

**ORAL ARGUMENT NOT YET SCHEDULED**

No. 15-1409 and Consolidated Cases

(15-1363, 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432)

---

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

---

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,

*Petitioner,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

---

**UNOPPOSED MOTION OF NEW YORK POWER AUTHORITY,  
SACRAMENTO MUNICIPAL UTILITY DISTRICT, AND SOUTHERN  
CALIFORNIA EDISON COMPANY 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, New York Power Authority (“NYPA”), Sacramento Municipal Utility District (“SMUD”), and Southern California Edison Company (“SCE”) (collectively, referred to herein as the “Power Companies”) respectfully request leave to intervene in support of the United States Environmental Protection Agency

(“EPA”) and its Administrator, Regina A. McCarthy (collectively, “Respondents”) in the above-captioned and consolidated petitions for review of the final rule of Respondents entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units”, 80 Fed. Reg. 64,662 (October 23, 2015) (hereinafter “Clean Power Plan” 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.

The Power Companies seek to join forces with other Movant-Intervenors for Respondents from the power sector and will be represented by counsel of record for several members of this coalition. These other Movant-Intervenors for Respondents sought leave in two separate motions before this Court. One group of electric generators and utilities filed an unopposed motion to intervene on November 5, 2015, and included 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.<sup>1</sup> An additional electric generator and utility, NextEra Energy, Inc., also moved to intervene on November 5, 2015.<sup>2</sup> With the consent of these other Movant-Intervenors, the Power Companies now seek leave of the Court to join their coalition and intervene on behalf of Respondents.

---

<sup>1</sup> *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 (filed Nov. 5, 2015) (Doc. #1582209).

<sup>2</sup> *See* Unopposed Motion to Intervene in Support of Respondents by NextEra Energy, Inc. (filed Nov. 5, 2015) (Doc. #1582177).

Counsel for the Power Companies consulted with counsel for Petitioners, Respondents and other Movant-Intervenors in this case and the consolidated cases on December 4, 2015. Counsel for Respondents and Movant-Intervenors for Respondents American Wind Energy Association, Advanced Energy Economy, Solar Energy Industries Association and the Environmental Non-Governmental Organizations have stated that they consent to the motion. Counsel for State and Municipal Movant-Intervenors for Respondents expressed that they do not oppose the motion. Counsel for Petitioners in cases 15-1363, 15-1364, 15-1367, 15-1370, 15-1371, 15-1373, 15-1374, 15-1376, 15-1380, 15-1393, 15-1398 and 15-1409 have stated that they take no position on the motion at this time. Counsel for Petitioner in case 15-1422 has stated that Petitioner does not object to the motion. Not all counsel for the remaining Petitioners and Movant-Intervenor for 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 three of the largest state, municipal and investor-owned electric utilities in the United States, providing millions of Americans with clean, affordable, reliable electricity. As owners of electric generating units (“EGUs”) directly subject to regulation under the Clean Power Plan, the Power Companies are strong supporters of both the Rule and the EPA in issuing emissions guidelines that provide broad flexibility to states and affected EGU owners to achieve meaningful carbon dioxide (“CO<sub>2</sub>”) reductions in a cost-effective manner. Together, the Power Companies possess an extensive collective experience in investing in clean generation

and complying with regulatory mandates to reduce emissions from their generating portfolios. Their collective experience complying with these mandates, many of which informed the EPA's development of the Clean Power Plan's nationally uniform CO<sub>2</sub> emission performance rates, demonstrates the achievability and reasonableness of the Clean Power Plan itself.

NYPA is the largest state power organization in the United States, providing electricity to governmental customers, businesses and municipal and cooperative electric systems. *See* Attach. A, Decl. of Edward A. Welz ¶ 1. NYPA owns and operates 16 generating facilities, producing an electricity mix that is 71 percent clean, renewable hydropower. *Id.* ¶ 2. Among NYPA's fleet are EGUs that will be directly affected by the Clean Power Plan, including NYPA's 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. *Id.* ¶ 3.

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. *See* Attach. B, Decl. of Michael Gianunzio ¶ 2. In furtherance of its greenhouse gas ("GHG") emissions reduction goals, SMUD has committed to reducing GHG emissions to 10 percent of 1990 levels by the year 2050. In 2010, SMUD became the first large electric utility in California to supply 20 percent of energy from qualified renewable sources, exceeding its 2010 goal by 4 percent, and putting it well on pace to meeting its goal of supplying 33 percent of energy from qualified renewable sources by the year 2020. SMUD has built a diverse portfolio of resources to achieve 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 natural gas-fired combined cycle (“NGCC”) facility that first came online in 2006 and consists of affected EGUs subject to the Clean Power Plan. *Id.* ¶ 5. 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. SMUD constructed the nation’s first utility-scale solar facility in 1984, and now delivers approximately 7 percent of electricity from wind, including from turbines it owns and operate at its Solano Wind Farm. 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. *Id.* ¶ 7.

SCE is one of the largest electric utilities in the United States, serving more than 15 million people in a 50,000-square-mile area of southern California. *See* Attach. C, Decl. of Ronald O. Nichols ¶ 2. SCE has provided electric service in the region for over 125 years, and in 2014 delivered more than 88 million megawatt-hours (“MWh”) of electricity to its customers. SCE is committed to reducing CO<sub>2</sub> emissions from its fleet and throughout its portfolio. In 2014 alone, SCE delivered approximately 17.7 million MWh of renewable power from geothermal, biomass, solar, wind, and small hydropower sources, equating to roughly 23.5 percent of all the electricity delivered by SCE last year. *Id.* ¶ 4. SCE also owns and operates the

Mountainview Generating Station, a 1050-MW NGCC facility which consists of affected EGUs subject to the Clean Power Plan. *Id.* ¶ 5.

As three of the largest electric utilities in the nation and owners and operators of affected EGUs subject to the Clean Power Plan, the Power Companies have a significant, direct interest in ensuring the Rule is upheld and timely implemented. Like the other Movant-Intervenors for Respondents from the power sector<sup>3</sup>, the Power Companies have invested extensively in developing and procuring generation from low-emitting sources. The Power Companies' support of the Clean Power Plan is thus both significant and well-documented. The Power Companies submitted an extensive body of comments to the EPA on the Clean Power Plan in its proposed form that both expressed this support and offered numerous technical revisions to strengthen its provisions.<sup>4</sup> The Power Companies seek to protect the flexibility

---

<sup>3</sup> See *supra* notes 1 & 2 and accompanying discussion.

<sup>4</sup> See, e.g., Letter from Caroline Choi, Vice President, Integrated Planning and Environmental Affairs, Southern California Edison, Michael Gianunzio, Chief Regulatory and Legislative Officer, Sacramento Municipal Utility District, et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23198 (joint comments on proposed CPP by several California utilities, including PG&E, SMUD, and SCE); Letter from Calpine Corporation, et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23167 (joint comments on proposed CPP by a group of power companies including Calpine, National Grid, and Seattle City Light); Letter from Jeffrey C. Cohen, Director, Legislative & Regulatory Affairs, New York Power Authority to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602-23990; Letter from Paul L. Gioia, Whiteman Osterman & Hanna LLP, Attorney for New York Transmission Owners to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602-22912 (comments by numerous transmission owners, including NYPA); Letter from RGGI EPA Rules Collaborative to EPA (Nov. 2014), EPA-HQ-OAR-2013-0602-22536 (endorsees include NYPA, National Grid, and Calpine); Letter from Roger Caiazza, Director, Environmental Energy Alliance of New York to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602-22854 (Alliance members include NYPA and National Grid); Letter from Donald Gilligan, President,

provided by the final Clean Power Plan by joining with other Movant-Intervenors for Respondents from the power sector to defend the Clean Power Plan.

For these reasons and as described below, the Power Companies have significant interests in the outcome that will be harmed if the challenged action is reversed, and those interests will not adequately be represented by the other parties to in 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 most forward-thinking electric utilities, the Power Companies have undertaken significant investments to provide cleaner electricity to their customers, both in compliance with existing state and federal requirements and in anticipation of increasingly stringent emission limitations. The opportunity presented by the Clean Power Plan for other owners of EGUs to follow the examples established by the Power Companies and thereby achieve meaningful reductions in U.S. power-sector CO<sub>2</sub> emissions will be greatly diminished if the Clean Power Plan is invalidated. As owners of EGUs subject to the Clean Power Plan and low- and zero-carbon resources that may be relied upon to help achieve the Clean Power Plan’s

---

National Association of Energy Service Companies to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602-23998 (members include NYPA, PG&E, and SCE).

goals,<sup>5</sup> the Power Companies have an interest in the timely and full implementation of the Clean Power Plan, and disposition of these petitions may impair or impede their ability to protect that interest.<sup>6</sup>

The Power Companies will also provide a distinct perspective in this litigation not adequately represented by existing parties. As a group of the nation's largest utilities which own and operate regulated generating units, the Power Companies' interests are distinct from those of Respondents, whose interests are in the proper administration and implementation of the Clean Air Act.<sup>7</sup> Further, the Power Companies' interests and perspective are distinct from those of other state, non-governmental organization and trade association Movant-Intervenors for Respondents, which will not present the Power Companies' collective experience in reducing emissions across their diverse generation portfolios.

The Clean Power Plan's nationally uniform emission performance rates and equivalent state rate- and mass-based goals are based on strategies already being effectively deployed in the power sector. The Power Companies were early adopters of these strategies, often pursuant to state and federal emission reduction mandates, and have been able to meet and exceed targets while continuing to provide their

---

<sup>5</sup> See, e.g., Welz Decl. ¶ 3; Gianunzio Decl. ¶ 5; Nichols Decl. ¶ 5.

<sup>6</sup> See, e.g., *Huron Emtl. Activist League v. U.S. Emtl. 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).

<sup>7</sup> 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).



customers reliable, affordable electric service. Informed by these experiences, which include participation by each of the Power Companies in cap-and-trade programs implemented by California or as part of the Regional Greenhouse Gas Initiative, the Power Companies are uniquely positioned to provide the Court with a candid perspective on the merits of the reduction strategies considered by the EPA, and thus the underlying reasonableness and legality of the Clean Power Plan. By seeking to join the coalition of other power-sector Movant-Intervenors for Respondents, the Power Companies wish to provide additional ballast to the coalition's defense of the Clean Power Plan and thereby counterbalance the views of the many utility-sector Petitioners who oppose the Clean Power Plan.

Recognizing that the Power Companies are seeking to join an existing coalition of Movant-Intervenors for Respondents from the power sector and will be represented by counsel of record for several members of that coalition, participation by the Power Companies will cause neither delay nor undue prejudice to the parties, nor any duplicative briefing. The Power Companies will coordinate with the EPA and all other intervenors, and 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 Respondents.

Dated: December 7, 2015

Respectfully submitted,

/s/ Kevin Poloncarz

Kevin Poloncarz

*Counsel of Record*

Donald L. Ristow

Paul Hastings LLP

55 2nd Street #2400

San Francisco, CA 94105

(415) 856-7000

kevinpoloncarz@paulhastings.com

*Counsel for New York Power  
Authority, Sacramento Municipal  
Utility District, and Southern  
California Edison Company*

**ORAL ARGUMENT NOT YET SCHEDULED**

Nos. 15-1409 and Consolidated Cases

---

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

---

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,

*Petitioner,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

---

**RULE 26.1 DISCLOSURE STATEMENT**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rules 26.1 and 27, Proposed Intervenor-Respondent Southern California Edison Company (“SCE”) states that it is an investor-owned public utility primarily engaged in the business of purchasing, generating, transmitting, distributing, and selling electric energy at wholesale and retail in the State of California. SCE is a subsidiary of its parent, Edison International, both of which have issued equity and debt securities to the public. SCE has common and preferred stocks outstanding. The common stock is held 100% by Edison International; the preferred stocks are publicly held. There is no

publicly held company that has a 10% or greater equity interest in SCE, other than Edison International.

/s/ Kevin Poloncarz

Kevin Poloncarz

**ORAL ARGUMENT NOT YET SCHEDULED**

Nos. 15-1409 and Consolidated Cases

---

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

---

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,

*Petitioner,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

---

**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*. The Petitioners in the above-captioned cases are:

**15-1409** – Mississippi Department of Environmental Quality

**15-1363** – States of West Virginia, Texas, Alabama, Arkansas, Colorado, Florida, Georgia, Indiana, Kansas, Louisiana, Missouri, Montana, Nebraska, New Jersey, Ohio, South Carolina, South Dakota, Utah, Wisconsin, and Wyoming, the State of Arizona Corporation Commission, the Commonwealth of Kentucky, the State of Louisiana Department of Environmental Quality, Attorney General Bill

Schuette on behalf of the People of Michigan, and the State of North Carolina  
Department of Environmental Quality

15-1364 – State of Oklahoma and the Oklahoma Department of  
Environmental Quality

15-1365 – International Brotherhood of Boilermakers, Iron Ship Builders,  
Blacksmiths, Forgers and Helpers, AFL-CIO

15-1366 – Murray Energy Corporation

15-1367 – National Mining Association

15-1368 – American Coalition for Clean Coal Electricity

15-1370 – Utility Air Regulatory Group and American Public Power  
Association

15-1371 – Alabama Power Company, Georgia Power Company, Gulf Power  
Company, and Mississippi Power Company

15-1372 – CO<sub>2</sub> Task Force of the Florida Electric Power Coordinating Group,  
Inc.

15-1373 – Montana-Dakota Utilities Co., a Division of MDU Resources Group,  
Inc.

15-1374 – Tri-State Generation and Transmission Association, Inc.

15-1375 – United Mine Workers of America

15-1376 – National Rural Electric Cooperative Association, Arizona Electric  
Power Cooperative, Inc., Associated Electric Cooperative, Inc., Big Rivers Electric  
Corporation, Brazos Electric Power Cooperative, Inc., Buckeye Power, Inc., Central  
Montana Electric Power Cooperative, Central Power Electric Cooperative, Inc., Corn

Belt Power Cooperative, Dairyland Power Cooperative, Deseret Generation & Transmission Co-operative, Inc., East Kentucky Power Cooperative, Inc., East River Electric Cooperative, Inc., East Texas Electric Cooperative, Inc., Georgia Transmission Corporation, Golden Spread Electric Cooperative, Inc., Hoosier Energy Rural Electric Cooperative, Inc., Kansas Electric Power Cooperative, Inc., Minnkota Power Cooperative, Inc., North Carolina Electric Membership Corporation, Northeast Texas Electric Cooperative, Inc., Northwest Iowa Power Cooperative, Oglethorpe Power Corporation, Powersouth Energy Cooperative, Prairie Power, Inc., Rushmore Electric Power Cooperative, Inc., Sam Rayburn G&T Electric Cooperative, Inc., San Miguel Electric Cooperative, Inc., Seminole Electric Cooperative, Inc., South Mississippi Electric Power Association, South Texas Electric Cooperative, Inc., Southern Illinois Power Cooperative, Sunflower Electric Power Corporation, Tex-La Electric Cooperative of Texas, Inc., Upper Missouri G. & T. Electric Cooperative, Inc., Wabash Valley Power Association, Inc., Western Farmers Electric Cooperative, and Wolverine Power Supply Cooperative, Inc.

**15-1377** – Westar Energy, Inc.

**15-1378** – NorthWestern Corporation

**15-1379** – National Association of Home Builders

**15-1380** – State of North Dakota

**15-1382** – 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 & 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

**15-1383** – Association of American Railroads

**15-1386** – Luminant Generation Company, 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

**15-1393** – Basin Electric Power Cooperative

**15-1398** – Energy & Environment Legal Institute

**15-1410** – International Brotherhood of Electrical Workers, AFL-CIO

**15-1413** – Entergy Corporation

**15-1418** – LG&E and KU Energy LLC

**15-1422** – West Virginia Coal Association

**15-1432** – Newmont Nevada Energy Investment, LLC and Newmont USA Limited

**Respondents**

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



Intervenors and *Amici Curiae*

Movant-intervenors are American Wind Energy Association, Advanced Energy Economy, 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, Peabody Energy Corporation, Solar Energy Industries Association, the States of New York, 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, Minnesota (by and through the Minnesota Pollution Control Agency), New Hampshire, New Mexico, Oregon, Rhode Island, Vermont, and Washington, the Commonwealths of Massachusetts and Virginia, the District of Columbia, the Cities of Boulder, Chicago, New York, Philadelphia, and South Miami, Broward County, Florida, NextEra Energy, Inc., 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, Dixon Bros., Inc., Nelson Brothers, Inc., Western Explosive Systems Company, Norfolk Southern Corp., Joy Global Inc., Gulf Coast Lignite Coalition, West Virginia Highlands Conservancy, the Ohio Valley Environmental Coalition, Coal River Mountain Watch, the Kanawha Forest Coalition, Mon Valley Clean Air Coalition, and Keepers of the Mountains Foundation.

*Amicus Curiae* are William D. Ruckelshaus and William K. Reilly.

Movant-*Amicus Curiae* is Philip Zoebisch.

/s/ Kevin Poloncarz

Kevin Poloncarz

**CERTIFICATE OF SERVICE**

I hereby certify that on this 7th day of December, 2015, 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 overnight delivery on counsel for the following parties at the following addresses:

Ms. Janice M. Alward  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2927  
*Counsel for Petitioner Arizona Corporation Commission*

Kelvin Allen Brooks  
Office of the Attorney General, State of New Hampshire  
33 Capitol Street  
Concord, NH 03301-6397  
*Counsel for Movant-Intervenor State of New Hampshire*

Patrick Burchette  
Holland & Knight LLP  
800 17th Street, NW  
Suite 1100  
Washington, DC 20006-6801  
*Counsel for Petitioners East Texas Electric Cooperative, Inc.; Northeast Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; Tex-La Electric Cooperative of Texas, Inc.*

William F. Cooper  
State of Hawaii Department of the Attorney General  
425 Queen Street  
Honolulu, HI 96813  
*Counsel for Movant-Intervenor State of Hawaii*

David Finley Crabtree  
Vice President, General Counsel  
10714 South Jordan Gateway  
South Jordan, UT 84092  
*Counsel for Petitioner Deseret Generation & Transmission Co-operative*

Tannis Fox  
Office of the Attorney General  
408 Galisteo Street  
Villagra Building  
Santa Fe, NM 87501  
*Counsel for Movant-Intervenor State of New Mexico*

Ms. Karen R. Harned  
National Federation of Independent Business  
1201 F Street, NW  
Suite 200  
Washington, DC 20004  
*Counsel for Petitioner National Federation of Independent Business*

Jacob Larson  
Environmental Law Division  
321 E. 13th Street, Room 18  
Des Moines, IA 50319  
*Counsel for Movant-Intervenor State of Iowa*

Mr. Karl Roy Moor  
Southern Company Services, Inc.  
600 18th Street, North 15N  
Birmingham, AL 35203  
*Counsel for Petitioner Alabama Power Company, Georgia Power Company, Gulf Power Company,  
and Mississippi Power Company*

Carrie Noteboom  
New York City Law Department  
100 Church Street  
New York, NY 10007  
*Counsel for Movant-Intervenor City of New York*

Steven J. Oberg  
Lynn, Jackson, Shultz & Lebrun, P.C.  
PO Box 8250  
Rapid City, SD 57709  
*Counsel for Petitioner Rushmore Electric Power Cooperative, Inc.*

Mr. Gary Vergil Perko  
Hopping Green & Sams  
119 South Monroe Street  
Suite 300  
Tallahassee, FL 32301  
*Counsel for Petitioner Gulf Power Company*

Mr. Lee Philip Rudofsky  
Office of the Attorney General, State of Arkansas  
323 Center Street  
Suite 200  
Little Rock, AR 72201  
*Counsel for Petitioner State of Arkansas*

Bill Spears  
Segrest & Segrest, P.C.  
18015 West Highway 84  
McGregor, TX 76657  
*Counsel for Petitioner Brazos Electric Power Cooperative, Inc.*

Mr. Ben H. Stone  
Balch & Bingham LLP  
1310 Twenty Fifth Avenue  
Gulfport, MS 39501-1931  
*Counsel for Petitioner Mississippi Power Company*

Luther J. Strange, III  
Office of the Attorney General, State of Alabama  
501 Washington Avenue  
Montgomery, AL 36130  
*Counsel for Petitioner State of Alabama*

Laurence H. Tribe  
Harvard Law School  
Griswold 307  
1563 Massachusetts Avenue  
Cambridge, MA 02138

*Counsel for Movant-Intervenors Peabody Energy Corporation, Dixon Bros., Inc., Nelson Brothers, Inc., Western Explosive Systems Company, Norfolk Southern Corporation, Joy Global Inc., and Gulf Coast Lignite Coalition*

Thiruvendran Vignarajah  
Office of the Attorney General, State of Maryland  
200 St. Paul Place  
20th Floor  
Baltimore, MD 21202-2021

*Counsel for Movant-Intervenor State of Maryland*

Ms. Janet F. Wagner  
Arizona Corporation Commission  
1200 West Washington  
Phoenix, AZ 85007-2927  
*Counsel for Petitioner Arizona Corporation Commission*

Philip Zoebisch  
28 W Madison Avenue  
Collingswood, NJ 08108  
*Movant-Amicus Curiae*

/s/ Kevin Poloncarz

Kevin Poloncarz

## **Attachment A**

**ORAL ARGUMENT NOT YET SCHEDULED**

No. 15-1363 and Consolidated Cases

(15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432)

---

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

---

WEST VIRGINIA, et al.,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

---

**DECLARATION OF EDWARD A. WELZ**

I, Edward A. Welz, 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 Executive Vice President and Chief Operating Officer of the New York Power Authority (“NYPA”). Established by Governor Franklin D. Roosevelt through legislation signed in 1931, NYPA is the largest state power organization in

the United States, providing electricity to governmental customers, businesses and municipal and cooperative electric systems.

2. NYPA owns and operates 16 generating facilities, producing an electricity mix that is comprised of approximately 71 percent clean, renewable hydropower. This includes power produced from NYPA's St. Lawrence-Franklin D. Roosevelt Power Project, the Niagara Power Project, the Blenheim-Gilboa Pumped Storage Power Project, and smaller hydropower facilities elsewhere throughout the state of New York.

3. Among NYPA's fleet are electric generating units that will be directly affected by the Clean Power Plan, including NYPA's 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.

4. NYPA supports the final rule issued by the U.S. Environmental Protection Agency ("EPA") entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" 80 Fed. Reg. 64,662 (Oct. 23, 2015) (hereinafter, "Clean Power Plan" or "Plan"). NYPA participated extensively in the Clean Power Plan's development, submitting comments both separately and as a part of multiple coalitions.<sup>1</sup> NYPA continues to support the Clean

---

<sup>1</sup>Letter from Jeffrey C. Cohen, Director, Legislative & Regulatory Affairs, New York Power Authority to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602; Letter from Paul L. Gioia, Whiteman Osterman & Hanna LLP, Attorney for New York Transmission Owners to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602 (comments by numerous transmission owners, including NYPA); Letter from RGGI Rules Collaborative to EPA (Nov. 2014), EPA-HQ-OAR-2013-0602 (endorsees include NYPA, National Grid, and Calpine); Letter from Roger Caiazza, Director, Environmental Energy Alliance of New York to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602 (Alliance



Power Plan as a reasonable, legally-defensible approach to reducing carbon dioxide (“CO<sub>2</sub>”) emissions throughout the power sector.

5. In particular, NYPA supports the Clean Power Plan for the flexibility provided to individual states in crafting and submitting implementation plans to achieve the Plan’s emission reduction requirements. NYPA supported this flexibility in our comments on the proposed Clean Power Plan.<sup>2</sup> The flexibility afforded by the final Clean Power Plan allows states to incorporate existing programs with demonstrated success in reducing emissions from the power sector as part of state implementation plans.

6. One such program is the Regional Greenhouse Gas Initiative (“RGGI”), the nation’s first multi-state cap-and-trade program to reduce CO<sub>2</sub> emissions. NYPA participates in RGGI, which requires electricity generators to hold CO<sub>2</sub> allowances sufficient to cover total CO<sub>2</sub> emissions. NYPA has participated in program auctions and has found costs for allowances to be reasonable and allowances to be consistently available when needed to cover emissions from NYPA’s fleet.

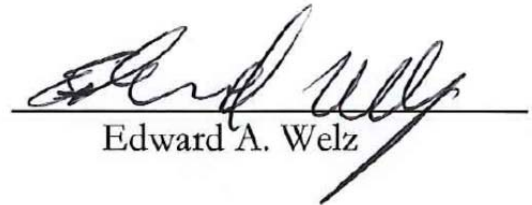
7. As a result of RGGI’s success in demonstrating how market-based trading programs can be relied upon to reduce CO<sub>2</sub> emissions from the power sector, NYPA anticipates that similar emissions markets will likely develop and provide a pathway to compliance with the future reduction obligations of the Clean Power Plan.

---

members include NYPA and National Grid); Letter from Donald Gilligan, President, National Association of Energy Service Companies to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602 (members include NYPA, PG&E, and SCE).

<sup>2</sup> See Letter from RGGI Rules Collaborative to EPA (Nov. 2014), EPA-HQ-OAR-2013-0602; Letter from Roger Caiazza, Director, Environmental Energy Alliance of New York to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on December 7, 2015.



Edward A. Welz

## **Attachment B**

**ORAL ARGUMENT NOT YET SCHEDULED**

No. 15-1409 and Consolidated Cases

(15, 1363, 15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432)

---

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

---

MISSISSIPPI DEPARTMENT OF ENVIRONMENTAL QUALITY,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

---

**DECLARATION OF MICHAEL GIANUNZIO**

I, Michael Gianunzio, 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 Chief Legislative and Regulatory Officer at the Sacramento Municipal Utility District (“SMUD”). I am responsible for managing all governmental relations, legislative matters and regulatory requirements affecting SMUD at the local, state, and federal levels.

2. Created by voters in 1923, 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.

3. SMUD supports the final rule issued by the U.S. Environmental Protection Agency ("EPA") entitled "Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units" 80 Fed. Reg. 64,662 (Oct. 23, 2015) (hereinafter, "Clean Power Plan" or "Plan"). SMUD also supported the rule in its proposed form, submitting comments together with California's other leading utilities that were supportive of the Plan and the flexibility it provided to individual states.<sup>1</sup> SMUD believes that the Clean Power Plan reflects a reasonable approach to reduce carbon dioxide ("CO<sub>2</sub>") emissions from the power sector and builds upon SMUD's own experience in reducing emissions across our generation portfolio, while continuing to provide affordable, reliable electricity to consumers.

4. In furtherance of our emissions reduction goals, SMUD has committed to reducing greenhouse gas ("GHG") emissions to 10 percent of 1990 levels by the year 2050. In 2010, SMUD became the first large electric utility in California to supply 20 percent of energy from qualified renewable sources, exceeding our 2010 goal by 4 percent, and putting us well on pace to meeting our goal of supplying 33 percent of energy from qualified renewable sources by the year 2020.

---

<sup>1</sup> Letter from Michael Gianunzio, Chief Regulatory and Legislative Officer, Sacramento Municipal Utility District, et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23198 (joint comments on proposed CPP by several California utilities, including SMUD, LADWP, SCE, and PG&E).

5. SMUD has built a diverse portfolio of resources to achieve these reductions, while at the same time maintaining low-cost, reliable electric service for our customers. This includes our ownership and operation of the 500-MW Cosumnes Power Plant, a natural gas-fired combined cycle facility that first came online in 2006 and consists of affected electric generating units subject to the Clean Power Plan.

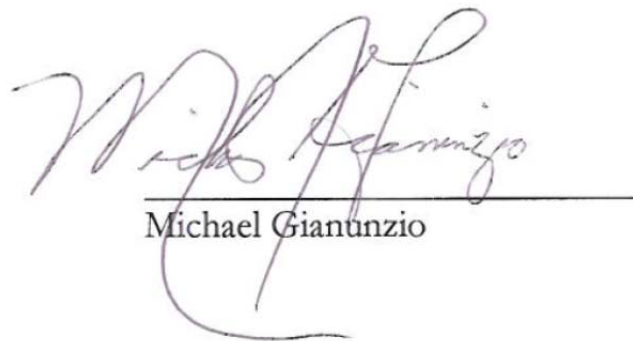
6. SMUD also generates significant capacity from carbon-free resources, including from our Upper American River Project, a 688-MW hydropower system of eleven reservoirs and eight powerhouses that meets approximately 20 percent of SMUD's demand in typical water years. SMUD constructed the nation's first utility-scale solar facility in 1984, and now delivers approximately 7 percent of electricity from wind, including from turbines we own and operate at our Solano Wind Farm.

7. SMUD has also aggressively sought to reduce customer demand, acting as an industry leader in residential and commercial energy efficiency programs. By offering numerous rebate, incentive and financing options to customers, SMUD is reducing GHG emissions, while simultaneously providing cost-savings to customers. Through these energy efficiency programs and our 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.

8. SMUD is supportive of the flexibility the Clean Power Plan affords to achieve its goals through existing state programs, including California's cap-and-trade program implemented under Assembly Bill ("AB") 32. Given the success of the cap-and-trade program under AB 32, SMUD anticipates that similar emissions markets

will develop throughout the U.S. and provide a pathway for owners of affected electric generating units to comply with the requirements imposed pursuant to the Clean Power Plan.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on December 3, 2015.



Michael Giantunzio

## **Attachment C**



**ORAL ARGUMENT NOT YET SCHEDULED**

No. 15-1363 and Consolidated Cases

(15-1364, 15-1365, 15-1366, 15-1367, 15-1368, 15-1370, 15-1371, 15-1372, 15-1373, 15-1374, 15-1375, 15-1376, 15-1377, 15-1378, 15-1379, 15-1380, 15-1382, 15-1383, 15-1386, 15-1393, 15-1398, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1432)

---

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

---

WEST VIRGINIA, et al.,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

---

**DECLARATION OF RONALD O. NICHOLS**

I, Ronald O. Nichols, 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 vice president of Regulatory Affairs and Nuclear for Southern California Edison Company (“SCE”). I am responsible for regulatory policy and affairs, regulatory operations, and environmental affairs.

2. SCE is one of the largest electric utilities in the United States, serving more than 15 million people in a 50,000-square-mile area of southern California. SCE has provided electric service in the region for over 125 years and in 2014 delivered more than 88 million megawatt-hours (“MWh”) of electricity to our customers.

3. SCE supports the final rule issued by the U.S. Environmental Protection Agency (“EPA”) entitled “Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units” 80 Fed. Reg. 64,662 (Oct. 23, 2015) (hereinafter, “Clean Power Plan”). SCE supported the Clean Power Plan in its proposed form through submission of comments as part of multiple groups.<sup>1</sup> SCE’s continued support for the final Clean Power Plan reflects our belief that it provides the flexibility necessary for states and owners of affected electric generating units to implement proven strategies that are already achieving reductions in the industry.

4. SCE has made significant progress in reducing emissions and expanding renewable generation, while at the same time maintaining affordable service for customers. In 2014 alone, SCE delivered approximately 17.7 million MWh of renewable power from geothermal, biomass, solar, wind, and small hydropower

---

<sup>1</sup> Letter from Janet Loduca, Vice President, Safety, Health, and Environment, Pacific Gas and Electric Company, Caroline Choi, Vice President, Integrated Planning and Environmental Affairs, Southern California Edison Company, et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602 (joint comments on proposed CPP by several California utilities, including SCE); Letter from Dave Robertson, Portland General Electric, VP, Public Policy, et al. to EPA (Nov. 25, 2014) EPA-HQ-OAR-2013-0602 (joint comments on proposed CPP by several utilities, including SCE); Letter from Donald Gilligan, President, National Association of Energy Service Companies to EPA (Dec. 1, 2014), EPA-HQ-OAR-2013-0602 (members include SCE).

sources, equating to roughly 23.5 percent of all the electricity delivered by SCE last year.

5. SCE also owns and operates the Mountainview Generating Station, a 1050-MW natural gas-fired combined cycle facility that first went into operation in 2006 and consists of affected electric generating units subject to the Clean Power Plan.

6. SCE has invested extensively in energy efficiency programs. In the past five years, SCE's partnership with our customers has resulted in savings of over 7.6 million MWh. Energy conservation from SCE's installation of smart meter technology alone is anticipated to reduce greenhouse gas emissions and smog-forming pollutants in excess of 365,000 tons annually.

7. SCE's experience in reducing emissions across our portfolio and in complying with California's cap-and-trade program implemented under Assembly Bill 32 has informed our belief that the reduction obligations required by the Clean Power Plan are readily achievable by utilities and generators, and can be accomplished while maintaining system reliability and affordable rates for consumers.

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on December 7, 2015.



Ronald O. Nichols