

ORAL ARGUMENT NOT YET SCHEDULED

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

STATE OF OHIO, *et al.*,

*Petitioners,*

v.

ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

*Respondents.*

No. 22-1081

(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 RESPONDENTS**

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, “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. 22-1081 and consolidated cases. Those consolidated cases concern several petitions for review that have been filed by a coalition of seventeen States, members of the renewable fuel

industry, and state soybean associations (collectively, “Petitioners”), challenging the final action of Respondents entitled “California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption; Notice of Decision,” 87 Fed. Reg. 14,332 (Mar. 14, 2022) (the “State Waiver Reconsideration”).

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. American Fuel and Petrochemical Manufacturers, Domestic Energy Producers Alliance, Energy Marketers of America, and National Association of Convenience Stores takes no position on this motion. Respondents and all other Petitioners did not respond before the designated 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.<sup>1</sup> Electrification of the transportation sector is therefore critical to lowering GHG emissions and preventing the worst effects of climate change. Yet, electrification of the vehicle fleet is expected to significantly increase consumer demand for electricity in coming decades. Movant-Intervenors and their members are investing billions in the clean electricity-generating resources, vehicle-charging infrastructure, and grid improvements needed to meet that demand, while maintaining reliability of the electricity grid and keeping costs affordable for consumers. These investments are based upon the well-founded expectation that California and other states will continue enforcing standards that demand technological innovation and promote the adoption of electric vehicles, regardless of policy changes at the federal level.

Since its inception, the modern Clean Air Act (“the Act”) was designed to be “technology-forcing,” *Union Elec. Co. v. EPA*, 427 U.S. 246, 257 (1976); *Train v. NRDC*, 421 U.S. 60, 90 (1975). In particular, the 1970 amendments were “expressly designed to force regulated

---

<sup>1</sup> See *Fast Facts on Transportation Greenhouse Gas Emissions*, U.S. EPA, <https://www.epa.gov/greenvehicles/fast-facts-transportation-greenhouse-gas-emissions> (last visited June 13, 2022).

sources to develop pollution control devices that might at the time appear to be economically or technologically infeasible.” *Whitman v. Am. Trucking Ass’ns, Inc.*, 531 U.S. 457, 491 (2001) (Breyer, J., concurring) (citation omitted). Though some opponents of the 1970 amendments argued the emissions standards would harm industry, 1 Leg. Hist. 238, 240 (statements of Sen. Griffin), the Act has instead propelled the development of key cost-saving technologies, such as the catalytic converter, which “helped achieve substantial reductions without the economic catastrophe that some had feared.” *Whitman*, 531 U.S. at 492 (Breyer, J., concurring).

Congress’s technology-forcing vision is illustrated by the Act’s reliance “on the California experience to fashion and to improve the national efforts at emissions control.” *Motor & Equip. Mfrs. Ass’n, Inc. v. E.P.A.*, 627 F.2d 1095, 1110 (D.C. Cir. 1979). California began taking statewide efforts to control vehicle emissions as early as 1958, before the federal government and other states, which were relative “Johnnies-come-lately to the field . . . .” *Id.* at 1109. Section 209(b) of the Act explicitly seeks to take advantage of this experience by allowing California to set independent emissions standards, so long as those

“standard will be, in the aggregate, at least as protective of public health and welfare as applicable federal standards.” 42 U.S. Code § 7543(b) (the “State Waiver”). By enacting Section 209, “Congress consciously chose to permit California to blaze its own trail with a minimum of federal oversight.” *Ford Motor Co. v. EPA*, 606 F.2d 1293, 1297 (D.C. Cir. 1979). In 1977, Congress expanded the scope of this State Waiver authority by adding Section 177 to the Act, which permitted other states to “adopt and enforce” standards that are identical to those implemented by California. 42 U.S.C. § 7507 (the “Section 177 States”). The 1977 amendments to Section 209 were expressly intended “to ratify and strengthen” the waiver provision and to “afford California the broadest possible discretion” to design and implement its own standards. H.R. REP. 95–294, 301–02, 1977 U.S.C.C.A.N. 1077, 1380–81.

GHGs are among the air pollutants California and the Section 177 States are empowered to regulate,<sup>2</sup> and California’s zero-emission vehicle mandate (and later its GHG standards) have been covered by a

---

<sup>2</sup> See Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act, 74 Fed. Reg. 66,496, 66,516 (Dec. 15, 2009).

State Waiver since 1993.<sup>3</sup> This statutory regime—deploying minimum national requirements set by EPA, coupled with a California-led backstop that demands ever-improving emissions performance and technological innovation within California and the Section 177 States—creates the regulatory certainty necessary for Movant-Intervenors to make substantial investments in the technology and innovation needed to electrify the light-duty vehicle fleet and ensure an accessible, affordable, clean, and reliable supply of fuel for that fleet.

Exemplifying California’s key role in the Act’s technology-forcing structure, in the early years of the Obama Administration, California worked with the EPA and National Highway Traffic Safety Administration (“NHTSA”) to establish the first set of nationally applicable GHG standards for light-duty vehicles.<sup>4</sup> These standards demanded both fuel-economy increases and GHG emissions reductions through model year 2016.<sup>5</sup> A key facet in this hallmark achievement

---

<sup>3</sup> See, e.g., California State Motor Vehicle Pollution Control Standards; Waiver of Federal Preemption, 58 Fed. Reg. 4,166 (Jan. 13, 1993).

<sup>4</sup> Light-Duty Vehicle Greenhouse Gas Emission Standards and Corporate Average Fuel Economy Standards, 75 Fed. Reg. 25,324 (May 7, 2010).

<sup>5</sup> *Id.*

was California's agreement to treat compliance with the joint federal standards as compliance with California and the Section 177 States' standards.<sup>6</sup> In 2012, EPA and NHTSA increased their ambition and demanded a 50 percent reduction in GHG emissions from new light-duty vehicles by 2025.<sup>7</sup> This increase was again supported by California, which continued to accept compliance with federal standards as compliance with its own standards.

The federal government has not, however, demonstrated an unwavering commitment to the objective of reducing emissions from new light-duty vehicles. Over the course of three administrations, the federal government has careened from the stringent, technology-forcing standards California helped shape;<sup>8</sup> to a finding that those very standards were *not* appropriate, were based on "outdated information,"

---

<sup>6</sup> See, e.g., Letter from Mary D. Nichols, Chairman, Cal. Air Resources Board, to Lisa Jackson, Adm'r, EPA, and Ray LaHood, Sec'y, U.S. Dep't. of Transp. (May 18, 2009) <https://www.epa.gov/sites/default/files/2016-10/documents/air-resources-board.pdf>.

<sup>7</sup> 2017 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions and Corporate Average Fuel Economy Standards, 77 Fed. Reg. 62,624 (Oct. 15, 2012).

<sup>8</sup> *Id.*

and “too stringent;”<sup>9</sup> to a further weakening of EPA’s and NHTSA’s standards;<sup>10</sup> and now back to a more technology-forcing posture.<sup>11</sup>

In the face of this federal instability, California and the Section 177 States have remained committed to lower-emitting transportation technologies. After much debate during prior administrations, on January 9, 2013, EPA finally granted California’s request for a State Waiver to enforce its Advanced Clean Car program regulations for model years 2015 through 2025 (the “ACC Waiver”).<sup>12</sup> That program combines vehicle GHG emissions standards for manufacturers selling new motor vehicles in California, with a zero-emission vehicle standard that requires a certain number or percentage of vehicles sold or delivered in

---

<sup>9</sup> Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022–2025 Light-Duty Vehicles, 83 Fed. Reg. 16,077 (Apr. 13, 2018) (withdrawing previous final determination).

<sup>10</sup> 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); The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 85 Fed. Reg. 24,174 (Apr. 30, 2020).

<sup>11</sup> Revised 2023 and Later Model Year Light-Duty Vehicle Greenhouse Gas Emissions Standards, 86 Fed. Reg. 74,434 (Dec. 30, 2021).

<sup>12</sup> California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California’s Advanced Clean Car Program and a Within the Scope Confirmation for California’s Zero Emission Vehicle Amendments for 2017 and Earlier Model Years, 78 Fed. Reg. 2,112 (January 9, 2013).



California to emit zero exhaust emissions.<sup>13</sup> “These two requirements are designed to control smog- and soot-causing pollutants and GHG emissions in a single coordinated package of requirements for passenger cars, light-duty trucks, and medium-duty passenger vehicles . . . .”<sup>14</sup> Between 2013 and 2019, 12 other States adopted one or both of California’s standards as their own.<sup>15</sup>

Then, in the last administration, EPA and NHTSA proposed to withdraw the ACC Waiver—nearly six years after it was granted—as part of a comprehensive proposal that would also deem all state GHG emission and zero-emission vehicle standards to be preempted, and weaken EPA’s and NHTSA’s respective GHG and fuel economy standards.<sup>16</sup> In response to that proposal, California began forging agreements with some of the world’s largest automakers—which have moved to intervene in support of EPA in these cases<sup>17</sup>—to continue

---

<sup>13</sup> *Id.*

<sup>14</sup> State Waiver Reconsideration, 87 Fed. Reg. 14,332 (Mar. 14, 2022).

<sup>15</sup> *Id.*

<sup>16</sup> The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021–2026 Passenger Cars and Light Trucks, 83 Fed. Reg. 42,986 (August 24, 2018).

<sup>17</sup> See Motion of Ford Motor Company, Volkswagen Group of America, Inc., BMW of North America, LLC, American Honda Motor Co., Inc.,

implementing technology-forcing GHG emissions improvements through model year 2026, regardless of the federal government's actions.<sup>18</sup> EPA and NHTSA subsequently finalized their respective withdrawal of the ACC Waiver and regulatory declaration of preemption in the "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program," otherwise known as the "SAFE 1" Rule.<sup>19</sup> Movant-Intervenors challenged that decision in both this court and the Federal District Court in D.C.<sup>20</sup>

Following the change of administrations in early 2021, EPA has again changed course on the ACC Waiver. On his first day in office, President Joseph R. Biden, Jr. issued an executive order, directing, among other things, EPA and NHTSA to reconsider the SAFE 1 Rule and their respective decisions to withdraw the ACC Waiver and declare

---

and Volvo Car USA LLC to Intervene in Support of Respondents, Doc. # 1949658.

<sup>18</sup> See Coral Davenport and Hiroko Tabuchi, *4 Car Companies Defy Trump E.P.A.*, N.Y. TIMES, July 26, 2019, at A1; see also *Framework Agreements on Clean Cars*, CALIFORNIA AIR RESOURCES BOARD, <https://ww2.arb.ca.gov/resources/documents/framework-agreements-clean-cars> (last visited June 13, 2022).

<sup>19</sup> The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule Part One: One National Program, 84 Fed. Reg. 51,310 (Sept. 27, 2019).

<sup>20</sup> See *infra* at notes 34 and 36.

all state GHG and zero-emission vehicle standards to be preempted.<sup>21</sup>

Now, in the rulemaking at issue here, EPA has acted to respect the structure of the Act and restore California's and the Section 177 States' authority to implement their own GHG emissions and zero-emission vehicle standards. In this lawsuit, Petitioners are poised to challenge not only the appropriateness of EPA's State Waiver Reconsideration, but the very statutory and constitutional authority of EPA to grant California a State Waiver. Contrary to the clear language of the Act and decades of regulatory practice, the Ohio coalition claims "any waiver granted to California" is "repugnant to the constitution" and "void."<sup>22</sup> Similarly, other Petitioners variously claim that "[no] statutory authority EPA points to provides clear authorization for its radical delegation of regulatory power to California";<sup>23</sup> that "EPA's decision

---

<sup>21</sup> See Exec. Order. No. 13,990 §§ 2(a)(ii), 2(d), 86 Fed. Reg. 7,037 (Jan. 25, 2021).

<sup>22</sup> State of Ohio et al., Comment Letter on Notice to Reconsider Withdrawal of the Waiver of Preemption for California's Zero Emission Vehicle (ZEV) Mandate and GHG Emission Standards, EPA-HQ-OAR-2021-0257-0124 (July 6, 2021), at 1 (emphasis added), <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0257-0124> (last visited June 13, 2022).

<sup>23</sup> Petition for Review, *Clean Fuels Development Coalition, et al., v. EPA, et al.*, No. 22-1085 (D.C. Cir. petition docketed May 13, 2022), Doc. # 1947066.

runs afoul of the constitutional doctrine of equal sovereignty”;<sup>24</sup> and that “the final decision exceeds EPA’s authority by favoring one technology—through allowing states to favor one technology—electric vehicles, over others . . . .”<sup>25</sup> Such assertions go to the heart of the Act’s regulatory structure, threatening the well-founded reliance interests of Movant-Intervenors.

Over the past half century, California and the Section 177 States have been authorized by Congress to require more emissions reductions from the vehicle fleet than required by federal standards. Those reductions have supported efforts in such states to achieve the national ambient air quality standards and, more recently, address the threat posed by climate change. If upheld, Petitioners’ assertions would bar California and the Section 177 States from enforcing the technology-forcing standards that have spurred Movant-Intervenors’ investments in the technology and infrastructure needed to deploy and fuel an increasingly electrified vehicle fleet. Accordingly, rooted in their long-

---

<sup>24</sup> *Id.*

<sup>25</sup> Petition for Review, *The State Soybean Association of the State of Iowa, et al., v. EPA, et al.*, No. 22-1083 (D.C. Cir. petition docketed May 13, 2022), Doc. # 1947289.

term investment expectations, Movant-Intervenors have a unique perspective from which to contest Petitioners' arguments and defend EPA's State Waiver Reconsideration.

### 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,<sup>26</sup> 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 building out the clean electricity-generation, charging infrastructure and grid improvements that will be needed to fuel an increasingly electrified vehicle fleet. Since 2018, members of this coalition have advocated against the prior administration's efforts to limit California's and the Section 177 States' ability to set independent GHG standards for motor vehicles at least as protective as EPA's. By moving to intervene in this case, they seek to defend the integral role

---

<sup>26</sup> See *AEE Members & Advanced Energy Careers*, ADVANCED ENERGY ECONOMY, (identifying AEE members), <https://www.aee.net/members> (last accessed June 2022).

that complementary state standards play in promoting regulatory certainty.

To achieve the widespread adoption of electric vehicles and concomitant GHG reductions, it is not enough that vehicle manufacturers produce electric vehicles. Rather, consumers must have confidence that: they will readily be able to obtain the fuel they need to power such vehicles; the cost of that fuel will be competitive to liquid fuels; and the electricity grid will continue to provide a reliable source of power for their vehicles and homes. Movant-Intervenors and their members have made significant efforts and investments to support the infrastructure and technology needed to integrate electric vehicles to the grid and support the widespread adoption of such electric vehicles by consumers.

National Grid, for example, is investing over \$300 million in Massachusetts and over \$150 million in New York in charging infrastructure, incentives, and other programs.<sup>27</sup> This is in addition to

---

<sup>27</sup> See M.J. Bradley & Associates Energy Strategy Coalition, Comment Letter Regarding California State Motor Vehicle Pollution Control Standards; Advanced Clean Cars Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption (Jul. 6, 2021) (comment letter submitted on behalf of Calpine Corporation, Los Angeles Department of Water and Power, National Grid, NYPA, and Seattle

its significant company- and service-area wide initiatives to support electric vehicles. 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.<sup>28</sup> 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.<sup>29</sup> Seattle City Light has already invested more than \$12 million 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.<sup>30</sup> Additionally, through its Drive Clean Seattle Program, it is

---

City Light, among others) at 2, <https://www.regulations.gov/comment/EPA-HQ-OAR-2021-0257-0389> (last visited June 13, 2022).

<sup>28</sup> *Id.*

<sup>29</sup> *See EVolve NY: A Vision for an Electric Future*, NEW YORK POWER AUTHORITY, <https://evolveny.nypa.gov/en/fast-charging-hubs-electric-vehicles-new-york> (last accessed June 2022).

<sup>30</sup> *See* M.J. Bradley & Associates Energy Strategy Coalition, *supra* note 27, at 2.

pursuing significant investments in charging infrastructure and innovative rate structures to effectuate its Transportation Electrification Strategy. AEE is deeply 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. And, Calpine Corporation has been making significant investments in projects that would significantly reduce GHG emissions from the firm generating resources that will be needed to maintain reliability of the electricity grid in a highly electrified future.<sup>31</sup>

Movant-Intervenors' and their members' activities and investments reflect their commitment to transportation electrification and the view that widespread vehicle electrification and the infrastructure to support it will be needed to achieve deep

---

<sup>31</sup> See Calpine Corporation, Comment on EPA's White Paper: Available and Emerging Technologies for Reducing Greenhouse Gas Emissions from Combustion Turbine Electric Generating Units (June 6, 2022), <https://www.regulations.gov/comment/EPA-HQ-OAR-2022-0289-0016> (last visited June 13, 2022).



decarbonization. Those investments are supported by the authority of California and the Section 177 States to adopt and enforce more stringent GHG and zero-emission vehicle standards than promulgated at the federal level. *See* Declaration of Nancy Sutley ¶ 5. These state standards directly incentivize investments in widespread vehicle electrification by ensuring that automakers deploy electric vehicles in the numbers and on the schedule needed to realize the full benefits of the Movant-Intervenors' investments, which, due to long planning horizons within the power sector, often must be made years in advance.

Movant-Intervenors opposed efforts by the prior administration to revoke the authority of California and the Section 177 States to set their own GHG and zero-emission vehicle standards. They commented upon EPA's 2019 decision to withdraw portions of the ACC waiver related to GHG and zero-emission vehicle standards, explaining, among other things, how constant changes in federal emissions standards can "create company and investor challenges for those that have longer investment timeframes and who are already planning for compliance with, and

supporting the compliance of, the existing standards.”<sup>32</sup> In the same way, interfering with the ACC Waiver would “further disrupt state air pollution planning and industry investments.”<sup>33</sup> Movant-Intervenors ultimately challenged EPA’s decision to revoke the ACC Waiver as arbitrary and capricious and unlawful.<sup>34</sup> In briefing filed with this Court, they explained how EPA’s decision “contradict[ed] Congress’ intent, and arbitrarily devalue[d] Petitioners’ reasonable investments in electric vehicle technology and supporting infrastructure.”<sup>35</sup> In parallel litigation at the Federal District Court in D.C., Movant-Intervenors also challenged NHTSA’s decision to assert preemption of state and local vehicle GHG and zero-emission vehicle standards under the Energy

---

<sup>32</sup> See M.J. Bradley & Associates Energy Strategy Coalition, Comment 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) <https://www.regulations.gov/comment/EPA-HQ-OAR-2018-0283-4197>, (last visited June 13, 2022).

<sup>33</sup> *Id.*

<sup>34</sup> Final 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. 19-1249 (D.C. Cir., Oct. 27, 2020), Doc. # 1868422.

<sup>35</sup> *Id.* at 23.

Policy and Conservation Act of 1975.<sup>36</sup>

Movant-Intervenors commented in favor of the current administration's reconsideration of the ACC Waiver withdrawal and conclusion that, due to both technological and competitive factors, electric vehicles will continue to grow and play a critical part in the United States' transportations sector.<sup>37</sup> They noted the need for market and regulatory certainty to continue making investments to facilitate the electrification of the transportation sector, and discussed how their "efforts and investments were premised in part upon California's waiver to enforce its own GHG tailpipe and [zero-emission vehicle] standards and other states' ability to adopt those standards under section 177 of the Clean Air Act."<sup>38</sup> Movant-Intervenors further noted that "[g]iven the lead time necessary for investment in research and development and eventual deployment of new technologies, we need regulatory certainty that allows us to anticipate future challenges and opportunities and

---

<sup>36</sup> Motion of Calpine Corporation, Consolidated Edison, Inc., National Grid USA, New York Power Authority, And Power Companies Climate Coalition To Intervene As Plaintiffs, *California et al., v. Chao, et al.*, 19-CV-02826 (D.D.C., filed December 4, 2019), ECF No. 47.

<sup>37</sup> See M.J. Bradley & Associates Energy Strategy Coalition, *supra* note 27, at 2.

<sup>38</sup> *Id.* at 3.

invest in solutions to meet them[.]” and the grant of the State Waiver supports this regulatory certainty.<sup>39</sup> LADWP appeared at a public hearing held by EPA on the proposed reconsideration of the State Waiver and specifically noted that the prior administration’s withdrawal of the waiver disregarded the strong reliance interests that it and other electric utilities had in preservation of that waiver.<sup>40</sup>

Movant-Intervenors’ motion to intervene in support of the EPA in this proceeding is aimed at protecting their and their members’ investments and interests. Despite the fact that the EPA’s authority to grant the State Waiver is supported by the text of the 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 State Waiver Reconsideration and counter any assertion that any waiver granted

---

<sup>39</sup> *Id.* at 2.

<sup>40</sup> See Transcript of Virtual Public Hearing held on Wednesday, June 2, 2021 at 9 am; Public Hearing, California State Motor Vehicle Pollution Control Standards; Advanced Clean Car Program; Reconsideration of a Previous Withdrawal of a Waiver of Preemption, at 275 (testimony of Mark Sedlacek), <https://www.regulations.gov/document/EPA-HQ-OAR-2021-0257-0097> (last visited June 13, 2022).

pursuant to Section 209 is “repugnant to the constitution” and “void.”<sup>41</sup>

### GROUND 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 before the June 13, 2022 deadline the Court set for procedural motions<sup>42</sup> and within 30 days after the Petition was filed. *See* Fed. R. App. P. 26(a)(1)(C) (if the last day for filing is a Saturday, Sunday or legal holiday, then the period continues to run until the end of the next day that is not a Saturday, Sunday or legal holiday).

Movant-Intervenors have a substantial interest in ensuring that EPA retains authority to grant the State Waiver and thereby continues to promote a regulatory environment that incentivizes the development and deployment of low- and zero-emissions transportation technology. Premised upon a regulatory foundation that includes the authority of California and the Section 177 States to set independent GHG and zero-

---

<sup>41</sup> State of Ohio et al., *supra* note 22, at 1.

<sup>42</sup> Order (May 13, 2022), Doc. # 1946639.

emission vehicle standards, Movant-Intervenors and their members have made and are making significant investments in clean electricity generation, charging infrastructure, and related technology needed to realize the significant economic and environmental benefits that integrating vehicles into the electricity grid can provide to vehicle owners, utility customers, and the environment. Decl. of Nancy Sutley ¶¶ 4, 5. By seeking review of the State Waiver Reconsideration, the Petitioners place Movant-Intervenors' and their members' expected return on their investments directly within the crosshairs of this proceeding. *See id.* ¶ 6. 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 have standing to protect their interests and ensure that they and their members realize the benefits of their investments in the technology, infrastructure, and clean electricity generation resources needed to fuel the light-duty vehicle fleet. *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) (citation omitted).

Movant-Intervenors’ interests are unique and distinct from the interests of the EPA, whose interests are in the proper administration of the Act and may be limited to defending the substance of its State Waiver Reconsideration. *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 EPA’s changing positions over the course of three administrations regarding the propriety of the State Waiver generally, and the ACC Waiver specifically, the agency has demonstrated that it does not share Movant-Intervenors’ and their members’ interest in a consistent regulatory environment within California and the Section 177 States.

As companies investing significant sums in the technology and infrastructure needed to electrify the light-duty vehicle fleet, Movant-Intervenors’ and their members’ interests are also distinct from the state and local governments and non-governmental environmental organizations who are proposing to intervene in this case, and will bring to bear a different perspective and seek to protect different interests.

Movant-Intervenors’ interests are also distinct from the proposed Automobile Manufacturer intervenors, who are direct objects of EPA’s and California’s regulations. Regardless how many electric vehicles the Automobile Manufacturer intervenors can produce, consumer adoption of those vehicles and their successful integration into the electricity grid depends upon deploying the technology and infrastructure needed to provide those vehicles with an accessible, affordable, clean, and reliable



supply of fuel. Movant-Intervenors are focused on supporting the deployment of the technology, infrastructure, and low-carbon generation resources needed to realize the GHG reduction and climate benefits promised by electric vehicles. As such, Movant-Intervenors can articulate the impacts of EPA's State Waiver Reconsideration on companies making investments in those technologies, infrastructure, and resources in California and the Section 177 States.

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: June 13, 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 percent or greater ownership interest in AEE.

Dated: June 13, 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 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 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. It is a department of the City of Seattle.

Dated: June 13, 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 OHIO, *et al.*,

*Petitioners,*

v.

ENVIRONMENTAL  
PROTECTION AGENCY, *et al.*,

*Respondents.*

No. 22-1081  
(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 Ohio, Alabama, Arkansas, Georgia, Indiana, Kansas, Kentucky, Louisiana, Mississippi, Missouri, Montana, Nebraska, Oklahoma, South Carolina, Texas, Utah, and West Virginia (No. 22-1081); American Fuel and Petrochemical Manufacturers, Domestic Energy Producers Alliance, Energy Marketers of America, and National Association of Convenience Stores (No. 22-1084); and Clean Fuels Development Coalition, ICM, Inc., Illinois Corn Growers Association, Kansas Corn Growers Association, Michigan Corn Growers

Association, Missouri Corn Growers Association, and Valero Renewable Fuels Company, LLC (No. 22-1085).

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

Movant-Intervenors for Petitioners: None at this time.

Proposed Movant-Intervenors for Respondents: States of California, Colorado, Connecticut, Delaware, Hawaii, Illinois, Maine, Maryland, Minnesota, Nevada, New Jersey, New Mexico, New York, North Carolina, Oregon, Rhode Island, Vermont, and Washington; the Commonwealths of Massachusetts and Pennsylvania; the District of Columbia; and the cities of Los Angeles and New York (No. 22-1081 and consolidated cases); Center for Biological Diversity, Clean Air Council, Conservation Law Foundation, Environmental Defense Fund, Environmental Law & Policy Center, National Parks Conservation Association, Natural Resources Defense Council, Public Citizen, Sierra Club, and Union of Concerned Scientists (No. 22-1081 and consolidated cases); and Ford Motor Company, Volkswagen Group of America, Inc., BMW of North America, LLC, American, Honda Motor Co., Inc., and Volvo Car USA LLC (No. 22-1081 and consolidated cases).

*Amici Curiae*: None at this time.

**CERTIFICATE OF COMPLIANCE**

The foregoing motion contains 4,613 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: June 13, 2022

/s/ Kevin Poloncarz  
Kevin Poloncarz

**CERTIFICATE OF SERVICE**

I hereby certify that on this Monday, June 13, 2022, I electronically filed the foregoing Motion to Intervene and attachments with the Clerk of the Court using the electronic case filing (“ECF”) system.

Dated: June 13, 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 OHIO, *et al.*,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION  
AGENCY, *et al.*,

*Respondents.*

Case Nos. 22-1081 and  
consolidated

**DECLARATION OF NANCY SUTLEY**

I, Nancy Sutley, do hereby declare that the following statements made by me under oath are true and accurate to the best of my knowledge, information and belief:

1. I am Senior Assistant General Manager of External and Regulatory Affairs and Chief Sustainability Officer at the Los Angeles Department of Water and Power (“LADWP”). Prior to my current position at LADWP, I served as Chair of the White House Council on Environmental Quality from 2009 to 2014. I also previously served as Los Angeles Deputy Mayor for Energy and Environment, a member of the Board of Metropolitan Water District of Southern California and of the California State Water Resources Control Board, energy advisor to

Governor Gray Davis, and Deputy Secretary for Policy and Intergovernmental Relations for the California Environmental Protection Agency.

2. Founded in 1902 and delivering electricity starting in 1916, LADWP is the largest municipal electric utility in the nation, serving a population of over 4 million people. As a vertically integrated utility, LADWP owns and operates a diverse portfolio of generation, transmission, and distribution assets across several states, and a 465 square mile service territory that includes the City of Los Angeles and most of the Owens Valley.

3. The City of Los Angeles and the State of California have adopted ambitious policy mechanisms to address climate change and reduce emissions of greenhouse gases. LADWP considers itself a key partner to the City and the State in those efforts, and the work we do to enhance the sustainability of our business is at the center of our mission.

4. LADWP is committed to accelerating decarbonization of the transportation sector. LADWP has made major investments in electric vehicle-charging infrastructure and grid innovation designed to support zero-emission transportation. LADWP offers rebates for the purchase of certain used electric vehicles and installation of electric vehicle chargers through our Charge Up LA! Program. LADWP provides electric vehicle discount charging rates through its time-of-use meter service option. LADWP is also working to install thousands of electric vehicle chargers

and associated charging infrastructure throughout the City of Los Angeles to support the growth of electric transportation. LADWP is making these investments and taking these actions to realize the significant economic and environmental benefits that integration of vehicles to the electricity grid can provide to vehicle owners, customers, and LADWP's grid.

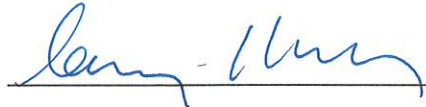
5. These investments and efforts were premised on the longstanding authority California has had to adopt its own standards for emissions from cars and trucks and the waiver of preemption that the Environmental Protection Agency ("EPA") had previously granted to California to enforce its Advanced Clean Car program. That waiver meant that, regardless whether or not the federal government moved forward with standards that would drive electrification of the light-duty vehicle fleet or abandoned such standards as it did in the last administration, California would have the authority to implement such standards on its own, along with the other states that had adopted identical standards. The waiver therefore supported our investments in electrification of the light-duty vehicle fleet.

6. LADWP opposed the prior administration's withdrawal of the waiver in public comments and litigation. It also supported EPA's proposal to reconsider that withdrawal, including in public comments and at a public hearing EPA held on June 2, 2021, because, by restoring the waiver, EPA has removed uncertainty that LADWP will realize its



expectation of benefits to its grid, customers and the environment from our investments in electrification of the vehicle fleet.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on June <sup>13</sup>  , 2022.



Nancy Sutley