

[ORAL ARGUMENT NOT YET SCHEDULED]

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

STATE OF NORTH DAKOTA, <i>et al.</i> ,	)	
	)	
Petitioners	)	No. 15-1381
	)	(consolidated with Nos.
v.	)	15-1396, 15-1397,
	)	15-1399, 15-1434,
	)	15-1438, 15-1448,
	)	15-1456, 15-1458,
	)	15-1463, 15-1468,
UNITED STATES ENVIRONMENTAL	)	15-1469, 15-1481,
PROTECTION AGENCY, and REGINA A.	)	15-1482, 15-1484,
MCCARTHY, Administrator	)	16-1218, 16-1220,
	)	16-1221, 16-1227)
Respondents.	)	
_____	)	

**UNOPPOSED MOTION OF THE INSTITUTE FOR POLICY INTEGRITY  
AT NEW YORK UNIVERSITY SCHOOL OF LAW FOR LEAVE TO FILE  
*AMICUS CURIAE* BRIEF IN SUPPORT OF RESPONDENTS**

Pursuant to Federal Rule of Appellate Procedure 29(b) and D.C. Circuit Rule 29(b), the Institute for Policy Integrity (“Policy Integrity”) at New York University School of Law, by and through its undersigned counsel, moves this Court for leave to participate as *amicus curiae* in the above-captioned case in

support of Respondents.<sup>1</sup> Proposed *amicus curiae* has consulted with the parties. Counsel for Respondents have indicated that their clients consent to Policy Integrity's filing of an *amicus* brief. Counsel for the following Respondent-Intervenors have also indicated that their clients consent to Policy Integrity's filing of an *amicus* brief: 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; Sacramento Municipal Utility District; Environmental and Health Non-Governmental Organizations; Center for Biological Diversity; and NextEra Energy, Inc. Counsel for State and Municipal Respondent-Intervenors have indicated that their clients do not object to Policy Integrity's participation as *amicus curiae*. Counsel for Petitioner Basin Electric Power Cooperative; Petitioners in Nos. 15-1396, 15-1399, 15-1434, 15-1448, 15-1463, 15-1469, 15-1481, 16-1218, and 16-1221; Petitioner-Intervenors; and Respondent-Intervenor Tri-State Generation and Transmission Association, Inc. have indicated that their clients take no position. Counsel for Respondent-Intervenor Golden Spread

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<sup>1</sup> This motion does not purport to represent the views of New York University School of Law, if any.

Electric Cooperative, Inc. and all other Petitioners did not respond to a notice sent on Tuesday, October 25, 2016 requesting consent. That notice provided that if no response was received by Friday, October 28, 2016, counsel for Policy Integrity would assume that those parties took no position on its participation in this case.

This motion is timely under Federal Rule of Appellate Procedure 29(e) because it is filed before Respondents' brief is filed. In addition, this motion is timely under Circuit Rule 29(b)–(c) because it is filed as soon as practicable after the docketing of the case.

In support of this motion, proposed *amicus curiae* states as follows:

## **I. Nature of the Case**

Petitioners are challenging the Standards of Performance for Greenhouse Gas Emissions from New, Modified, and Reconstructed Stationary Sources: Electric Utility Generating Units (the “Rule”), which the Environmental Protection Agency (“EPA”) finalized on October 23, 2015. 80 Fed. Reg. 64,510 (Oct. 23, 2015). The Rule requires new coal-fired electric generating units to limit their greenhouse gas emissions to the level achievable using partial carbon capture and sequestration. *Id.* at 64,513. EPA has the authority to set New Source Performance

Standards, like the Rule, under section 111(b) of the Clean Air Act. 42 U.S.C. § 7411(b).

Petitioners argue that the Rule is unlawful because it is not based on a system of emissions reduction that is “adequately demonstrated” or “achievable,” and that EPA acted arbitrarily and capriciously because the Rule purportedly has no benefits and excessive costs. Policy Integrity proposes to draw upon its expertise in economics and administrative law to draft an *amicus curiae* brief that can assist the Court in analyzing Petitioners’ arguments.

## **II. Interest of Proposed *Amicus Curiae* and Relevance and Desirability of Participation**

Policy Integrity is a nonpartisan think tank dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy, with a particular focus on environmental issues. Policy Integrity is a collaborative effort of faculty at New York University School of Law; a full-time staff of attorneys, economists, and policy experts; law students; and a Board of Advisors comprised of leaders in public policy, law, and government.

Policy Integrity has produced scholarship on and has expertise in the regulation of greenhouse gases and other pollutants under the Clean Air Act,

regulatory impact analysis, and rulemaking under the Administrative Procedure Act. Our director, Richard L. Revesz, has published more than 50 articles and books on environmental and administrative law, including pieces discussing the policy underpinnings of regulating externalities under the Clean Air Act. Policy Integrity has previously filed *amicus curiae* briefs in a number of significant cases in this Court and the Supreme Court involving EPA's authority to regulate pollutants, including greenhouse gases, under the Clean Air Act, including the case challenging EPA's companion Clean Power Plan rule, which limits greenhouse gases from existing power plants.

Policy Integrity has a significant interest in the outcome of the legal issues presented in this case. An area of special concern for Policy Integrity is the proper use of benefit-cost analysis in the promulgation of federal environmental regulations. Policy Integrity has specific expertise in the estimation of regulatory costs and benefits and in the application of economic analysis to administrative decisionmaking. In addition, Policy Integrity filed formal comments on the Rule at issue in this case.

Policy Integrity proposes to file an *amicus curiae* brief responding to arguments raised in Petitioners' briefs regarding the manner in which EPA took costs and benefits into account when establishing performance standards.

If permitted to file an *amicus curiae* brief, Policy Integrity would file its brief in accordance with the briefing schedule, Circuit Rules, and any formatting requirements established by the Court.

## CONCLUSION

For the foregoing reasons, the unopposed motion for leave to file an *amicus curiae* brief in support of Respondents should be granted.

Respectfully submitted on November 2, 2016.

/s/ Richard L. Revesz

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*Counsel for the Institute for Policy Integrity*

**CIRCUIT RULE 28(a)(1) CERTIFICATE AS TO PARTIES AND AMICI**

Except for the following, all parties, intervenors, and *amici* appearing in this court are, to the best of my knowledge, listed in the Certificates as to Parties, Rulings, and Related Cases filed by counsel for the State of North Dakota and by other Petitioners on November 27, 2015; the Petitioners' Certificate as to Parties and *Amici Curiae* included in a joint motion filed by counsel for Petitioners on January 6, 2016; and the Certificate as to Parties, Rulings, and Related Cases filed by counsel for Murray Energy Corporation on August 1, 2016:

**Intervenors:**

No. 15-1381

& consolidated cases: 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; Sacramento Municipal Utility District; Tri-State Generation and Transmission Association, Inc.

/s/ Richard L. Revesz  
Richard L. Revesz

*Counsel for the Institute for Policy Integrity*

**CIRCUIT RULE 26.1 DISCLOSURE STATEMENT**

The Institute for Policy Integrity (“Policy Integrity”) is a nonpartisan think tank at New York University School of Law. Policy Integrity is dedicated to improving the quality of government decisionmaking through advocacy and scholarship in the fields of administrative law, economics, and public policy. Policy Integrity has no parent companies. No publicly held entity owns an interest of more than ten percent in Policy Integrity. Policy Integrity does not have any members who have issued shares or debt securities to the public.

/s/ Richard L. Revesz  
Richard L. Revesz

*Counsel for the Institute for Policy Integrity*

**CERTIFICATE OF SERVICE**

I hereby certify that on November 2, 2016, I filed the foregoing Unopposed Motion of the Institute for Policy Integrity at New York University School of Law for Leave to File an *Amicus Curiae* Brief in Support of Respondents and Rule 26.1 Disclosure Statement through the Court's CM/ECF system, which will send a notice of filing to all registered CM/ECF users. I also caused the foregoing to be served via first-class mail on counsel for the following parties at the following addresses:

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