

ORAL ARGUMENT NOT YET SCHEDULED

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

No. 20-1175

NATIONAL COALITION FOR ADVANCED TRANSPORTATION et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY et al.,

Respondents.

No. 20-1178

CENTER FOR BIOLOGICAL DIVERSITY et al.,

Petitioners,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY et al.,

Respondents,

UNOPPOSED MOTION OF PETITIONERS TO CONSOLIDATE CASES
WITH CASE NO. 19-1230 AND DISPENSE WITH INITIAL SUBMISSIONS

The two above-captioned petitions for review were both filed on May 28, 2020, and docketed on June 1, 2020. Petitioners in each case now move unopposed that the petitions be consolidated for all purposes with *Union of Concerned Scientists v. NHTSA*, No. 19-1230 (*UCS*), in which this Court entered a briefing order on May 20, 2020. ECF No. 1843712. Consolidation is appropriate because the instant petitions (protectively) challenge the same agency actions under review in *UCS*, based on after-arising grounds. *See* U.S. Court of Appeals for the District of Columbia Circuit, *Handbook of Practice and Internal Procedures* (Dec. 1, 2019), at 24.

All parties to these petitions are already parties in *UCS* and cases that this Court has previously consolidated with *UCS*. No party intends to file procedural or dispositive motions in the instant petitions, and petitioners in these cases will raise the same issues in these cases as in *UCS*. Thus, “[i]n order to achieve the most efficient use of the Court’s resources, as well as to maintain consistency in its decisions,” *id.*, petitioners respectfully request that this Court consolidate these petitions with *UCS* and not require submission of case-opening documents. If the motion is granted, the petitions can proceed on the same briefing schedule, and with the same briefing format, ordered in *UCS*.

Respondents consent to the relief requested in this motion, but reserve the right to object to the merits brief filed by either of the moving Petitioners to the extent such brief goes beyond a challenge to the agency actions under review in *UCS*.

Respectfully submitted,

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Dated: June 2, 2020

CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Petitioners in Case No. 20-1175

1. National Coalition for Advanced Transportation (“NCAT”) is a coalition of companies and non-profit organizations that supports electric vehicle and other advanced transportation technologies and related infrastructure, including business leaders engaged in energy supply, transmission and distribution; vehicle and component design and manufacturing; and charging infrastructure production and implementation, among other activities. NCAT is an unincorporated association and does not have a parent corporation. No publicly-held entity owns 10% or more of NCAT.

NCAT currently has the following members:

Atlantic City Electric

Baltimore Gas & Electric

ChargePoint

Commonwealth Edison Company

Delmarva Power

Edison International

EVgo

Exelon Corporation

Pacific Gas and Electric Company

PECO

PEPCO

Plug In America

Portland General Electric

Rivian Automotive

Sacramento Municipal Utility District

Tesla, Inc.

2. Advanced Energy Economy (“AEE”) certifies that it is a not-for-profit business association dedicated to making energy secure, clean, and affordable. AEE does not have any parent companies or issue stock, and no publicly held company has a 10% or greater ownership interest in AEE.

3. Calpine Corporation (“Calpine”) certifies that it is a privately held corporation. CPN Management, LP owns 100 percent of the common stock of Calpine. Volt Parent GP, LLC is the General Partner of CPN Management, LP. Energy Capital Partners III, LLC owns the controlling interest in Volt Parent GP, LLC. Calpine is among America’s largest generators of electricity from natural gas and geothermal resources, with 78 power plants in operation or under construction in 16 U.S. states and Canada, amounting to nearly 26,000 megawatts of generating capacity. Calpine also provides retail electric service to customers in competitive markets throughout the U.S., including an additional seven states (beyond those in which it operates generation resources), through its subsidiaries Calpine Energy Solutions and Champion Energy Services.

4. Consolidated Edison, Inc. (“Con Edison”) states that it is a holding company that owns several subsidiaries, including Consolidated Edison Company of New York, Inc., which delivers electricity, natural gas and steam to customers in New York City and Westchester County, Orange & Rockland Utilities, Inc., which together with its subsidiary, Rockland Electric Company, delivers electricity and natural gas to customers primarily located in southeastern New York State and Northern New Jersey, and Con Edison Clean Energy Business, Inc., which, through its subsidiaries, develops, owns, and operates renewable and energy infrastructure projects and provides energy-related products and services to wholesale and retail customers and has more than 2,600 megawatts of utility-scale solar and wind generation capacity in service, with a footprint spanning 17 states. Con Edison has outstanding shares and debt held by the public and may issue additional securities to the public. Con Edison has no parent corporation and no publicly held company has a ten percent or greater ownership interest in it.

5. National Grid USA states that it is a holding company with regulated direct and indirect subsidiaries engaged in the transmission, distribution and sale of electricity and natural gas and the generation of electricity. It is the direct or indirect corporate parent of several subsidiary electric distribution companies, including Massachusetts Electric Company, Nantucket Electric Company, Niagara Mohawk Power Corporation and The Narragansett Electric Company. National Grid USA is also the direct corporate parent of National Grid Generation LLC, which supplies capacity to, and

produces energy for, the use of customers of the Long Island Power Authority. 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. No publicly held corporation directly owns more than 10 percent of National Grid plc's outstanding ordinary shares.

6. New York Power Authority ("NYPA") states that it is a New York State public-benefit corporation. It is the largest state public power utility in the United States, with 16 generating facilities and more than 1,400 circuit-miles of transmission lines. NYPA sells electricity to more than 1,000 customers, including local and state government entities, municipal and rural cooperative electric systems, industry, large and small businesses and non-profit organizations. NYPA has no parent corporation and no publicly held company owns greater than 10 percent ownership interest in it.

7. Power Companies Climate Coalition states that it is an unincorporated association of companies engaged in the generation and distribution of electricity and natural gas, organized to advocate for responsible solutions to address climate change and reduce emissions of greenhouse gases and other pollutants, including through participation in litigation concerning federal regulation. Its members include the Los Angeles Department of Water and Power (“LADWP”), Seattle City Light, NYPA, as well as Con Edison, National Grid USA and each of their respective subsidiaries, as enumerated and described elsewhere in this disclosure statement.*

Petitioners in Case No. 20-1178

1. Center for Biological Diversity is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Center for Biological Diversity is a national, nonprofit conservation organization incorporated under the laws of the State of Arizona and headquartered in Tucson, that is dedicated to the protection of endangered species and the environment.

* Other members of Power Companies Climate Coalition, including Exelon Corporation and its subsidiaries (Atlantic City Electric Company, Baltimore Gas and Electric Company, Commonwealth Edison Company, Constellation, Delmarva Power, Exelon Generation Company, PECO, and Potomac Electric Power), Pacific Gas and Electric Company, and Sacramento Municipal Utility District, are participating in litigation challenging these actions as members of the National Coalition for Advanced Transportation. Power Companies Climate Coalition members Public Service Enterprise Group Incorporated and its subsidiaries (PSEG Energy Resources & Trade, PSEG Fossil, PSEG Nuclear, PSEG Power, and Public Service Electric and Gas Company) are not participating in this litigation.

2. Chesapeake Bay Foundation, Inc., is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Chesapeake Bay Foundation is a nonprofit, nonpartisan organization whose mission is to “Save the Bay” and keep it saved, as defined by reaching a 70 on the Chesapeake Bay Foundation’s Health Index. CBF is incorporated under the laws of Maryland with offices in Maryland, Pennsylvania, Virginia, and the District of Columbia.

3. Communities for a Better Environment is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Communities for a Better Environment is a nonprofit corporation with a mission of achieving environmental health and justice. Communities for a Better Environment works to secure clean air and reduce pollutant emissions in its members’ communities, and to address climate change emissions and impacts locally, regionally and beyond.

4. Conservation Law Foundation is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Conservation Law Foundation is a nonprofit, member-supported environmental organization whose vision is a healthy, thriving New England – for generations to come. It uses the law, science and the market to create solutions that preserve our natural resources, build healthy communities, and sustain a vibrant economy. Conservation Law Foundation is incorporated in the Commonwealth of Massachusetts with offices in Massachusetts, Maine, New Hampshire, Vermont, and Rhode Island.

5. Environment America is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Environment America works for clean air, clean water, clean energy, wildlife and open spaces, and a livable climate. Environment America is incorporated under the laws of the state of Colorado, with headquarters in Denver, Colorado.

6. Environmental Defense Fund is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Environmental Defense Fund is a national non-profit organization that links science, economics, and law to create innovative, equitable, and cost-effective solutions to urgent environmental problems. Environmental Defense Fund is organized under the laws of the State of New York with its headquarters in New York City.

7. Environmental Law & Policy Center is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Environmental Law & Policy Center is a nongovernmental corporation that works to improve public health and to protect our natural resources across the Great Lakes states and the Midwest region. Environmental Law & Policy Center is incorporated under the laws of the State of Illinois with offices in Illinois, Iowa, Michigan, Minnesota, Ohio, Wisconsin, and Washington, D.C.

8. Natural Resources Defense Council, Inc., is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Natural Resources Defense Council is a nongovernmental corporation that engages in research, advocacy,

public education, and litigation to protect public health and the environment. Natural Resources Defense Council is a tax-exempt organization incorporated under the laws of the State of New York, with headquarters in New York City.

9. Public Citizen, Inc., is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Public Citizen is a nongovernmental corporation that engages in research, advocacy, media activity, and litigation related to advancing health and safety, consumer protection, and the environment, among other things. Public Citizen is incorporated in the District of Columbia and has its principal offices in Washington, D.C.

10. Sierra Club is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Sierra Club is a nongovernmental corporation whose mission is to explore, enjoy, and protect the wild places of the Earth; to practice and promote the responsible use of the Earth's resources and ecosystems; to educate and enlist humanity to protect and restore the quality of the natural and human environment; and to use all lawful means to carry out these objectives. Sierra Club is incorporated under the laws of the State of California, with its principal place of business in Oakland, California.

11. Union of Concerned Scientists is a nonstock corporation that does not issue shares or debt securities, and it has no parent companies. Union of Concerned Scientists is a nongovernmental corporation that puts rigorous, independent science to work to solve our planet's most pressing problems by combining technical analysis and effective

advocacy to create innovative, practical solutions for a healthy, safe, and sustain-able future. Union of Concerned Scientists is incorporated under the laws of Washington, D.C., with headquarters in the State of Massachusetts.

CERTIFICATE OF COMPLIANCE

The foregoing motion contains 258 words and complies with the type-volume limit in Fed. R. App. P. 27(d)(2)(A). The document was prepared using Microsoft Word 365 in 14-point, Garamond font, and it complies with the typeface and typestyle requirements of Fed. R. App. P. 27(d)(1)(E).

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CERTIFICATE OF SERVICE

On June 2, 2020, I filed the foregoing document with this Court using the CM/ECF system. All counsel in these consolidated cases are registered CM/ECF users and will be served via the CM/ECF system.

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