

**ORAL ARGUMENT NOT YET SCHEDULED**

No. 15-1432 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, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1442, 15-1451, 15-1459)

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

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NEWMONT NEVADA ENERGY INVESTMENT, LLC  
AND NEWMONT USA LIMITED,

*Petitioners,*

v.

ENVIRONMENTAL PROTECTION AGENCY  
AND REGINA A. MCCARTHY, ADMINISTRATOR,

*Respondents.*

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**UNOPPOSED MOTION OF THE CITY OF LOS ANGELES, BY AND  
THROUGH ITS DEPARTMENT OF WATER AND POWER, 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, the City of Los Angeles, by and through its Department of Water and Power (“LADWP”), respectfully requests 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.

LADWP seeks to join with other Movant-Intervenors for Respondents from the power sector and will be represented by counsel of record for several members of their coalition. These other Movant-Intervenors for Respondents sought leave to intervene in three 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> Another electric generator and utility, NextEra Energy, Inc., also moved to intervene on November 5, 2015.<sup>2</sup> On December 7, 2015, a group of several more electric generators and utilities, including New York Power Authority, Sacramento Municipal Utility District, and Southern

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<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).

California Edison Company, also moved to intervene in support of Respondents.<sup>3</sup> With the consent of these Movant-Intervenors, LADWP now seeks leave of the Court to join their coalition and intervene on behalf of Respondents.

Counsel for LADWP consulted with counsel for Petitioners, Respondents and other Movant-Intervenors in this case and the consolidated cases on December 16, 2015, with the exception of counsel for Petitioner in case 15-1459, who were consulted on December 17, 2015, upon consolidation of its petition with these cases. Counsel for Respondents and Movant-Intervenors for Respondents American Wind Energy Association, Solar Energy Industries Association, Environmental Non-Governmental Organizations, and State and Municipal Movant-Intervenors for Respondents have stated that they consent to the motion. Counsel for Movant-Intervenor for Respondents Advanced Energy Economy has stated that it does not oppose the motion. Counsel for Petitioners in cases 15-1363, 15-1364, 15-1370, 15-1373, 15-1374, 15-1380, 15-1393, 15-1398, 15-1409, 15-1418, 15-1422, and 15-1459 have stated that they take no position on the motion. Counsel for Petitioner in case 15-1368 has stated that it takes no position on the motion at this time. Counsel for Petitioners in cases 15-1432, 15-1442, and 15-1451 have stated that they do not oppose the motion. Not all counsel for the remaining Petitioners and Movant-Intervenors for Petitioners had responded to LADWP's request for position at the time of this filing.

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<sup>3</sup> See Unopposed Motion of New York Power Authority, Sacramento Municipal Utility District, and Southern California Edison Company for Leave to Intervene in Support of Respondents (filed Dec. 7, 2015) (Doc. #1587303).

## I. INTRODUCTION AND INTEREST OF LADWP

LADWP is the largest municipal electric utility in the United States, providing electric service to a population of over 4 million people. Founded in 1902 and delivering electricity since 1916, LADWP has annual sales which exceed 23 million megawatt-hours and a service territory covering 465 square miles in Los Angeles and much of the Owens Valley. In this capacity, and as an owner of electric generating units directly subject to regulation under the Clean Power Plan, LADWP supports the Rule and the flexibility it provides to states and owners of affected generating units to achieve meaningful, cost-effective carbon dioxide (“CO<sub>2</sub>”) reductions.

As an owner and operator of a diverse portfolio of generation, transmission, and distribution assets across several states, LADWP directly owns the majority of its total generating capacity of over 7,600 megawatts (“MW”). *See* Attach. A, Decl. of Nancy Sutley ¶ 2 (hereinafter, “Decl.”). This includes the Valley Generating Station, a 580-MW natural gas-fired combined cycle generating facility that consists of affected units directly subject to regulation by the Clean Power Plan. A diverse array of sources further comprise LADWP’s portfolio, including electricity produced from hydropower, nuclear, coal, natural gas, wind, biomass, biogas, geothermal, and solar energy. *Id.*

LADWP has long been committed to increasing its use of renewable energy, investing in energy efficiency, and reducing CO<sub>2</sub> emissions. Over the last 25 years, LADWP’s CO<sub>2</sub> emission reduction efforts have resulted in substantial reductions in CO<sub>2</sub> emissions and the CO<sub>2</sub> emissions intensity of its portfolio. Between 1990 and

2012, it reduced its total CO<sub>2</sub> emissions by 22 percent and its CO<sub>2</sub> emissions intensity by 29 percent. *Id.* ¶ 3.

As the largest municipal electric utility in the nation and the owner and operator of affected generating units subject to the Clean Power Plan, LADWP has a significant, direct interest in ensuring the Rule is upheld and timely implemented. LADWP has invested extensively in developing and procuring generation from low-emitting sources and reducing demand for electricity. Informed by this experience, LADWP strongly supported the Clean Power Plan when it was released in its proposed form, submitting an extensive body of comments to the EPA that both expressed this support and offered technical revisions to strengthen its provisions.<sup>4, 5</sup>

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<sup>4</sup>*See, e.g.*, Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA (Nov. 17, 2014), EPA-HQ-OAR-2013-0602-23122; Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA (Nov. 25, 2014), EPA-HQ-OAR-2013-0602-24106 (supplement to Nov. 17, 2014 letter); Letter from Nancy Sutley, Chief Sustainability and Economic Development Officer, LADWP to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23198 (joint comments on proposed Clean Power Plan by several California utilities, including LADWP, Pacific Gas and Electric Company, Sacramento Municipal Utility District and Southern California Edison Company); Letter from Calpine Corporation, et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23167 (joint comments on proposed Clean Power Plan by a group of power companies including LADWP, Calpine Corporation, National Grid, and Seattle City Light).

<sup>5</sup> For example, LADWP commented on how a significant, unplanned outage at Utah's Intermountain Power Project (where LADWP is both a participant and its operating agent) affected the 2012 baseline data that the EPA relied upon in establishing the Clean Power Plan's goals. *See* Decl. ¶ 6; *see also* Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA (Nov. 17, 2014), EPA-HQ-OAR-2013-0602-23122, at 3. LADWP offered suggestions for how the EPA could establish a more representative baseline for use in computing the Clean Power Plan's goals and continues to support incorporation of these suggestions into the Clean Power Plan. *See* Decl. ¶ 6.

Now that the Rule is final, LADWP seeks to defend the Clean Power Plan as a reasonable and achievable means of reducing CO<sub>2</sub> emissions by joining the coalition of other Movant-Intervenors for Respondents from the power sector in these consolidated cases.

For these reasons and as described below, LADWP has 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 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). LADWP’s motion is timely because it was filed within 30 days after the most recent petition for review was filed in the consolidated cases. *Id.*

As the largest municipal electric utility in the United States, LADWP has undertaken significant, large-scale investments to increase its reliance upon lower-emitting renewable generating sources and reduce CO<sub>2</sub> emissions, while continuing to provide its customers reliable and affordable electricity service. The opportunity presented by the Clean Power Plan for other electric utilities to follow a similar path and thereby achieve meaningful CO<sub>2</sub> reductions will be greatly diminished if the Clean Power Plan is invalidated. As an owner of electric generating units subject to the

Clean Power Plan,<sup>6</sup> LADWP has an interest in its timely and full implementation, and disposition of these petitions may impair or impede its ability to protect that interest.<sup>7</sup>

LADWP will also provide an important, distinct perspective in this litigation not adequately represented by existing parties. As the largest municipal electric utility in the United States, LADWP's interests are distinct from those of Respondents, whose interests are in the proper administration and implementation of the Clean Air Act.<sup>8</sup> Further, LADWP's interests and perspective are distinct from those of other state, non-governmental organization, and trade association Movant-Intervenors for Respondents, which do not possess LADWP's unique experience as the nation's largest municipal electric utility in reducing emissions across its generation portfolio, while maintaining reliable and affordable service to the millions of people it serves.

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, including reduced reliance upon coal-fired power plants and increased reliance upon lower- and zero-emitting generating sources. In light of LADWP's experience reducing emissions from its generation portfolio through implementation of these and other strategies, LADWP is uniquely

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<sup>6</sup> See, e.g., Decl. ¶ 2.

<sup>7</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>8</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' interests were more narrow and focused than the EPA's).

positioned to provide the Court a candid perspective on the merits of the reduction strategies considered by the EPA in calculating the Clean Power Plan's emission reduction goals and the reasonableness of the resulting goals. In seeking to join the coalition of other power-sector Movant-Intervenors for Respondents, LADWP strives to bolster the coalition's defense of the Clean Power Plan and counterbalance the views of Petitioners from the power sector who oppose the Clean Power Plan.

Recognizing that LADWP is 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 LADWP will cause neither delay nor undue prejudice to the parties, nor any duplicative briefing. LADWP will coordinate with the EPA and all other intervenors, and follow any schedule issued by this Court.

### **III. CONCLUSION**

For the foregoing reasons, LADWP respectfully requests that the Court enter an order granting it leave to intervene in support of Respondents.



Dated: December 18, 2015

Respectfully submitted,

/s/ Kevin Poloncarz

Kevin Poloncarz

*Counsel of Record*

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*Counsel for the City of Los Angeles, by  
and through its Department of Water  
and Power*

**ORAL ARGUMENT NOT YET SCHEDULED**

Nos. 15-1432 and Consolidated Cases

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**IN THE UNITED STATES COURT OF APPEALS  
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NEWMONT NEVADA ENERGY INVESTMENT, LLC  
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*Petitioners,*

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*Respondents.*

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**CERTIFICATE AS TO PARTIES AND AMICI CURIAE**

Pursuant to Circuit Rules 15, 27(a)(4) and 28(a)(1)(A), Proposed Intervenor-Respondents submits the following Certificate as to Parties and *Amici Curiae*. The Petitioners in the above-captioned cases are:

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

**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

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

**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

**15-1442** – The Kansas City Board of Public Utilities – Unified Government of Wyandotte County/Kansas City, Kansas

**15-1451** – North American Coal Corporation

**15-1459** – Indiana Utility Group

### 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, Keepers of the Mountains Foundation, New York Power Authority, Southern California Edison Company, and Sacramento Municipal Utility District.

*Amici Curiae* are William D. Ruckelshaus, William K. Reilly, Philip Zebisch, and Institute for Policy Integrity at New York University School of Law.

/s/ Kevin Poloncarz

Kevin Poloncarz

**CERTIFICATE OF SERVICE**

I hereby certify that on this 18th 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 U.S. mail on counsel for the following parties at the following addresses:

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/s/ Kevin Poloncarz

Kevin Poloncarz

## **Attachment A**

**ORAL ARGUMENT NOT YET SCHEDULED**

No. 15-1432 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, 15-1409, 15-1410, 15-1413, 15-1418, 15-1422, 15-1442)

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*Respondents.*

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**DECLARATION OF NANCY SUTLEY**

I, Nancy Sutley, 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 Sustainability and Economic Development Officer at the Los Angeles Department of Water and Power (“LADWP”). Prior to my current position at LADWP, I was the Chair of the White House Council on Environmental Quality,

where I served from 2009 to 2014. I also previously served as Los Angeles Deputy Mayor for Energy and Environment, a member of the Board of Metropolitan Water District of Southern California and the California State Water Resources Control Board, energy advisor to Governor Gray Davis, and Deputy Secretary for Policy and Intergovernmental Relations for the California Environmental Protection Agency.

2. Founded in 1902 and delivering electricity starting in 1916, LADWP is the largest municipal electric utility in the nation, serving a population of over four million people. As a vertically integrated utility, LADWP owns and operates a diverse portfolio of generation, transmission, and distribution assets across several states. It has annual sales exceeding 23 million megawatt-hours (“MWhs”) and has a service territory that covers 465 square miles in Los Angeles and most of the Owens Valley. The transmission system serving the territory totals more than 3,600 miles and transports power from the Pacific Northwest, Utah, Wyoming, Arizona, Nevada, and California to Los Angeles. LADWP owns and operates the majority of its total generating capacity of over 7,600 megawatts (“MW”), including generating units that constitute affected generating units subject to the Clean Power Plan like the Valley Generating Station, a 580-MW natural gas-fired combined cycle generating facility. LADWP’s diverse portfolio includes electricity produced from natural gas, hydropower, coal, nuclear sources, wind, biomass, biogas, geothermal energy, and solar energy.

3. LADWP has long been committed to increasing its use of renewable energy and reducing carbon dioxide (“CO<sub>2</sub>”) emissions. Over the last 25 years, LADWP’s emission reduction efforts have resulted in substantial reductions in CO<sub>2</sub>

emissions and the CO<sub>2</sub> emissions intensity of its portfolio. Between 1990 and 2012 in particular, LADWP reduced its total CO<sub>2</sub> emissions by 22 percent and its CO<sub>2</sub> emissions intensity by 29 percent over the same period.

4. LADWP 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) (“Clean Power Plan”). LADWP has been an active and early supporter of the Clean Power Plan, submitting numerous comments to EPA on the proposed rule.<sup>1</sup> LADWP’s comments expressed its support for EPA’s efforts to reduce carbon dioxide (“CO<sub>2</sub>”) emissions from the power sector generally, as well as the reasonableness and legality of the Clean Power Plan specifically.<sup>2</sup>

5. LADWP’s comments also detailed its strong support for EPA’s decision to provide states with broad flexibility in implementing Clean Power Plan

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<sup>1</sup> See Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA (Nov. 17, 2014), EPA-HQ-OAR-2013-0602-23122; Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA (Nov. 25, 2014), EPA-HQ-OAR-2013-0602-24106 (supplement to Nov. 17, 2014 letter); Letter from Janet Loduca, Vice President, Safety, Health, and Environment, Pacific Gas and Electric Company (“PG&E”), et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23198 (joint comments on proposed Clean Power Plan by several California utilities, including LADWP, PG&E, and Southern California Edison Company); Letter from Calpine Corporation, et al. to EPA (Dec. 1, 2014) EPA-HQ-OAR-2013-0602-23167 (joint comments on proposed Clean Power Plan by a group of power companies including LADWP, Calpine, National Grid, and Seattle City Light).

<sup>2</sup> *Id.*

requirements, specifically by allowing states to rely on existing state programs that are already demonstrating cost-effective emission reductions from the power sector.<sup>3</sup>

6. LADWP's comments included recommendations to EPA on how to improve the Clean Power Plan and noted that a significant, unplanned outage at Utah's Intermountain Power Project in 2012 affected how the Clean Power Plan's baseline data was established. Since EPA did not incorporate all of LADWP's recommendations, including the baseline issue, into the Clean Power Plan, LADWP continues to support the idea that EPA should set the baseline levels of electrical generating units for computing state goals based on representative unit operations such as, for example, utilizing a recent multi-year period and specifically allow affected states and electric utilities to select as their baseline the average of any three consecutive years from 2008 through 2013.<sup>4</sup>

I declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the foregoing is true and correct. Executed on December 16, 2015.



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Nancy Sutley

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<sup>3</sup> See Letter from Mark J. Sedlacek, Director of Environmental Affairs, LADWP to EPA, at 12-13 (Nov. 17, 2014), EPA-HQ-OAR-2013-0602-23122.

<sup>4</sup> See *id.* at 3.