ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 12-1100 (and consolidated cases)

WHITE STALLION ENERGY CENTER, LLC, et al.

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

Respondent.

On Petition for Review of EPA Final Action, 77 Fed. Reg. 9304

BRIEF OF INDUSTRY RESPONDENT INTERVENORS

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Dated: February 21, 2013 (Initial Brief)

CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), counsel for Intervenor-Respondents Calpine Corporation, Exelon Corporation, National Grid Generation LLC, and Public Service Enterprise Group, Inc. certifies as follows:

(A) Parties and *amici*: With two exceptions, the parties and *amici* to this action are those set forth in the certificate filed with the Joint Opening Brief of State, Industry and Labor Petitioners. The first exception is that on December 6, 2012, the Court granted the motion of Petitioner EcoPower Solutions (USA) Corporation to dismiss its petition for review (Case No. 12-1170). The second exception is that on February 11, 2013, this Court granted the motion of the American Thoracic Society, the American College of Chest Physicians, the American College of Preventive Medicine, the American College of Occupational and Environmental Medicine, the National Association for the Medical Direction of Respiratory Care, William Buzbee, Jody Freeman, Oliver Houck, Richard Lazarus, Robert Percival, and Zygmunt Plater for leave to join in the *amicus curiae* brief.

(B) Rulings Under Review: This case addresses petitions for review of EPA's Final Rule, "National Emission Standards for Hazardous Air Pollutants From Coal and Oil-Fired Electric Utility Steam Generating Units," 77 Fed. Reg. 9304 (Feb. 16, 2012).

(C) Related Cases: Intervenor-Respondents adopt the statement of related cases set forth in the Brief for Respondent.

February 21, 2013

/s/ Brendan K. Collins
Brendan K. Collins

CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, Intervenor-Respondents Calpine Corporation, Exelon Corporation, National Grid Generation LLC, and Public Service Enterprise Group, Inc. provide the following disclosure statements.

Calpine Corporation ("Calpine") generates more electricity than any other independent power producer in America, with a fleet of 92 power plants in operation or under construction, representing more than 27,000 megawatts of generation capacity in operation. Serving customers in 20 states and Canada, Calpine specializes in developing, constructing, owning and operating natural gas-fired and renewable geothermal power plants that use advanced technologies to generate power in a low-carbon and environmentally responsible manner. 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.

Exelon Corporation ("Exelon") is a publicly-traded corporation, organized and existing under the laws of the Commonwealth of Pennsylvania. Its stock trades on the New York Stock Exchange under the ticker symbol EXC. Exelon has no parent company, and no publicly-held company has a 10 percent or greater

ownership interest in Exelon. Exelon owns Exelon Generation Company, LLC which owns or controls approximately 35,000 MW of generating facilities, and is engaged in the generation and sale of electricity in wholesale and retail markets. Exelon is also engaged in the purchase, transmission, distribution and sale of electricity through its regulated electric utility subsidiaries, Baltimore Gas and Electric Company ("BGE") of Baltimore, MD, Commonwealth Edison Company ("ComEd"), of Chicago, IL, and PECO Energy Company ("PECO"), of Philadelphia, PA. Together, BGE, ComEd and PECO own transmission and distribution systems and serve approximately 6.6 million retail electric customers in central Maryland, northern Illinois, and southeastern Pennsylvania. On March 12, 2012, Exelon merged with Constellation Energy Group, Inc. in a stock-for-stock transaction. The resulting company retained the Exelon name and is headquartered in Chicago.

National Grid Generation LLC is a limited liability company organized under the laws of New York that owns and operates 53 natural gas- and oil-fired electric generating units capable of delivering approximately 3,850 megawatts of electricity. National Grid Generation LLC is a wholly-owned subsidiary of KeySpan Corporation. KeySpan Corporation is a wholly-owned subsidiary of National Grid USA, a public utility holding company with regulated subsidiaries engaged in the generation of electricity and the transmission, distribution and sale of both natural gas and electricity. All of National Grid USA's common shares are owned by National Grid North America Inc., which is wholly-owned by National Grid (US) Partner 1

Limited. National Grid (US) Partner 1 Limited is wholly-owned by National Grid (US) Investments 4 Limited, which is wholly-owned by National Grid (US) Holdings Limited, which is wholly-owned by National Grid plc. National Grid plc's ordinary shares are listed on the London Stock Exchange. National Grid plc's stock is also held by U.S. investors through American Depositary Shares that are listed on the New York Stock Exchange. National Grid plc has no parent companies and no publicly-held company holds a 10 percent or greater ownership interest.

Public Service Enterprise Group, Inc. ("PSEG") is a diversified energy company whose family of companies distributes electricity and gas to more than two million utility customers in New Jersey and owns and operates approximately 13,200 megawatts of electric generating capacity concentrated in the Northeast. PSEG owns a diverse fleet of generating units, including coal-fired units. PSEG is a publicly-traded New Jersey corporation. It has no parent companies and no publicly-held company holds a 10 percent or greater ownership interest.

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GLOSSARY

Act	Clean Air Act
Am.Br.	Brief of *Amici Curiae* in Support of Respondent, Doc. 1417795
EGU	Electric Utility Steam Generating Unit, as defined in 42 U.S.C. § 7412(a)(8)
EPA	U.S. Environmental Protection Agency
EPABr.	Brief for Respondent, Doc. 1416613
JA	Joint Appendix
MACT	Maximum achievable control technology
MATS	Mercury and Air Toxics Standards, *National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 77 Fed. Reg. 9304 (Feb. 16, 2012)
Pet.Br.	Joint Brief of State, Industry and Labor Petitioners, Doc. 1401252
RTC	Response to Comments
Rule	Mercury and Air Toxics Standards, *National Emission Standards for Hazardous Air Pollutants from Coal- and Oil-Fired Electric Utility Steam Generating Units and Standards of Performance for Fossil-Fuel-Fired Electric Utility, Industrial-Commercial-Institutional, and Small Industrial-Commercial-Institutional Steam Generating Units*, 77 Fed. Reg. 9304 (Feb. 16, 2012)
SO_2	Sulfur Dioxide

INTRODUCTION

The electric generation industry has anticipated the application of Section 112 of the Clean Air Act ("Act"), 42 U.S.C. § 7412, to its facilities since EPA's decision to list the category of "electric utility steam generating units" ("EGUs") in 2000. Some industry members have since invested in their generation fleets, mindful of the "maximum achievable control technology" standards that EPA has been required to promulgate since 2002 (*see* 42 U.S.C. § 7412(c)(5)), and the short time the Act allows for implementation of those standards.[1] Companies installed expensive control equipment on plants now capable of meeting the requirements of the Mercury and Air Toxics Standards ("MATS Rule" or "Rule"). Companies retired uncontrolled plants and replaced them with natural gas plants, or with increased output at nuclear plants and other cleaner alternatives. These investment decisions were predicated on the same straightforward reading of Section 112 and this Court's decisions in *New Jersey v. EPA*, 517 F.3d 574 (D.C. Cir. 2008), and other cases that led EPA to adopt the Rule. EPA's finding that it is appropriate and necessary to regulate EGUs under Section 112, and its decision to regulate those sources in the same manner as all other sources under Section 112, are supported by the record, the law and the unique circumstances in which electric generators operate.

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[1] Exelon Corporation Comments on the proposed MATS Rule, EPA-HQ-OAR-2009-0234-17648, 17650, 17651 ("Exelon Comments") at 7-8 (JAXX-XX). *See also* 42 U.S.C. § 7412(i)(3).

Calpine Corporation, Exelon Corporation, National Grid Generation, LLC and Public Service Enterprise Group, Inc. (collectively, the "Industry Intervenors"), are engaged in the business of electric generation. Together they represent 80 gigawatts of generation capacity, enough to power over 60 million homes, and have made significant investments to prepare for the Rule. The generation industry requires regulatory certainty to engage in long-term planning and to invest in pollution control projects and new clean generation capacity necessary to replace antiquated, uncontrolled plants.[2] The long delay in the Rule's development, exacerbated by EPA's unauthorized attempt to de-list the EGU category in 2005, has harmed the industry, especially those members who, like Industry Intervenors, participate in competitive wholesale power markets, where the massive capital investments necessary to maintain the integrity of the nation's power grid are protected *only* by foresight dependent on regulatory certainty.[3] The Rule finally provides the certainty generators need, which will again be lost if this Court disturbs EPA's thoroughly-considered, technically-justified, reasonable application of Section 112 to EGUs.[4] The petitions for review should be denied.

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2 Exelon Comments at 2, 6-7 (JAXX, XX-XX).

3 *Id.*

4 *See* PSEG Comments on the proposed MATS Rule, EPA-HQ-OAR-2009-0234-18025 at 4 (JAXX).

STATEMENT OF THE CASE

Industry Intervenors adopt the Statement of the Case and Standard of Review offered by Respondent, and submit the following additional information.

Section 112 was adopted in its current form in 1990 concurrently with the Title IV Acid Rain Program, which introduced the first large-scale market-based system for reducing emissions of sulfur dioxide ("SO_2") from coal-fired power plants. *See* Clean Air Act Amendments of 1990, Pub. L. No. 101-549, 104 Stat. 2399 (1990). Title IV did not impose mandatory emission limits, but rather established an allowance trading program to create economic incentives for generators to install and to operate emission controls, especially flue gas desulfurization systems, or "scrubbers," to control SO_2. *See* 42 U.S.C. §§ 7651-7651*o*.

Congress adopted Section 112(n)(1)(A) to give EPA an opportunity to assess the impact of, among other things, Title IV on hazardous emissions from EGUs before deciding whether they should be regulated under Section 112. *See* 76 Fed. Reg. 24,976, 24,978 (May 3, 2011). Scrubbers installed to reduce SO_2 also reduce hazardous acid gas pollutants, including hydrochloric acid and hydrofluoric acid, and in certain configurations scrubbers will also reduce mercury and non-mercury metals, also hazardous pollutants.[5] Although Title IV prompted the installation of some scrubbers, most plants either switched to low sulfur coal without adding controls, or

[5] Exelon Comments, Exhibit 7 at 7, A-14–A-21, Exhibit 4 at 8, 20-21, 23 (JAXX, XX-XX, XX, XX-XX, XX). *See also* 76 Fed. Reg. at 24,990.

took no action at all, using allowances to meet their obligations. EPA's Utility Study concluded that only 27 of 261 EGUs surveyed in 1997 installed scrubbers.[6] More than fifteen years later, less than two-thirds of EGUs have scrubbers, and fewer still have configured their scrubbers to remove hazardous pollutants.[7]

Furthermore, much of the control equipment installed in response to Title IV and other programs fails to reduce hazardous pollutants reliably because it is not operated consistently. Petitioners note that "scrubbers installed to meet Acid Rain Program requirements are highly effective in reducing HAP emissions" (Pet.Br. 4), but scrubbers cannot be "effective" if they are not run. Allowance programs such as Title IV rely on economic incentives to reduce emissions, rather than mandatory limits. When those economic incentives are insufficient to cover the cost of operating pollution controls, even generators who already installed controls operate those controls only to the minimum extent necessary to comply with their permits.[8]

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[6] Eighty-three units purchased emission allowances and 136 units switched to low sulfur coal. Department of Energy, *The Effects of Title IV of the Clean Air Act Amendments of 1990 on Electric Utilities: An Update*, at 6-9 (March 1997) ("DOE Report") (JAXX-XX) (cited in Utility Study at 2-31 to 2-32 (EPA-HQ-OAR-2009-0234-3052) (JAXX-XX)).

[7] Exelon Comments at 25 n.47, 50-51, Exhibit 10 at 8-11, Exhibit 2 at 19-20, tbl.5, Exhibit 4 at 10 (JAXX, XX-XX, XX-XX, XX-XX, XX).

[8] DOE Report 6-9 (JAXX-XX). *See also* Response to Comments ("RTC"), Vol. I at 13 (JAXX).

Competitive electricity markets create strong incentives for EGU owners to avoid, as much as possible, the operation of pollution controls that raise operating costs. Power grid operators – the direct customers of wholesale electricity generators – take competitive bids from generating facilities and sequentially purchase electric output starting at the lowest bid price and proceeding upward until electricity demand is satisfied. The last bid needed and accepted then sets the price for all previously accepted power. Generating facilities with higher – and unaccepted – bids do not operate, generate power or earn revenue. For the past several years, allowance prices and energy prices have been so low that it has been cheaper for many generators to buy allowances rather than to reduce pollution by operating already-installed controls.

Neither Title IV nor any other provision of the Act requires or even encourages generators who have thus far avoided installing hazardous pollutant controls to install them now, absent the MATS Rule. As a result, uncontrolled EGUs remain the leading source of many hazardous pollutants in the air we breathe. *See, e.g.*, 77 Fed. Reg. 9304, 9310 (Feb. 16, 2012). Without the Rule, they will continue to emit hazardous pollutants unabated.

SUMMARY OF ARGUMENT

EPA's finding that it is "appropriate and necessary" to regulate EGUs under Section 112 (the "Finding") and promulgation of the Rule reflect the proper application of the law to the facts in the administrative record. The Rule faithfully

observes both the letter and spirit of Section 112, and the petitions for review should be denied.

ARGUMENT

I. EPA's Finding is Proper.

A. Regulation under Section 112 is necessary to reduce hazardous pollutant emissions from EGUs.

In addition to the reasons set forth in Respondent's brief, the nature of competitive power markets further supports EPA's Finding. Because the economic incentives created by Title IV and similar programs are inadequate to encourage reductions in hazardous pollutants, there are now three groups of EGUs: (1) units that must operate controls to meet lower permit limits (*e.g.*, newer units, and those subject to more stringent State laws); (2) units that have installed controls voluntarily, but operate them only in response to capricious economic incentives; and (3) units that never installed controls. In competitive energy markets throughout the country, the second and third groups of units, unencumbered by the cost of operating emission controls, routinely underbid well-controlled EGUs and other cleaner energy sources. As a result, uncontrolled units operate more, pollute more, and depress wholesale electricity prices paid to all generators, assuring that it will remain uneconomic even to operate existing pollution controls, much less to install new controls or to build new, cleaner generation sources.

Without national unit-level emission standards under Section 112, existing EGUs will remain overwhelmingly uncontrolled, with the health and environmental effects of their pollution unabated.[9] Petitioners argue that it is inappropriate to regulate EGUs, touting reductions in the industry's emissions over the past 20 years. Pet.Br. 8-9. They neglect to mention, though, that these improvements came from their *competitors'* investments, while their uncontrolled units continue to make EGUs the largest source of hazardous pollutants in the nation. For Petitioners to rely on emission reductions achieved at their competitors' expense to dodge the Rule's requirement that they make comparable investments in pollution controls is transparent free-riding. The Rule merely requires owners of uncontrolled plants to install and operate control technology already operating at their competitors' plants, both leveling the playing field and improving health and the environment.

B. EPA was not required to consider cost when listing EGUs.

Petitioners complain that EPA did not consider costs when deciding to list EGUs under Section 112(c). Pet.Br. 39-44. As for-profit businesses, Industry Intervenors are as concerned with cost as Petitioners, but recognize that the statute specifically addresses cost concerns at the standard-setting stage, *not* the listing stage. Cost is not included as a consideration for listing source categories under Section

[9] Compliance with the MATS Rule will reduce hydrochloric acid emissions from EGUs by approximately 88% and mercury emissions by 75%. Regulatory Impact Analysis 3-10 (JAXX).

112(c), nor does the word "cost" appear in Section 112(n)(1)(A), much though Petitioners strain to find it. *Id.*

The approach mandated by Congress and followed by EPA properly balances cost considerations with the goal of Section 112 – protection of the public from hazardous pollutants. *See* Am.Br. 13-22. Congress specifically included cost as a factor for EPA to consider in developing emission standards under Section 112(d)(2). In contrast, Congress provided that where EPA sets MACT Floor standards under Section 112(d)(3),[10] neither cost nor any other factor identified in Section 112(d)(2) is considered because MACT Floor standards are based only on the real world performance of existing plants, not administrative judgment.[11]

Petitioners' reading of Section 112(n)(1)(A) is wholly inconsistent with the hierarchy of factors established by Congress, as it would purportedly require EPA to choose not to regulate EGUs *at all* under Section 112 based on cost, even though EPA could not consider cost to justify a less stringent emission standard than the MACT Floor. EPA's decision not to consider cost at the listing stage is consistent

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[10] *See* EPABr. 8-9 for explanation of the "MACT Floor."

[11] Congress considered and rejected incorporating cost in the MACT Floor analysis. *Compare* H.R. 3030, 101st Cong. § 112(d)(3) (as reported by H. Comm. on Energy and Commerce, May 17, 1990) *with* Pub. L. No. 101-549 § 301, 104 Stat. 2399, 2540. *See also Nat'l Lime Ass'n v. EPA*, 233 F.3d 625, 629 (D.C. Cir. 2000).

with the statutory structure, and certainly reasonable under a *Chevron* analysis.

Furthermore, as a practical matter, EPA cannot consider cost until after listing, when it develops emission standards. Until EPA determines the MACT Floor, and considers requiring additional emission reductions under Section 112(d)(2), EPA cannot possibly fulfill its statutory mandate to evaluate "the cost of achieving such emission reduction, and any non-air quality health and environmental impacts and energy requirements." *See* 42 U.S.C. § 7412(d)(2). This analysis requires a detailed understanding of what emissions limits are achievable, what equipment will be required to achieve those limits, and what impacts on health and the environment will result. Under Petitioners' interpretation, EPA would be required to formulate emission standards in order to assess costs, even before determining whether to regulate the EGU category at all.

Petitioners' criticisms of EPA's cost-benefit analysis under Executive Order 12,866 (Pet.Br. 43) make distinctions not recognized within the Dismal Science. EPA applied best scientific practices and approved guidelines, and correctly showed that the benefits of the rule vastly exceed the costs. Am.Br. 3-13. A peer review of EPA's methodology submitted with Exelon's comments on the proposed MATS Rule

confirmed EPA's methodology and found that, if anything, EPA underestimated benefits and overestimated costs.[12]

II. EPA Properly Developed Standards Under Section 112.

A. The Rule requires only that existing EGUs match reductions their better performing peers already achieve.

Making essentially the same argument that this Court rejected in *New Jersey v. EPA*, 517 F.3d at 580-583,[13] Petitioners contend that Section 112(n)(1)(A) was intended to establish a parallel universe of regulation different from the rest of Section 112. Pet.Br. 36-38. As set forth in Respondent's brief (EPABr. 56-62), Section 112(n)(1)(A) does not do so, but merely provides a different entryway into the same regulatory program applied to all source categories regulated under Section 112.

The MATS Rule complies with the emission standard-setting provisions of Section 112, and is neither onerous nor unnecessary, as Petitioners suggest. The standards are achievable by all types of facilities through the application of widely available and well-understood control technologies already in place at many plants.[14] In nearly every case, MATS will do nothing more than require that all EGUs achieve

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12 Exelon Comments at 39-42, 45-46, Exhibit 21 at 4-5, 10-22, 31-33 (JAXX-XX, XX-XX, XX-XX, XX-XX, XX-XX).

13 *See also* Transcript of Oral Argument at 33-34, *New Jersey v. EPA* (No. 05-1097) (JAXX-XX).

14 Exelon Comments, Exhibit 7 at 15 (JAXX).

the average standards already achieved by the best performing 12% of plants – the MACT Floor. Indeed, EPA found that 69 coal-fired units already meet *all* of the MATS standards.[15] Petitioners' complaints thus amount to nothing more than their desire to continue operating on the cheap, and to avoid clearing the bar set, not by EPA, but by their industry peers.

Petitioners' more specific criticisms of the MATS standards, such as EPA's decisions on which sources to group together for purposes of calculating the MACT Floor, merely quibble with EPA's technical judgment in areas properly left to the agency's discretion. *See, e.g.*, EPABr. 17, 81, 91. This Court owes EPA the highest deference in these areas and the ample record evidence supporting EPA's judgments requires that these arguments be dismissed.

B. There is no rational basis for distinguishing between area and major sources within the EGU category established by Congress.

Petitioners claim that EPA erred when it did not distinguish between EGUs that would be "major sources" and "area sources" when it calculated MACT Floor standards for the EGU category. Petitioners' transparent objective is to dilute the protection that Section 112 would provide by excluding from EPA's consideration the "best performing" sources that Congress chose to set the benchmark for performance in Section 112(d)(3).

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[15] RTC Vol. I at 435 (JAXX).

Respondent argues correctly that Section 112(a)(8) unambiguously overrides any area-versus-major source distinction within the unified category of "electric utility steam generating units," and that its reasonable interpretation is entitled to deference even if the Court finds ambiguity. *See* EPABr. 63-67. The alternative interpretation championed by Petitioners is patently *unreasonable,* as it would have the dual effect of allowing the dirtiest plants to continue to pollute at higher levels, while requiring plants already operating pollution controls to meet even tighter standards.

Petitioners claim that "EPA must establish MACT standards for 'major sources' based on the performance, and characteristics, of a population of sources that consists *exclusively* of 'major sources.'" Pet.Br. 57 (emphasis in original). For this proposition, Petitioners cite Section 112(d)(1), which says nothing of the sort. Section 112(d)(1) requires EPA to develop standards for both major and area sources, but to the extent the Act mandates any particular means by which EPA "*must* establish MACT standards," Section 112(d)(2) and (d)(3) lay out EPA's mandatory obligations. Neither of these paragraphs creates or recognizes any distinction between area and major sources. The only data requirement established here is that EPA base MACT Floor standards on "existing sources… for which the Administrator has emissions information;" the words "major" and "area" do not appear. 42 U.S.C. § 7412(d)(3)(A).

Virtually all uncontrolled coal-fired generation plants emit more than ten tons per year of hydrochloric acid, and would be characterized as "major sources" if such a distinction were made. *See id.* § 7412(a)(1). Only a handful of coal-fired facilities emit less without operating emission controls – just eight in the entire country.[16] However, because acid gases are controlled by the same technologies that remove SO_2, EGUs operating scrubbers may reduce hazardous pollutant emissions to the point that they fall below the major source threshold.[17] Aside from total mass of emissions, these plants are typically comparable in all other respects to the vast majority of plants that exceed the major source threshold.[18] Far more than any other factor, it is the presence or absence of pollution controls that determines the amount of emissions from any plant, and therefore whether that EGU would be a "major source" or an "area source" if such a distinction were to be made.

Petitioners argue that EPA must segregate supposed "major source" and "area source" data to achieve the perverse effect of eliminating from EPA's calculations many of the very "best performing" sources that Congress intended to set the benchmark for the MACT Floor. 42 U.S.C. § 7412(d)(3)(A). Many sources EPA used to calculate emission standards employ controls that reduce their hazardous

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16 RTC Vol. I at 263-65 (JAXX-XX). There are 1,091 coal-fired EGUs. 76 Fed. Reg. at 25,032.

17 RTC Vol. I at 265 (JAXX).

18 *Id.* at 263-64 (JAXX-XX).

emissions below the major source threshold, despite the fact that they are larger units.[19] If these "best performing" sources were excluded from the calculation of the MACT Floor, they would be replaced by sources that are necessarily *worse performing* (having missed EPA's original cut), and the resulting MACT Floor would necessarily be weaker. Conversely, if a MACT Floor were derived only for sources that have already acted to reduce emissions, the result would be a more stringent standard based on the "best performers" in a group already composed entirely of "best performers."[20] Petitioners thus seek to extend their free-riding even further by advocating a lenient standard for those who have done the least to improve air quality and a more stringent (and more expensive) standard for their competitors who have done the most.

Such an absurd result would be plainly contrary to the Congressional mandate that sources utilize the "maximum achievable control technology." EPA was correct to reject any perverse distinction between major and area sources within the EGU category.

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19 RTC Vol. 1 at 263-65 (JAXX-XX).

20 *See* Exelon Comments at 82 (JAXX).

CONCLUSION

For the reasons set forth above and in the briefs of EPA, *amici curiae* in support of Respondent, and other Respondent Intervenors, the petitions for review should be denied.

February 21, 2013

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

In accordance with Federal Rule of Appellate Procedure 32(a)(7) and Circuit Rule 32(a), I hereby certify that the foregoing Brief of Industry Respondent Intervenors contains 3,118 words as counted by the Microsoft Office Word 2010 word processing system. I further certify that the combined words of the Public Health, Environmental and Environmental Justice Group Respondent Intervenors, the State and Local Government Respondent Intervenors, and the Industry Respondent Intervenors do not exceed 9,375, as mandated by this Court's August 24, 2012 Order.

February 21, 2013

/s/ Brendan K. Collins
Brendan K. Collins

CERTIFICATE OF SERVICE

I, Brendan K. Collins, a member of the Bar of this Court, hereby certify that on February 21, 2013, I electronically filed the foregoing "Brief of Industry Respondent Intervenors" with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the appellate CM/ECF system.

Pursuant to D.C. Circuit Rules 25 and 31, five (5) paper copies of the foregoing brief and accompanying addendum will be delivered to the Clerk of the Court.

Participants in the case who are registered CM/ECF users will be served by the appellate ECF system.

/s/ Brendan K. Collins
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