

ORAL ARGUMENT NOT YET SCHEDULED

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

CALPINE CORPORATION,
CONSOLIDATED EDISON, INC.;
NATIONAL GRID USA; NEW YORK
POWER AUTHORITY; and POWER
COMPANIES CLIMATE COALITION,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY; UNITED
STATES DEPARTMENT OF
TRANSPORTATION; and NATIONAL
HIGHWAY TRAFFIC SAFETY
ADMINISTRATION,

Respondents.

No. 20-1177 (and consolidated)

PETITIONERS' NON-BINDING STATEMENT OF ISSUES

Pursuant to the Court's Order of June 1, 2020, Petitioners Calpine Corporation, Consolidated Edison, Inc., National Grid USA, New York Power Authority, and Power Companies Climate Coalition ("Power Companies") submit the following non-binding statement of issues to be raised in this proceeding to challenge the final agency actions of Respondents United States Environmental Protection Agency ("EPA") and National Highway Traffic Safety Administration ("NHTSA") published together at 85 Fed. Reg. 24,174 (Apr. 30, 2020) and titled "The Safer Affordable Fuel-Efficient (SAFE) Vehicles Rule for Model Years 2021-2026 Passenger Cars and Light Trucks" ("SAFE Vehicles Rule Part Two"), as well

as the final agency action of EPA published at 83 Fed. Reg. 16,077 (Apr. 13, 2018) and titled “Mid-Term Evaluation of Greenhouse Gas Emissions Standards for Model Year 2022-2025 Light -Duty Vehicles” (“Revised Mid-Term Evaluation”), without waiving its right to modify these issues or raise additional ones:

(1) With respect to the SAFE Vehicles Rule Part Two, whether Respondent EPA’s action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Clean Air Act, Administrative Procedure Act, or other laws because, among other things:

(a) EPA failed to comply with section 202 of the Clean Air Act by, among other things, prescribing greenhouse gas emission standards that are not premised upon application of widely-available technology;

(b) EPA relied on inaccurate data, misleading analysis and modeling that was significantly flawed, while ignoring a substantial record of evidence before it demonstrating that the greenhouse gas emission standards it had previously adopted for model years 2021-2025 remained appropriate;

(c) EPA offered an implausible explanation that runs counter to the evidence in the record to justify its decision to prescribe greenhouse gas emission standards that are substantially weaker than the standards it adopted in 2012.

(2) With respect to the SAFE Vehicles Rule Part Two, whether Respondent NHTSA's action is arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with the Administrative Procedure Act, the Energy Policy and Conservation Act, as amended by the Energy Independence and Security Act, or other laws because, among other things:

(a) NHTSA failed to comply with 49 U.S.C. § 32902, which provides that the average fuel economy required to be attained shall be the "maximum feasible" average fuel economy standard for each fleet for the model year;

(b) NHTSA relied on inaccurate data, misleading analysis and modeling that was significantly flawed, while ignoring a substantial record of evidence before it demonstrating the feasibility and appropriateness of the final standards it adopted in 2012 for model year 2021 and the augural standards it announced at that time for later model years;

(c) NHTSA offered an implausible explanation that runs counter to the evidence in the record to justify setting fuel economy standards that are significantly less stringent than the final standards it adopted in 2012 for model year 2021 and the augural standards it announced at that time for later model years.

(3) With respect to the Revised Mid-Term Evaluation, whether Respondent EPA's action is arbitrary, capricious, an abuse of discretion, or otherwise not in

accordance with the Clean Air Act, Administrative Procedure Act, or other laws because, among other things:

(a) EPA failed to provide adequate factual support in the record for its Revised Final Determination that the greenhouse gas emission standards it had previously prescribed for model years 2022-2025 are not appropriate;

(b) EPA failed to provide the reasoned explanation required to justify its withdrawal of the January 2017 Final Determination that the greenhouse gas emission standards it had previously prescribed for model years 2022-2025 are appropriate;

(c) EPA did not adequately satisfy the requirements of 40 C.F.R. § 86.1818-12(h), which requires that EPA base its final determination on a record that has been made available for public review and comment, a draft Technical Assessment Report and detailed assessments of specific factors identified in the regulation.

Dated: July 1, 2020

Respectfully submitted,

/s/ Kevin Poloncarz

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CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of July, 2020, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF System, which will cause all registered CM/ECF users to be served. Additionally, a true and correct copy of the foregoing was served via First Class U.S. Mail on the following:

Hon. Andrew Wheeler, Administrator
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Dated: July 1, 2020

/s/ Kevin Poloncarz
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