervenors group, are addressing demand for the critical minerals used in many electric vehicles by reducing dependence on cobalt, improving recycling, directly securing materials, and developing domestic supplies. *See* EPA_Resp._to_Comments, at 12-79, 12-88, 19-18 to 21; *see also* Tesla, Inc., Comment on Proposed Rule, Tesla Impact Report 2020, Part 2, at 45 (Tesla directly sourced vast majority of lithium it used in 2020 from mines in Australia and Argentina and was exploring lithium sourcing in the United States); *id.* at 47 (Tesla's nickel-based cathode has less cobalt than similar chemistries used in industry, and Tesla is working towards batteries with less cobalt and, for some applications, potentially eliminating cobalt). EPA also found that the issue of dependence on imported materials and minerals is not unique to electric vehicles, but also affects conventional vehicles, which have relied on imported platinum and palladium in catalytic converters used to control

tailpipe emissions and on foreign-manufactured computer chips. EPA_Resp._to_Comments, at 12-79.

The Executive Branch and Congress are also taking actions outside this rulemaking to increase domestic battery manufacturing and domestic sourcing of key components. EPA_Resp._to_Comments, at 19-19 to 21; EPA Br. 10. For example, the Infrastructure Investment and Jobs Act allocated a combined $6 billion for grants for battery material processing and battery manufacturing and recycling projects, giving priority to entities that will not use materials supplied by "a foreign entity of concern." § 40207, 135 Stat. at 963–71. The Inflation Reduction Act provided a combined $5 billion to support domestic zero-emission vehicle manufacturing facilities and production. §§ 50142–50143, 136 Stat. at 2044. That Act also provided a 10 percent advanced manufacturing production tax credit to spur domestic production of critical minerals. § 13502(b)(1)(M), 136 Stat. at 1973. Recognizing these federal and private investments to reduce dependence on imported minerals, and EPA's analysis that reduced foreign oil dependence improves national security, there is no basis for Petitioners' argument that supply-chain risks implicate the major-questions doctrine.

* * *

In the event the Court does not dismiss or deny the petitions for review, Respondent-Intervenors join EPA's request for the opportunity for further briefing on remedy. *See* EPA Br. 94 n.30. Vacatur of the Standards would have disruptive consequences and alter significant reliance interests of the automakers regulated by the Standards (who have intervened in defense of EPA here) and others, including Respondent-Intervenors, who have made significant investments to plan and facilitate electrification. *See, e.g.*, *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331-32 (D.C. Cir. 2021).

CONCLUSION

For these reasons, the petitions should be denied.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This Brief complies with Federal Rule of Appellate Procedure 32(f) and (g), along with the Court's September 22, 2022 Order, because it contains 3,907 words.

This Brief complies with the typeface requirements of Federal Rule of Appellate Procedure 32(a)(5) and the type-style requirements of Federal Rule of Appellate Procedure 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word and Century 14-point font.

Dated: March 21, 2023

/s/ Kevin Poloncarz
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CERTIFICATE OF SERVICE

I hereby certify that on March 21, 2023, I electronically filed the foregoing brief with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. The participants in the case are registered CM/ECF users and service will be accomplished by the appellate CM/ECF system.

Dated: March 21, 2023

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