

No. 15-1363 (and consolidated cases)

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

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**STATE OF WEST VIRGINIA, *et al.*,**

*Petitioners,*

v.

**UNITED STATES ENVIRONMENTAL PROTECTION AGENCY, *et al.*,**

*Respondents.*

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On Petition for Review of Final Agency Action of the United  
States Environmental Protection Agency  
80 Fed. Reg. 64,662 (Oct. 23, 2015)

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**BRIEF OF INTERVENORS 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 AND SOUTHERN CALIFORNIA  
EDISON COMPANY IN SUPPORT OF RESPONDENTS**

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March 29, 2016

**CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED  
CASES**

Pursuant to Circuit Rule 28(a)(1), Intervenors 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 and Southern California Edison Company state as follows:

**Parties and Amici**

All parties, intervenors, and *amici* appearing in this case are listed in Respondent EPA's Brief.

**Rulings Under Review**

The final agency action under review is: Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (October 23, 2015).

**Related Cases**

Intervenors adopt the statement of related cases set forth in Respondent EPA's Brief.

/s/ Kevin Poloncarz  
Kevin Poloncarz

## CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, Intervenor Calpine Corporation, National Grid Generation, LLC, Pacific Gas and Electric Company and Southern California Edison Company state as follows:

Calpine Corporation (“Calpine”) states that it is a major U.S. power company which owns 84 primarily low-carbon, natural gas-fired and renewable geothermal power plants in operation or under construction that are capable of delivering more than 27,000 megawatts of electricity to customers and communities in 20 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, LLC (“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.

Pacific Gas and Electric Company (“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.

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.

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## GLOSSARY

|                 |                                                                                                                                                 |
|-----------------|-------------------------------------------------------------------------------------------------------------------------------------------------|
| CAA             | Clean Air Act                                                                                                                                   |
| CO <sub>2</sub> | Carbon Dioxide                                                                                                                                  |
| EPA             | United States Environmental Protection Agency                                                                                                   |
| JA              | Joint Appendix                                                                                                                                  |
| Rule            | Carbon Pollution Emission Guidelines for Existing Stationary Sources: Electric Utility Generating Units, 80 Fed. Reg. 64,662 (October 23, 2015) |
| TSD             | Technical Support Document                                                                                                                      |

## STATUTES AND REGULATIONS

Applicable statutes and regulations are set forth in Respondent EPA's Brief.

## SUMMARY OF ARGUMENT

The power companies that have intervened in support of Respondents in this litigation are among the nation's largest electric utilities and owners of generating units subject to the Rule. Together, they own and operate more than 100,000 megawatts of generating capacity—representing nearly 10 percent of the nation's total—and serve millions of customers in 26 states across the country, both in competitive and vertically-integrated electricity markets. The undersigned represent a diverse coalition of major investor-owned utilities, public power authorities and one of the largest independent power producers (hereinafter, "Power Companies") and support the Rule as a lawful means of reducing carbon dioxide ("CO<sub>2</sub>") emissions from affected fossil-fired units.

The Rule harnesses existing trends within the electricity sector, recognizing the practical realities of how the integrated electricity grid operates and how utilities are already achieving CO<sub>2</sub> reductions. It

leverages strategies already widely used by the Power Companies and the broader industry to reduce emissions and deliver power at least cost to consumers, including shifting generation towards cleaner and renewable sources and emissions trading. It provides tremendous flexibility to states and power companies to achieve its emission performance goals however they see fit. The Power Companies' collective experience reducing emissions within their respective generation portfolios demonstrates the reasonableness and achievability of those goals.

## **ARGUMENT**

### **I. Generation Shifting Is a Lawful Basis for the Best System of Emission Reduction**

Confronted with a statutory mandate to determine the best system of emission reduction that has been adequately demonstrated, EPA selected proven methods already effectively deployed by generating units to reduce their CO<sub>2</sub> emissions, recognizing the integrated and interdependent nature of the electricity system those units serve. 80 Fed. Reg. 64,662, 64,725. In the Power Companies' view, this choice was unremarkable. Electricity providers have been shifting generation among affected units and to zero-emitting sources as a

means of achieving emission reductions for decades, as these strategies achieve greater reductions at lower cost than by relying on control technology alone. *Id.* at 64,730-31; Comments of Calpine Corporation, Los Angeles Department of Water and Power, National Grid, Seattle City Light, et al., EPA-HQ-OAR-2013-0602-23167, at 9 (JA\_\_) (“EPA’s approach...reflects the essence of the way the electric industry operates...fully consistent with our companies’ successful practices.”). In fact, generation shifting is itself “business-as-usual” within the power sector and the ordinary means by which supply and demand are instantaneously matched throughout the interconnected electricity grid and balancing authorities and utilities make dispatch decisions to deliver power at least-cost to consumers. *See* 80 Fed. Reg. at 64,692. By largely following existing trends that are causing generation shifts towards lower-emitting sources and by requiring reductions at no greater pace than they are already being achieved by many states and power companies, the Rule’s formulation of the best system of emission reduction is reasonable and consonant with the practical realities of how the electricity grid is operated today.

Petitioners' essential claim is that, in identifying the best system of emission reduction, EPA must ignore how the nation's bulk power grid is truly operated and the widespread use of generation shifting to optimize the grid's operation, and instead look solely at what can be achieved by implementation of measures at individual units. Core Issues Br. at 29-61. Yet such a narrow interpretation of what the best system may entail is unrealistic, given the uniquely integrated nature of the electricity sector and EPA's statutory obligation to identify the *best* system of emission reduction.

Petitioners' efforts to cast the strategies included within the Rule's best system as novel and unachievable ignore a record replete with contrary evidence. *Eg., id.* at 32; Record-Based Issues Br. at 22. Existing Clean Air Act ("CAA") programs have been explicitly premised upon the ability of the power sector to cost-effectively comply by shifting generation to lower-emitting sources. 80 Fed. Reg. at 64,772. The same is true of state CO<sub>2</sub> reduction programs such as the Regional Greenhouse Gas Initiative and California's cap-and-trade program, which put a price on carbon emissions and, by virtue of the electricity grid's reliance upon least-cost dispatch principles, incentivize operation

of the lowest-emitting units. *Id.* at 64,678, 64,796. The Rule's best system of emission reduction simply builds upon these well-established programs. *Id.* at 64,796.

EPA was correct, therefore, to conclude that the best system of emission reduction cannot be limited to heat rate improvements at coal-fired units. Because heat rate improvements reduce variable operating costs, their implementation at affected coal-fired units, in the absence of generation-shifting measures contemplated by building blocks two and three, would increase the cost-competitiveness of those units compared to lower-emitting fossil sources, leading to their more frequent dispatch. This in turn would lead to greater net CO<sub>2</sub> emissions, despite the reduced emission rate. *Id.* at 64,748, 64,787. Accordingly, to achieve real reductions in CO<sub>2</sub> emissions consistent with section 111, EPA could not identify the best system of emission reduction as consisting solely of heat rate improvements to individual units.

Likewise, EPA was correct in declining to establish the best system based on other facility-based control measures which, while technically feasible, are significantly more expensive than shifting generation to lower- and zero-emitting sources. *Id.* at 64,727-28.

Affected coal-fired units could, for instance, co-fire with natural gas or convert to operate exclusively on natural gas. *Id.* Due to the Rule's flexibility, these remain viable compliance options. *Id.* Yet, as EPA recognized, even had EPA established the best system based on these measures, affected units would almost certainly rely on generation shifting to achieve equivalent emission reductions at lower cost. *Id.* at 64,728. Recognizing these facts, EPA took the sensible step of deciding that the best system of emission reduction was comprised primarily of the generation-shifting measures that utilities would actually and already do employ to balance supply and demand at lowest total cost.

Petitioners nonetheless contend that the best system is unachievable, asserting technical flaws in the reductions that EPA determined could be obtained through use of existing natural gas-fired combined-cycle units and potential renewable sources. Yet at their core, these measures merely build on existing trends, which are causing gas-fired generation to economically displace coal-fired generation and renewable sources to become more cost-competitive. *Id.* at 64,785; Greenhouse Gas Mitigation Measures TSD, EPA-HQ-OAR-2013-0602-37115, at 3-11 (JA\_\_) (noting that, due to natural gas price declines,



“operators have shifted significant quantities of generation from coal units to [gas-fired combined-cycle units], absent any federal CO<sub>2</sub> requirements.”). And while Petitioners incorrectly assert otherwise, there are more than sufficient amounts of unused gas-fired combined-cycle capacity and potential renewable generation capacity available for all affected units to achieve the Rule’s emission reduction goals at reasonable cost. 80 Fed. Reg. at 64,799, 64,802, 64,806-11.

EPA correctly concluded, for instance, that a utilization rate of 75 percent net summertime capacity for existing gas-fired combined-cycle units is technically feasible. *Id.* at 64,798-801. From the perspective of the Power Companies, EPA set this rate with ample margin and attention to what is practically attainable. *Id.* at 64,799; *see also* Comments of Calpine Corporation, EPA-HQ-OAR-2013-0602-22799, at 8-9 (JA\_\_-\_\_) (“our...data demonstrate that even higher annual capacity factors are achievable”). Petitioners cite a series of statistics, implying that data showing the existing fleet was utilized at a 46 percent overall rate in 2012 demonstrate that a 75 percent utilization rate cannot be achieved by 2030. Record-Based Issues Br. at 27-29. Yet, the 46 percent rate reflects an electricity system that does not sufficiently factor the

cost of carbon pollution into dispatch decisions. Once that cost is incorporated, the existing gas-fired fleet will have adequate incentive to displace additional coal-fired generation and exceed EPA's conservative 75 percent rate, as many combined-cycle units already regularly do. 80 Fed. Reg. at 64,799.

Moreover, the Rule does not mandate that any particular combined-cycle unit operate at these utilization rates, nor does it require they be achieved instantaneously. Rather, in setting the Rule's emission performance rates, EPA forecast only gradual increases in combined-cycle utilization, assuming that, in the decade between 2012 and 2022, the percentage of combined-cycle generation would increase no more than it did in a single year (2011), and then only modest increases of 5 percent per year thereafter. *Id.* at 64,798. In fact, the Rule does not mandate that these utilization rates ever be attained, but allows states and affected units expansive flexibility to achieve the emission performance rates however they should choose.

Generators across the country, regardless of ownership or market structure, can seamlessly and cost-effectively reduce emissions through the generation-shifting measures contemplated by the Rule. *Id.* at

64,796-97, 64,805-08. The Power Companies' own investments in low- and zero-emitting generation affirm this. *E.g., id.* at 64,805, Table 8; Comments of Austin Energy, EPA-HQ-OAR-2013-0602-22814, at 1-2, (JA\_\_-\_\_); Comments of Calpine Corporation, Los Angeles Department of Water and Power, National Grid, Seattle City Light, et al., EPA-HQ-OAR-2013-0602-23167, at 9 (JA\_\_) (“Each of the elements of [the best system of emission reduction]...has been successfully deployed by our companies.”). Far from the standard of “*non-performance*” suggested by Petitioners (Core Issues Br. at 25), the Rule’s reliance upon generation shifting is fully consonant with how the Power Companies have improved the emission performance of their respective generation portfolios.

## **II. EPA Appropriately Considered the Availability of Emissions Trading**

Petitioners claim that EPA unreasonably relied on the availability of trading to demonstrate the achievability of its emission guidelines. Record-Based Issues Br. at 49. Petitioners are incorrect. As EPA explains, “[e]ssentially, trading does nothing more than commoditize compliance....” 80 Fed. Reg. at 64,734. Trading is simply an accounting mechanism that makes it possible for sources to “cross-invest” in

reductions elsewhere in lieu of undertaking direct investments themselves. *Id.* at 64,733. And, contrary to Petitioners' contentions, the Rule does not mandate trading, but makes it available as but one means for affected units to cost-effectively access the reductions needed to achieve their respective emission performance rates. For a host of reasons, including the strong interest in trading expressed by both states and affected units, EPA reasonably concluded "that states could—and, in fact, may be expected to—establish standards of performance that incorporate emissions trading." *Id.*

The Power Companies were among those that expressed a strong interest in emissions trading and noted that EPA's framework regulations under section 111(d) already authorized trading to implement emissions guidelines. *See* Comments of Calpine Corporation, Los Angeles Department of Water and Power, National Grid, Seattle City Light, et al., EPA-HQ-OAR-2013-0602-23167, at 7 (JA\_\_) (noting that "emission standard" is defined to include "establishing an allowance system" under 40 C.F.R. § 60.21(f)). As the Power Companies noted, emissions trading is well-demonstrated under both existing CAA programs and state programs designed to reduce CO<sub>2</sub> emissions. *See id.*

at 6 (JA\_\_); Comments of Pacific Gas and Electric Company, Southern California Edison, Los Angeles Department of Water and Power, Sacramento Municipal Utility District, et al., EPA-HQ-OAR-2013-0602-23198, at 2-3 (JA\_\_-\_\_).

At bottom, Petitioners assert that, although trading should be available as a compliance tool, EPA must ignore its availability in identifying the level of reduction achievable through implementation of the best system of emission reduction. But the statute imposes no such constraint on EPA. Ignoring trading would fail to reflect the practical realities of how the electricity sector has historically achieved emissions reductions and how states and utilities will undoubtedly seek to achieve them under the Rule. Indeed, some of the very same Petitioners who attack the legality of the Rule for allowing a “cap-and-trade program” under section 111(d) endorsed just such an approach in litigation challenging the Clean Air Mercury Rule. *See* Joint Brief of State Respondent-Intervenors, Industry Respondent-Intervenors, and State Amicus, at 26, *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008) (No. 05-1097) (supporting legality of a cap-and-trade program under section 111(d)).

Petitioners are also wrong to claim that this Rule is defective because, unlike other trading programs established under the CAA, EPA did not itself impose a national trading program nor mandate that trading be implemented by all states. Record-Based Issues Br. at 52. EPA provided states flexibility to decide on the contours of a trading program that would best suit their respective generating units, rely upon existing trading programs, or eschew trading altogether; that is not a fault, but a virtue of the Rule. Far from reflecting any critical flaw, EPA's conclusion that trading would be utilized as but one means of accessing reductions reflects the real-world experience of the Power Companies: Whether in competitive markets or traditional regulatory structures, trading programs are a demonstrated means of driving emission reductions at least cost for consumers. *See* Comments of Env'tl. Energy Alliance of New York (National Grid, New York Power Authority, et al.), EPA-HQ-OAR-2013-0602-22854, at 9 (JA\_\_) ("Through [the Regional Greenhouse Gas Initiative]...states have seamlessly and successfully implemented emissions limits within existing power markets without market distortions, disruptions, or reliability issues."). They will likewise provide a pathway to compliance

with standards established under the Rule. *See* Resp. of Power Companies in Opp'n to Mot. for Stay, Doc. #1587423, at 4 (Dec. 8, 2015).

### **III. The Rule Will Not Impair Reliability**

Petitioners' claim that the Rule will compromise reliability lacks merit. By building upon existing shifts in the electricity sector, the reductions required by the Rule can be accomplished through changes already being instituted and planned by states and system operators. This is especially true given the flexibility afforded by the final Rule, which does not require rigid implementation of the building blocks, but allows states and power companies to utilize whatever tools they deem appropriate to achieve an equivalent level of emissions performance. The final Rule also extended the start of the interim compliance period to 2022 – more than 6 years from the Rule's effective date – and adjusted the interim goals to provide a more gradual progression towards the Rule's 2030 goal. 80 Fed. Reg. at 64,875. States are afforded significant discretion to develop a plan adapted to their unique circumstances and must demonstrate consideration of grid reliability. *Id.* at 64,876. Finally, EPA provided states a safety mechanism that allows compliance obligations to be modified in cases of acute threats.

*Id.* at 64,876; *see also id.* at 64,874-81; Resource Adequacy and Reliability Analysis TSD, EPA-HQ-OAR-2013-0602-36847 (JA\_\_).

Petitioners' reliability claims are divorced from the realities of how the electricity grid operates and changes in the generation mix are actually planned for and accommodated. 80 Fed. Reg. at 64,881; Analysis Group, Electric System Reliability and EPA's Clean Power Plan: Tools and Practices, EPA-HQ-OAR-2013-0602-37015 (JA\_\_). The Power Companies and broader industry have successfully reduced emissions within their generation portfolios without compromising reliability and will continue to do so under the Rule. *See Resp. of Power Companies in Opp'n to Mot. for Stay*, Doc. #1587423, at 1 (Dec. 8, 2015).

#### **IV. The Rule's Leakage Provisions Are Lawful and Do Not Prevent Dispatch of New Units**

Petitioners incorrectly assert that the Rule's leakage provisions unlawfully "regulate the dispatch of new units under section 111(d)." Record-Based Issues Br. at 66. The leakage provisions simply ensure that, in the event a state should elect to adopt a mass-based plan in lieu of a rate-based plan (i.e., one that requires affected units to meet a total cap on emissions, expressed in tons per year, rather than a limit



expressed in pounds per megawatt-hour generated), its plan must achieve equivalent emission performance.

The “chief regulatory requirement” of the Rule is the emission performance rates that reflect application of the best system of emission reduction to the affected units. 80 Fed. Reg. at 64,823. Rate-based goals do not implicate leakage because new fossil-fired units, which cannot generate “emission rate credits,” have no incentive to increase their generation (and, as a consequence, their emissions) as a means of reducing emissions from affected units. *Id.*

Mass-based goals, however, could incentivize increased generation and emissions from new gas-fired combined-cycle units as a substitute for improving the emissions performance of existing units. *Id.* Because this could prevent mass-based programs from achieving equivalent emission performance, the Rule requires states submitting mass-based plans to “demonstrate that the plan addresses and mitigates the risk of potential emissions leakage to new sources.” *Id.* at 64,887. Although a state only need make this demonstration if it has elected to apply the Rule’s mass-based goals to its affected units in lieu of the emission performance rates, the Rule provides several options to such states:

They can choose to impose requirements upon new fossil-fired units as a matter of state law, as the ten states already implementing emissions budget trading programs have done; they can allocate allowances in a way that counteracts incentives to shift generation to new fossil-fired units; or they can otherwise demonstrate that leakage is unlikely to occur due to plan elements or unique state characteristics. *Id.* at 64,888, 64,949. None of these options regulates the dispatch of new fossil units under section 111(d).

Petitioners are also incorrect that these provisions “prevent the dispatch of new units.” Record-Based Issues Br. at 66. Rather, all they require is that a state electing a mass-based approach align incentives with what would occur if the subcategory-specific emission performance rates were applied to affected units instead. *See* 80 Fed. Reg. at 64,822. In no event would this prevent dispatch of new fossil units or subject them to federally enforceable emissions standards pursuant to section 111(d). New units would continue to be subject to separate standards established by EPA under section 111(b) and would in no circumstance need to achieve the subcategory-specific emissions rates established by EPA under section 111(d).

Ultimately, the Rule's leakage provisions recognize the practical reality of how generating units operate in the interconnected electricity grid, and do so within the bounds of section 111. Because sections 111(b) and 111(d) both require that the standards established pursuant to them reflect the "best system of emission *reduction*" and given the pollution prevention purposes of the CAA, (*see* 42 U.S.C. § 7401(a)(3), (c)), EPA can reject a state plan that would amount to no more than illusory compliance with a state's mass-based goals and would not result in implementation and enforcement of standards equivalent to those achieved by the best system of emission reduction. *See* 42 U.S.C. § 7411(d)(1)(B), (d)(2)(A). The Rule's leakage provisions simply make this explicit, anticipating market responses that risk counteracting section 111's and the Rule's emission reduction purposes. *See Natural Res. Def. Council v. EPA*, 822 F.2d 104, 122-26 (D.C. Cir. 1987) (upholding regulation preventing "bypass" of treatment system under *Chevron*, noting that, "far from being contrary to the policies and structures of the [Clean Water] Act," the bypass prohibition simply requires "that the applicable treatment technology, implemented for the purpose of achieving pollution reduction equivalent to the 'best technology,' be

operated as designed,” in furtherance of the statute’s pollution reduction goals and the agency’s broad statutory authority). Petitioners’ account fails to reflect these market dynamics and instead suggests a limitation in section 111(d) on EPA’s ability to counteract them, which exists nowhere in the statute.

### **CONCLUSION**

For all the reasons set forth above and in Respondent EPA’s Brief, the Court should deny the petitions for review.

Dated: March 29, 2016

Respectfully submitted,

/s/ Kevin Poloncarz

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## CERTIFICATE OF COMPLIANCE

Pursuant to Rule 32 of the Federal Rules of Appellate Procedure and the Circuit Rules of this Court, I hereby certify that the foregoing Brief of Intervenors 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 and Southern California Edison Company in Support of Respondents contains 3,174 words as counted by the word-processing system used to prepare this brief. I further certify that the combined words of this brief and those filed by State Intervenors, NGO Intervenors, and Trade Association Intervenors do not exceed the 20,000 word limit set by the Court in its January 28, 2016 Order (Document #1595922).

/s/ Kevin Poloncarz  
Kevin Poloncarz

**CERTIFICATE OF SERVICE**

I hereby certify that on this 29th day of March, 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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