ORAL ARGUMENT NOT YET SCHEDULED

No. 15-1481 and Consolidated Cases

(15-1381, 15-1396, 15-1397, 15-1399, 15-1434, 15-1438, 15-1448, 15-1456, 15-1458, 15-1463, 15-1468, 15-1469, 15-1480, 15-1482, 15-1484)

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

AMERICAN COALITION FOR CLEAN COAL ELECTRICITY,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY,

Respondent.

UNOPPOSED MOTION OF CALPINE CORPORATION, THE CITY OF AUSTIN D/B/A AUSTIN ENERGY, THE CITY OF LOS ANGELES, BY AND THROUGH ITS DEPARTMENT OF WATER AND POWER, THE CITY OF SEATTLE, BY AND THROUGH ITS CITY LIGHT DEPARTMENT, NATIONAL GRID GENERATION, LLC, NEW YORK POWER AUTHORITY, PACIFIC GAS AND ELECTRIC COMPANY, AND SACRAMENTO MUNICIPAL UTILITY DISTRICT 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, Calpine Corporation ("Calpine"), the City of Austin d/b/a Austin Energy ("Austin Energy"), the City of Los Angeles, by and through its Department of Water and Power ("LADWP"), The City of Seattle, by and through its City Light

Department ("Seattle City Light"), National Grid Generation, LLC ("National Grid Generation"), New York Power Authority ("NYPA"), Pacific Gas and Electric Company ("PG&E"), and Sacramento Municipal Utility District ("SMUD") (collectively, referred to herein as the "Power Companies") respectfully request leave to intervene in support of the United States Environmental Protection Agency ("EPA" or "Respondent") in the above-captioned and consolidated petitions for review of the final rule of Respondent entitled "Standards of Performance for Greenhouse Gas Emissions From New, Modified, and Reconstructed Sources", 80 Fed. Reg. 64,510 (October 23, 2015) (hereinafter "111(b) Standards" or "Standards" or "Rule"). Pursuant to Circuit Rule 15(b), this motion constitutes a motion to intervene in all existing and future cases before this Court involving the same agency action.

Counsel for the Power Companies consulted with counsel for Petitioners, Respondents, and Intervenors in this case and the consolidated cases on January 20, 2016. Counsel for Respondents and Intervenors for Respondents have stated that they consent to the motion, with the exception of Golden Spread Electric Cooperative, Inc., which takes no position on the motion. Counsel for Petitioners in cases 15-1399, 15-1458, 15-1480, 15-1482, 15-1484 and Intervenors for Petitioners have stated that they take no position on the motion. Counsel for Petitioners in cases 15-1468 and 15-1481 have indicated that they take no position on the motion at this

time. Not all counsel for the remaining Petitioners had responded to the Power Companies' request for position at the time of this filing.

I. INTRODUCTION AND INTEREST OF POWER COMPANIES

The Power Companies are among the largest and most forward-thinking electric utilities and generators in the United States, providing millions of Americans with clean, affordable, reliable electricity. Together, the Power Companies possess an extensive collective experience in investing in and developing new, clean generation and reducing the carbon intensity of the electricity they provide to their customers. Informed by these experiences, the Power Companies support the EPA in its promulgation of the 111(b) Standards as a necessary means of limiting carbon emissions from affected generating units. By establishing the first-ever federal carbon emission standards for new, modified and reconstructed fossil fuel-fired generating sources, the 111(b) Standards assure that decisions to modernize the nation's fossil fleet meet federal minimum standards, providing both a level playing-field across the country and a regulatory backstop in the event that prevailing market conditions favoring renewable and gas-fired generation should change.

Calpine is the largest generator of electricity from both natural gas and geothermal resources in the United States ("U.S."), owning 83 natural gas-fired and renewable geothermal power plants in operation or under construction that are capable of delivering nearly 27,000 megawatts ("MW") of electricity to customers in

the U.S. Of the ten largest electricity generators in the U.S., Calpine ranks as having the lowest overall emissions intensity for nitrogen oxides ("NO_x") and sulfur dioxide ("SO_2") and the lowest emissions intensity for CO_2 among those same ten generators' fossil fuel fleets.[1] This is a direct reflection of the investments in clean generation technology Calpine routinely undertakes in developing and maintaining its fleet. Complementing these investments, Calpine has consistently supported the EPA in its efforts to reduce emissions in the power sector, including its intervention in support of the EPA in defense of the Mercury and Air Toxics Standards[2] and the Cross-State Air Pollution Rule.[3] Calpine has also been instrumental in assuring that new and modified fossil fuel-fired power plants—the subject of this rulemaking—install the cleanest generation technology available to limit CO_2 emissions, both through Calpine's development and acceptance of the first-ever "best available control technology" limits on greenhouse gas ("GHG") emissions in a federal Clean Air Act Permit, before such limits were required by the EPA,[4] and through its participation as

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[1] *See* Natural Resources Defense Council et al., Benchmarking Air Emissions of the 100 Largest Electric Power Producers in the United States, at 10 (2015), *available at*: http://www.nrdc.org/air/pollution/benchmarking/files/benchmarking-2015.pdf (emissions and generation data from 2013).

[2] *See White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014), *rev'd sub nom. Michigan v. EPA*, 135 S. Ct. 2699 (2015).

[3] *See EPA v. EME Homer City Generation, L.P.*, 134 S. Ct. 1584 (2014).

[4] *See* Congressional Research Service, "EPA's BACT Guidance for Greenhouse Gases from Stationary Sources", L. Parker and J. McCarthy, CRS Report for Congress R41505 at 16 (Nov. 22, 2010), *available at*: http://nationalaglawcenter.org/wp-content/uploads/assets/crs/R41505.pdf (describing issuance of "the nation's first

amicus curiae in support of the EPA's authority to require that Clean Air Act permits for the largest sources of emissions include such limits.[5]

Austin Energy is the nation's eighth largest municipally-owned electric utility providing electricity to more than 448,000 customers and a population of nearly one million. Founded by the City of Austin in 1895, Austin Energy's annual revenues exceed $1.29 billion, which entirely fund its operations and provide a return to the City of Austin. Overseeing a diverse mix of nearly 3,500 MW of total generation and purchased power capacity, Austin Energy operates several gas-fired generating units, including units at the 927-MW Decker Creek Power Station and the 570-MW Sand Hill Energy Center. Austin Energy's generation portfolio also includes coal and nuclear resources and more than 1,300 MW of renewable generation capacity, including utility-scale wind, solar, and biomass resources. In managing this diverse portfolio, Austin Energy has implemented an aggressive GHG-reduction plan, with aims of meeting 55 percent of all energy needs through renewable resources by 2025 and reducing CO_2 power plant emissions by 20 percent below 2005 levels by 2020, and even greater reductions and renewable goals in later years.

[prevention of significant deterioration] permit that includes GHGs in its [best available control technology] analysis" to a Calpine affiliate for construction of a natural gas-fired combined cycle power plant in Hayward, California).

[5] *See Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427, 2447 (2014) (citing brief for Calpine as *amicus curiae* in upholding EPA's authority to mandate that prevention of significant deterioration permits for so-called "anyway" sources require the best available control technology for GHGs).

LADWP is the largest municipal electric utility in the United States, providing electric service to a population of over 4 million people. As the owner and operator of a diverse portfolio of generation, transmission, and distribution assets across several states, LADWP directly owns the majority of its total generating capacity of over 7,600 MW. LADWP has long been committed to increasing its use of renewable energy, investing in energy efficiency, and reducing CO_2 emissions. Between 1990 and 2012, it reduced its total CO_2 emissions by 22 percent and its CO_2 emissions intensity by 29 percent.

Seattle City Light is the tenth largest municipally-owned electric utility in the United States and provides electricity to approximately 415,000 customers in the Seattle area. Ninety percent of Seattle's electricity is generated through hydroelectric operations, much of which are owned and operated by Seattle City Light. The remainder of Seattle City Light's portfolio consists of purchases from a diverse mix of sources, including nuclear, wind, coal and landfill gas generation. Seattle City Light is the first utility in the nation to achieve net-zero GHG emissions, first achieving this accomplishment in 2005 and repeating it each year since then. This commitment and achievement reflect Seattle City Light's experience with, and understanding of, the opportunities and challenges faced by the power sector in making investment decisions in a carbon-regulated environment.

National Grid Generation is an electric company based in the northeast United States. National Grid Generation owns and operates 50 natural gas- and oil-fired

electric generating units capable of delivering approximately 3,800 MW of electricity to consumers throughout Long Island, New York. National Grid Generation and its affiliates are leaders in energy efficiency and renewable energy and have long supported the EPA in its efforts to reduce pollutant emissions from the power sector, having previously intervened before this Court in support of the EPA in defense of the Mercury and Air Toxics Standards.[6]

NYPA is the largest state power organization in the United States, providing electricity to governmental customers, businesses and municipal and cooperative electric systems. Established by Governor Franklin D. Roosevelt through legislation signed in 1931, NYPA owns and operates 16 generating facilities, producing an electricity mix that is 71 percent clean, renewable hydropower. Among NYPA's fleet are its 500-MW combined cycle plant located in Astoria, Queens, and the Richard M. Flynn Power Plant, a 135-MW combined cycle plant that has been producing power on Long Island since 1994. As NYPA continues to reduce its carbon emissions, it supports the EPA in its efforts to reduce CO_2 emissions throughout the power sector.

PG&E provides electric and gas service to Northern and Central California, serving approximately 16 million people throughout a 70,000-square-mile service area. Incorporated in California in 1905, PG&E is among the largest combined natural gas and electric utilities in the United States. PG&E owns and operates more than 7,500

[6] *See White Stallion Energy Ctr., LLC v. EPA*, 748 F.3d 1222 (D.C. Cir. 2014), *rev'd sub nom. Michigan v. EPA*, 135 S. Ct. 2699 (2015).

MW of generating capacity across a diverse mix of hydropower, gas-fired, renewable and nuclear generating units. Among its fleet, PG&E owns and operates two highly efficient gas-fired combined cycle power plants, the 657-MW Colusa Generating Station and the 580-MW Gateway Generating Station. PG&E has long been committed to reducing GHG emissions across its generation portfolio and has a CO_2 emissions rate for delivered electricity that is roughly two thirds cleaner than the national utility average. Additionally, PG&E's overall generating fleet has the lowest carbon intensity among the 25 largest generators (excluding federal operators of hydropower projects).[7] Significantly, over 50 percent of PG&E's delivered electricity comes from renewable or CO_2-free resources.

SMUD is the nation's sixth-largest community-owned electric service provider, serving 624,770 customer accounts and a population of approximately 1.4 million. In furtherance of its GHG emissions reduction goals, SMUD has committed to reducing GHG emissions to 10 percent of 1990 levels by the year 2050. SMUD has built a diverse portfolio of resources toward achieving these reductions, while at the same time maintaining low-cost, reliable electric service for its customers. This includes ownership and operation of the 500-MW Cosumnes Power Plant, a state-of-the-art

[7] *See* Natural Resources Defense Council, et al., Benchmarking Air Emissions of the 100 Largest Electric Power Producers in the United States, *supra* note 1 at 10 (indicating that PG&E was the 24th largest generator based on 2013 generation data, with a carbon intensity for all generating sources lower than all others among the 25 largest generators, except for the U.S. Army Corps of Engineers).

natural gas-fired combined cycle facility that first came online in 2006. SMUD also generates significant capacity from carbon-free resources, including from its Upper American River Project, a 688-MW hydropower system of 11 reservoirs and eight powerhouses that meets approximately 20 percent of SMUD's demand in typical water years. Through energy efficiency programs and renewable energy investments, SMUD has already reduced GHG emissions 20 percent below 1990 levels, and shifted its portfolio to approximately 50 percent carbon-neutral resources.

As a coalition that includes many of the largest electric utilities and generators in the U.S., the Power Companies have a significant and direct interest in ensuring the 111(b) Standards are upheld. The Power Companies have extensive experience developing and procuring power from both renewable and fossil fuel-fired power plants and will benefit from the certainty that the Rule's implementation will provide for future investment decisions. The Power Companies' interest in the 111(b) Standards has been well demonstrated through their active involvement in the rulemaking process, including their submission of an extensive collection of comments on the proposed rule, which both expressed support and offered numerous technical revisions to strengthen its provisions.[8] Now that the Rule is final,

[8] *See*, *e.g.*, Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA (Apr. 23, 2014), EPA-HQ-OAR-2013-0495-8023; Comments of the Class of '85 Regulatory Response Group (May 9, 2014), EPA-HQ-OAR-2013-0495-10100 (Comments by coalition of electric generators on the proposed 111(b) Standards, including National Grid); Comments of Pacific Gas and Electric Company (Apr. 23, 2014), EPA-HQ-OAR-2013-0495-7990; Letter from Michael J. Bradley, Director, The

the Power Companies seek to preserve the certainty provided by the 111(b) Standards by joining with other Intervenors for Respondents seeking to uphold the Rule.

For these reasons and as described below, the Power Companies have significant interests in the outcome that will be harmed if the Rule were to be vacated, and those interests will not adequately be represented by the other parties to this case. The Court should grant this motion.

II. GROUNDS FOR INTERVENTION

Under Rule 15(d), 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). The Power Companies' motion is timely because it was filed within 30 days after the most recent petition for review in the consolidated cases was filed. *Id.*

As some of the nation's largest and most forward-thinking electric utilities and generators, the Power Companies have undertaken significant investments to provide clean and affordable electricity to their customers. As a matter of course, the Power Companies routinely develop and procure electricity from a variety of generating sources, including the same source types which will be subject to the 111(b) Standards if newly built, reconstructed or modified. The Power Companies support the EPA's

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Clean Energy Group to EPA (Apr. 17, 2014), EPA-HQ-OAR-2013-0495-7540 (comments on proposed 111(b) Standards by The Clean Energy Group, a diverse coalition including Austin Energy, Calpine, National Grid, New York Power Authority, and PG&E).

adoption of the Rule as an important means to assure that future investment decisions to modernize the nation's fleet of fossil fuel-fired generating units assure achievement of minimum federal standards.

Petitioners intend to challenge the 111(b) Standards as "arbitrary and capricious" because they "will result in negligible CO_2 emission reductions."[9] However, by definitively limiting carbon emissions from new fossil fuel-fired electric generating sources for the first time, the 111(b) Standards will provide a valuable nationwide regulatory backstop. The Standards will prevent backsliding in the carbon emissions intensity of new fossil sources in the event that prevailing market conditions shift to support construction of dirtier forms of fossil generation (e.g., should the present dynamics favoring natural gas and renewable generating technologies shift to favor conventional coal generation). As the Power Companies continue to reduce carbon emissions across their respective generation fleets and portfolios, the regulatory backstop and level playing-field provided by the 111(b) Standards will help assure that investment decisions are directed towards reducing CO_2 emissions. Accordingly, the Power Companies, if granted leave to intervene, would dispute Petitioners' contentions that the 111(b) Standards are not necessary and will not secure reductions in CO_2 emissions from the electricity sector.

[9] *See* Petitioners' Non-Binding Statement of Issues to Be Raised, Case No. 15-1381 (D.C. Cir. Dec. 7, 2015), Doc. #1587212, at 2, ¶ 6; National Mining Association's Non-Binding Statement of Issues, Case No. 15-1456 (D.C. Cir. Jan. 15, 2016), Doc. #1593949, at 2, ¶ 3.

Petitioners also intend to challenge the 111(b) Standards for new stationary combustion turbines, claiming that the EPA acted arbitrarily and capriciously in not requiring new combustion turbines to utilize the same carbon capture and storage ("CCS") technology that formed the basis for the EPA's determination of the "best system of emission reduction" for new steam electric generating units.[10] Petitioners also intend to challenge the 111(b) Standards because they allegedly require "no controls" for new gas-fired power plants, allowing them to be built "without imposing any carbon control costs" on them.[11] The Power Companies would, if granted leave to intervene, dispute the contention that the 111(b) Standards for gas plants amount to no controls on CO_2 emissions. Additionally, one or more of the Power Companies may, in the future, seek to build or procure electricity from natural gas-fired power

[10] *See*, *e.g.*, International Brotherhood of Boilermakers' Non-Binding Statement of Issues, Case No. 15-1434 (D.C. Cir. Jan. 11, 2016), Doc. # 1592810, at 3, ¶ 7 (stating as issue "[w]hether EPA's decision to set performance standards based on CCS technologies only for new coal-fired power plants, but not for new natural gas combined cycle units is arbitrary and capricious or otherwise contrary to law?"); Petitioner's Non-Binding Statement of Issues of Peabody Energy Corp., Case No. 15-1438 (D.C. Cir. Jan. 6, 2016), Doc. #1592107, at 3, ¶ 5 (stating as issue "[w]hether EPA's inclusion of CCS as part of the "best system of emission reduction" for coal-fueled EGUs but not for natural-gas-fueled [electric-generating units] was arbitrary and capricious or otherwise contrary to law, including constitutional principles of equal protection under the Fifth Amendment."); Petitioner United Mine Workers of America Non-Binding Statement of Issues, Case No. 15-1463 (D.C. Cir. Jan. 15, 2016), Doc. #1593959, at 4, ¶ 7 (stating as issue "[w]hether EPA's decision to set performance standards based on CCS technologies only for new coal-fired power plants, but not for new natural gas combined cycle units, is arbitrary and capricious or otherwise contrary to law?").

[11] *See* Murray Energy Corporation Statement of Issues, Case No. 15-1396 (D.C. Cir. Dec. 12, 2015), Doc. #1586414, at 3, ¶¶ 6-7.

plants subject to the 111(b) Standards to meet additional demand for electricity, replace dirtier, less-efficient sources or provide flexible fossil resources to support the integration of intermittent renewable generation resources. To provide certainty for their investment decisions and assure that new gas-fired capacity across the country must meet the same stringent CO_2 standards,[12] the Power Companies seek to intervene in support of Respondent and uphold the Rule.

Petitioners also seek to challenge the 111(b) Standards for modified and reconstructed units,[13] which do not require use of carbon capture and storage or other advanced technologies (such as integrated gasification combined-cycle technology). Rather, the Rule requires that certain large modifications, for example, achieve a unit-specific CO_2 standard based on the unit's "best annual performance" since 2002.[14]

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[12] The Power Companies would note that, in light of the Supreme Court's decision in *Util. Air Regulatory Grp. v. EPA*, 134 S. Ct. 2427 (2014), many new fossil fuel-fired electric generating units could avoid triggering the requirements of the Clean Air Act's prevention of significant deterioration program and, as a consequence, would not be required to utilize the "best available control technology" to limit their emissions of GHGs if emissions of other regulated pollutants are less than 100 tons per year.

[13] *See*, *e.g.*, Murray Energy Corporation Statement of Issues, Case No. 15-1396 (D.C. Cir. Dec. 12, 2015), Doc. #1586414, at 3, ¶ 8 (stating issue that "[t]he rule imposes improper standards on modified and reconstructed coal power plants."); Petitioner's Non-Binding Statement of Issues of Peabody Energy Corp., Case No. 15-1438 (D.C. Cir. Jan. 6, 2016), Doc. #1592107, at 3, ¶ 8 (stating issue as "[w]hether the Rule is arbitrary and capricious or otherwise contrary to law because it imposes improper standards on modified and reconstructed coal-fueled EGUs.").

[14] *See* Rule, 80 Fed. Reg. at 64,547, Table 6; 80 Fed. Reg. at 64,658, Table 1 of Subpart TTTT of Part 60 (setting CO_2 emission standard for a modified steam generating unit or integrated gasification combined-cycle unit as "[a] unit-specific emission limit determined by the unit's best historical annual CO2 emission rate (from 2002 to the

Because units subject to the 111(b) Standards for reconstructed or modified units may not be subject to the correlative requirements for existing units under the "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units", 80 Fed. Reg. 64,662 (October 23, 2015) (hereinafter, "Clean Power Plan"),[15] the Power Companies believe it is particularly important that the 111(b) Standards establish a nationally uniform baseline for CO_2 emissions from such reconstructed or modified units.

Finally, in their initial submissions made to the Court, many of the Petitioners have already identified their basis for challenging the 111(b) Standards as their interest in blocking the EPA's Clean Power Plan.[16] The Power Companies would, if granted

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date of the modification);" but no lower than 1,800 or 2,000 pounds of CO_2 per gross megawatt-hour generated ("lb CO_2/MWh-gross"), depending upon the unit's size).

[15] *See* 80 Fed. Reg. at 64,746 (indicating that units subject to the 111(b) Standards due to modification or reconstruction are not required to be included as affected units in a state's plan submitted under the Clean Power Plan); *see also* "Federal Plan Requirements for Greenhouse Gas Emissions From Electric Utility Generating Units Constructed on or Before January 8, 2014; Model Trading Rules; Amendments to Framework Regulations", 80 Fed. Reg. 64,966, 65,038-39 (Oct. 23, 2015) (proposing that when an existing source modifies or reconstructs in such a way that it triggers the 111(b) Standards it "is no longer subject to the CAA section 111(d) program").

[16] *See* Addendum to Agency Docketing Statement for Petitioners in Case No. 15-1399, Doc. #1587209 (D.C. Cir. Dec. 7, 2015), "Answer to 6e" (claiming that standing of Petitioners The States of West Virginia, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Ohio, Oklahoma, South Carolina, South Dakota, Texas, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, Attorney General Bill Schuette for the People of Michigan, the Arizona Corporation Commission, the Louisiana Department of Environmental Quality, and the North Carolina Department of Environmental Quality is based in part upon their claim that 111(b) Standards are "a legal prerequisite for EPA's separate rule under

leave to intervene, dispute Petitioners' contention that the claims they raise in their petitions provide any basis for forestalling the important reductions in CO_2 emissions to be achieved by implementation of the Clean Power Plan. All of the Power Companies have been granted leave to participate as Intervenors in support of Respondents in related litigation in this Court challenging the Clean Power Plan.[17] On the same basis that supports their intervention in the related litigation as owners of affected units subject to the Clean Power Plan and companies whose investments in low- and zero-emitting generation technology have reduced emissions within their respective generation portfolios,[18] the Power Companies now seek to intervene in support of Respondent in this litigation as well.

Section 111(d) for existing power plants", and that the Clean Power Plan "could not legally exist without the Section 111(b) rule at issue in this case.").

[17] *See* Order, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Jan. 11, 2016), Doc. #1592885.

[18] *See* Unopposed Motion of Calpine Corporation, the City of Austin d/b/a Austin Energy, the City of Seattle, by and through its City Light Department, National Grid Generation, LLC, and Pacific Gas and Electric Company for Leave to Intervene in Support of Respondents, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Nov. 5, 2015), Doc. #1582209; Unopposed Motion of New York Power Authority, Sacramento Municipal Utility District, and Southern California Edison Company for Leave to Intervene in Support of Respondents, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Dec. 7, 2015), Doc. #1587303; Unopposed Motion of the City of Los Angeles, by and through its Department of Water and Power, for Leave to Intervene in Support of Respondents, *West Virginia v. EPA*, No. 15-1363 (D.C. Cir. Dec. 18, 2015), Doc. #1589622. Calpine was also granted leave to participate as *amicus curiae* in support of the EPA in the premature litigation seeking to prevent the EPA from finalizing the Clean Power Plan. *See* Brief for Calpine as Amicus Curiae Supporting Respondents, *In re Murray Energy Corp.*, 788 F.3d 330 (D.C. Cir. 2015).

For all of these reasons, the Power Companies have an interest in upholding the Rule and disposition of these petitions may impair or impede their ability to protect that interest.[19]

The Power Companies will also provide a distinct perspective in this litigation not adequately represented by existing parties.[20] As a group of the nation's largest utilities and generators whose future investment and procurement decisions will be directly shaped by implementation of the 111(b) Standards, the Power Companies' interests are distinct from those of Respondent, whose interest is in the proper administration and implementation of the Clean Air Act.[21] Further, the Power Companies' interests and perspective are distinct from those of other state and non-governmental organization Intervenors for Respondents, which will not present the Power Companies' collective experience in investing in clean generation technology and complying with similar regulatory mandates. The Power Companies are thus

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[19] *See*, *e.g.*, *Huron Envtl. Activist League v. U.S. Envtl. Protection Agency*, 917 F. Supp. 34, 43 (D. D.C. 1996) (intervention of industry groups granted where relief could establish rule of law unfavorable to intervenors).

[20] The foregoing discussion of issues raised by Petitioners in their non-binding statements of issues and initial submissions is not intended as a comprehensive list of arguments to which the Power Companies may respond in this litigation, but is intended to describe some of the Power Companies' particular interests that may not be adequately represented by the existing parties.

[21] *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"); *see also Natural Res. Def. Council v. Costle*, 561 F.2d 904, 912 (D.C. Cir. 1977) (finding the EPA did not adequately represent interests of proposed industry intervenors where appellants' interest was more narrow and focused than the EPA's).

uniquely positioned to provide the Court with a candid perspective on the merits and necessity of the Rule and the value it provides in securing CO_2 emission reductions from the electricity sector.

Given the early stage of this litigation, participation by the Power Companies will cause neither delay nor undue prejudice to the parties. The Power Companies will coordinate with the EPA and all other Intervenors for Respondents to avoid duplicative briefing, none of which have objected to this proposed intervention. The Power Companies will follow any schedule issued by this Court.

III. CONCLUSION

For the foregoing reasons, the Power Companies respectfully request that the Court enter an order granting leave to intervene in support of Respondent.

Dated: January 21, 2016

Respectfully submitted,

/s/ Kevin Poloncarz

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RULE 26.1 DISCLOSURE STATEMENTS

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rules 26.1 and 27, Proposed Intervenors-Respondent Calpine Corporation ("Calpine"), National Grid Generation, LLC ("National Grid Generation") and Pacific Gas and Electric Company ("PG&E") provide the following disclosure statements.

Calpine states that it is a major U.S. power company which owns 83 primarily low-carbon, natural gas-fired and renewable geothermal power plants in operation or under construction that are capable of delivering nearly 27,000 megawatts of

electricity to customers and communities in 18 U.S. states and Canada. Calpine's fleet of combined-cycle and combined heat and power plants is the largest in the nation. Calpine is a publicly-traded corporation, organized and existing under the laws of the State of Delaware. Its stock trades on the New York Stock Exchange under the symbol CPN. Calpine has no parent company, and no publicly-held company has a 10 percent or greater ownership interest in Calpine.

National Grid Generation states that it is a limited liability company organized under the laws of the State of New York that owns and operates 50 natural gas- and oil-fired electric generating units capable of delivering approximately 3,800 megawatts of electricity. All of the outstanding membership interests in National Grid Generation, LLC are owned by KeySpan Corporation. All of the outstanding shares of common stock of KeySpan Corporation are owned by National Grid USA, a public utility holding company with regulated subsidiaries engaged in the generation of electricity and the transmission, distribution and sale of natural gas and electricity. 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.

PG&E states that it is a corporation organized under the laws of the State of California, with its principal executive offices in San Francisco, California. PG&E is an operating public utility engaged principally in the business of providing electricity and natural gas distribution and transmission services throughout most of Northern and Central California. PG&E and its subsidiaries are subsidiaries of PG&E Corporation, an energy-based holding company organized under the laws of the State of California, with its principal executive offices in San Francisco, California. PG&E Corporation, PG&E's parent corporation, is the only publicly held corporation owning ten percent or more of PG&E's stock.

/s/ Kevin Poloncarz
Kevin Poloncarz

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CERTIFICATE AS TO PARTIES AND AMICI CURIAE

Pursuant to Circuit Rules 15, 27(a)(4) and 28(a)(1)(A), Proposed Intervenors-Respondent submit the following Certificate as to Parties and *Amici Curiae*. The Petitioners in the above-captioned cases are:

15-1381 – State of North Dakota

15-1396 – Murray Energy Corporation

15-1397 – Energy & Environment Legal Institute

15-1399 – The States of West Virginia, Alabama, Arkansas, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, Ohio, Oklahoma, South

Carolina, South Dakota, Texas, Utah, Wisconsin, Wyoming, and the Commonwealth of Kentucky, Attorney General Bill Schuette for the People of Michigan, the Arizona Corporation Commission, the Louisiana Department of Environmental Quality, and the North Carolina Department of Environmental Quality

15-1434 – International Brotherhood of Boilermakers, Iron Ship Builders, Blacksmiths, Forgers and Helpers, AFL-CIO

15-1438 – Peabody Energy Corporation

15-1448 – Utility Air Regulatory Group and American Public Power Association

15-1456 – National Mining Association

15-1458 – Indiana Utility Group

15-1463 – United Mine Workers of America, AFL-CIO

15-1468 – Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company

15-1469 – Chamber of Commerce of the United States of America, National Association of Manufacturers, American Fuel & Petrochemical Manufacturers, National Federation of Independent Business, American Chemistry Council, American Coke and Coal Chemicals Institute, American Foundry Society, American Forest & Paper Association, American Iron and Steel Institute, American Wood Council, Brick Industry Association, Electricity Consumers Resource Council, Lignite Energy Council, National Lime Association, National Oilseed Processors Association, and Portland Cement Association

15-1480 – Biogenic C02 Coalition

15-1481 – American Coalition for Clean Coal Electricity

15-1482 – Luminant Generation Company LLC, Oak Grove Management Company LLC, Big Brown Power Company LLC, Sandow Power Company LLC, Big Brown Lignite Company LLC, Luminant Mining Company LLC, and Luminant Big Brown Mining Company LLC

15-1484 – National Rural Electric Cooperative Association, Basin Electric Power Cooperative, East Kentucky Power Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Minnkota Power Cooperative, Inc., Sunflower Electric Power Corporation, and Tri-State Generation & Transmission Association Inc.

Respondents

Respondents are Regina A. McCarthy, Administrator, United States Environmental Protection Agency and the United States Environmental Protection Agency.

Intervenors and *Amici Curiae*

Intervenors are American Lung Association, Center for Biological Diversity, Clean Air Council, Clean Wisconsin, Conservation Law Foundation, Environmental Defense Fund, Natural Resources Defense Council, Ohio Environmental Council, Sierra Club, the States of California (by and through Governor Edmund G. Brown Jr., the California Air Resources Board, and Attorney General Kamala D. Harris), Connecticut, Delaware, Hawaii, Illinois, Iowa, Maine, Maryland, New Hampshire, New Mexico, New York, Oregon, Rhode Island, Vermont, and Washington, the Commonwealth of Massachusetts, the District of Columbia, the City of New York, Golden Spread Electric Cooperative, Inc., the State of Minnesota, by and through the

Minnesota Pollution Control Agency, Gulf Coast Lignite Coalition, Lignite Energy Council, NextEra Energy, Inc., and the Commonwealth of Virginia.

/s/ Kevin Poloncarz
Kevin Poloncarz

CERTIFICATE OF SERVICE

I hereby certify that on this 21st day of January, 2016, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will send notice of such filing to all registered CM/ECF users. I also caused the foregoing to be served via U.S. mail on counsel for the following parties at the following addresses:

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