

No. 18-1114 (consolidated with 18-1118, 18-1139, 18-1162)

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

STATE OF CALIFORNIA, *et al.*,

Petitioners,

v.

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

Respondents.

On Petition for Review of Final Action of the United States Environmental
Protection Agency

**UNOPPOSED MOTION BY ADVANCED ENERGY ECONOMY FOR
LEAVE TO PARTICIPATE AS *AMICUS CURIAE* IN SUPPORT OF
PETITIONERS**

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Dated: January 14, 2019

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, *amicus curiae* the Advanced Energy Economy (“AEE”) hereby submits the following corporate disclosure statement:

AEE 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.

s/ Gary S. Guzy

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Pursuant to Federal Rule of Appellate Procedure 29(a)(3) and D.C. Circuit Rule 29(b), Advanced Energy Economy (“AEE”) respectfully moves for leave to participate as an *amicus curiae* in support of Petitioners.

Counsel for all petitioners in these consolidated cases have provided the consent of their clients to *amicus* participation by AEE. Counsel for federal respondents and for intervenors in support of respondents have taken no position.¹

On January 12, 2017, Respondent Environmental Protection Agency (“EPA”) issued a binding “Final Determination” that required EPA to retain its greenhouse gas emission standards for light-duty vehicles for the years 2022-2025. In April 2018, EPA announced that it had reconsidered and withdrew that determination in an 11-page Federal Register notice that asserted that many of EPA’s conclusions reached little more than a year earlier “were optimistic or have significantly changed.” 83 Fed. Reg. 16,077, 16,077, 10,687 (Apr. 13, 2018). That purported revocation is a legal prerequisite for EPA to begin a rulemaking seeking to revise and weaken the greenhouse gas emission standards for those model years. *See* 40

¹ Counsel for intervenors responded that they take no position; counsel for respondent has not yet responded, perhaps due to the lapse in government appropriations.

C.F.R. § 86.1818-12(h). EPA has begun such a rulemaking, which also seeks to weaken greenhouse gas emission standards for model year 2021. 83 Fed. Reg. 42,986 (Aug. 24, 2018).

AEE is a national organization of businesses dedicated to making the energy used in the United States secure, clean, and affordable. AEE and its state and regional partner organizations are active in 27 states and represent more than 1,000 companies and organizations that span the advanced energy industry and its value chains. In the advanced transportation sector, AEE's membership includes manufacturers of electric and low emission vehicles of different vehicle sizes—from small, low-speed light-duty vehicles to large heavy-duty vehicles—as well as charging infrastructure providers, grid integration solution firms, fleet operators, electric vehicle program operators, and companies providing supporting technologies and software services.

AEE's broader membership also represents developers and manufacturers of technology critical to the future of the electric grid, such as energy efficiency, demand response, distributed energy resources, natural gas, wind, solar, hydro, fuel cells, grid edge software and services, and advanced nuclear power.² Together, these technologies and services make up the advanced energy sector, which employs over

² See <https://www.aee.net/members>

3.4 million people in the United States who serve a \$200 billion annual domestic market and a \$1.7 trillion global market. AEE's views and expertise in emission reduction technologies and strategies thus reflect a broad cross-section of the economy as it relates to electric vehicles and low emission vehicles and supporting infrastructure.

AEE and its members are keenly interested in the issues presented in this litigation. For example, AEE has established an Advanced Transportation Initiative that reflects a set of strategies and policy priorities relating to federal and state efforts to expand the use of advanced vehicles, including electric vehicles, hydrogen fuel cell vehicles, and natural gas vehicles, as well as the development of supporting infrastructure and technologies.³ These efforts have been designed to help create policy certainty in this sector, as part of a broader strategy to ensure that consumers have access to these advanced technologies. For example, AEE has developed expert briefing papers explaining steps regulators can take to maximize the societal benefits of a transition to increased use of electric vehicles in the transportation sector.⁴ AEE and its members have provided extensive written comments and oral

³ <https://www.aee.net/initiatives/advanced-transportation>

⁴ AEE, *EVs 101: A Regulatory Plan for America's Electric Transportation Future* (Sept. 2018), available at <https://info.aee.net/advanced-energy-policy-brief-ev-101>; see also Matt Stanberry, AEE, *How Public Utility Commissions Can Prepare for*

testimony to public utility commissions around the country addressing the most effective regulations regarding charging infrastructure deployment, electricity pricing for charging, and other related matters.⁵ Likewise, AEE and its members have provided guidance to more than fifteen states regarding the most effective means of spending settlement funds from the Volkswagen mitigation fund to reduce transportation emissions.⁶ AEE and its members have also advocated in favor of

Electric Vehicles, in Seven Steps (Nov. 6, 2018), available at <https://blog.aee.net/topic/advanced-transportation>

⁵ In just the past year, AEE has submitted testimony, comments, and evidence in nine separate state regulatory proceedings. *See, e.g.*, AEE, Letter to New York State Public Service Commission re: Electric Vehicle Supply Equipment and Infrastructure (Dec. 14, 2018); AEE, *Joint Stakeholder Comment on Electric Vehicles*, No. RU-00000A-18-0284 (Dec. 13, 2018) (comments to Arizona Corporation Commission); AEE, Letter to California Public Utility Commission re: Rates and Infrastructure for Vehicle Electrification (Dec. 12, 2018); AEE, Presentation to Colorado Public Utilities Commission's EV Working Group, EVS 101: A Regulatory Plan for America's Electric Transportation Future (Oct. 23, 2018); AEE, Letter to Illinois Commerce Commission re: Electric Vehicles Notice of Inquiry (Oct. 23, 2018); AEE, Letter to Vermont Public Utility Commission re: Promoting the Ownership and Use of Electric Vehicles (Oct. 15, 2018); AEE, Letter to California Public Utility Commission re: Proposed Decision on Transportation Electrification Standard Review Projects (Apr. 25, 2018); AEE, Letter to Maryland Public Service Commission re: Petition for Implementation of a Statewide Electric Vehicle Portfolio (Mar. 19, 2018).

⁶ *See, e.g.*, AEE, *Comments on Indiana Beneficiary Mitigation Plan* (Oct. 3, 2017); AEE, *Comments on Ohio Beneficiary Mitigation Plan* (Oct. 2, 2017); AEE, *Comments on Maryland Beneficiary Mitigation Plan* (Sept. 8, 2017); AEE, *Comments on Virginia Beneficiary Mitigation Plan* (Sept. 14, 2017).

legislation to promote zero-emission vehicles, such as legislation providing support for additional electric charging stations in California and Pennsylvania.⁷

Accordingly, AEE and its members have a direct interest in EPA's attempt to roll back light-duty vehicle greenhouse gas emission standards. The current greenhouse gas emission standards for light-duty vehicles—which were finalized in 2012 and again found to be appropriate (i.e., technically-feasible and cost-effective) in 2017—are a key part of the regulatory framework supporting investment and growth in electric vehicles and supporting infrastructure. With these standards in place for Model Year 2022 (less than three calendar years away), AEE's members have collectively invested billions of dollars into the research, development, and commercialization of advanced, clean vehicle technology and supporting infrastructure. The annual market for advanced transportation—including electric vehicles, hydrogen fuel cell vehicles, natural gas vehicles, and supporting infrastructure and technology—was \$21.8 billion in the United States in 2016.

⁷ Amisha Rai, AEE *AEE-Sponsored EV-Charging Infrastructure Bill in California Is on Its Way* (Apr. 19, 2018), <https://blog.aee.net/aee-sponsored-ev-charging-infrastructure-bill-in-california-is-on-its-way>; *see also* Zachary Antin, AEE, *Electric Vehicles Are Charged up and Ready to Energize U.S. Roadways – and Drivers* (Aug. 1, 2018), <https://blog.aee.net/electric-vehicles-are-charged-up-and-ready-to-energize-u.s.-roadways-and-drivers>; Letter from AEE to Mike Turzai, Speaker of Pennsylvania House of Representatives (May 29, 2018).

As a result, EPA's attempt to reverse course and weaken those standards, despite having developed standards of long duration and having recently found that such standards are fully appropriate, will directly harm the interests of AEE and its members in developing technologies to reduce greenhouse gas emissions from the transportation sector. A weakening of those standards will directly reduce the incentives for companies and other jurisdictions, both domestic and foreign, to continue the ongoing and accelerating transition towards lower and zero-emission advanced vehicles. This will lead to pernicious economic consequences for AEE's membership: after having relied on a set of clear regulatory signals in fuel economy and greenhouse gas emission standards, EPA's decision to reconsider that regulatory certainty, with no reasonable justification or sound legal basis on which to proceed, puts those investments in jeopardy.

AEE offers a unique and highly relevant perspective on these issues that will aid the Court's resolution of this matter. Because AEE's members span a wide range of entities, its interests extend not only to the direct impact of EPA's potential rollback on the transportation sector, but also more broadly to the collateral effects EPA's actions may have on related issues, such as efforts to develop advanced grid technologies to spur electric vehicle adoption, and the generation of clean electricity to power those vehicles. AEE and its members stand not only at the center of an advanced economy for energy, but specifically at the present convergence of the

energy and transportation sectors. It is difficult to imagine another industry group that more completely reflects the business interests of a growing market for clean, low- and zero-emission vehicles and the infrastructure that will power them, or that can provide more credible information to the Court on the feasibility and cost-effectiveness of these technologies in reducing greenhouse gas emissions from the transportation sector. This matter presents the specter of a major destabilization of the regulatory certainty and predictability around which AEE's members have planned for years. AEE's voice is therefore critical.

AEE's *amicus* filing would focus on the direct and significant impacts EPA's flawed action will have, and is already having, on the interests of this broad-based suite of businesses. AEE is uniquely positioned to explain the impact of EPA's action from the perspective of these businesses. AEE will also provide the Court with an important business perspective on the feasibility and cost-effectiveness of the current greenhouse gas emission standards, a central issue underlying the April 2018 reconsideration and withdrawal by EPA that is the subject of these appeals. AEE notes that to date no other business entities or organizations have sought to file an *amicus* brief in this matter.

AEE's motion is timely. D.C. Circuit Rule 29 authorizes such motions up to seven days after the filing of the principal brief of the party being supported, and encourages the filing of such motions as soon as practicable. AEE has moved

forward promptly with preparing and submitting this motion in light of the Court's November 21, 2018, ruling deferring respondents' jurisdictional arguments to the merits panel. If AEE's motion is granted, AEE will file its brief in conformity with the briefing schedule and word limitations established by this Court's January 11, 2019 Order.

Respectfully Submitted,

s/ Gary S. Guzy

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January 14, 2019

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CERTIFICATE OF PARTIES AND AMICI CURIAE

Pursuant to D.C. Circuit Rule 28(a)(1)(A), counsel certifies as follows: Except for (1) Advanced Energy Economy, (2) the Local Government Coalition amicus (described in its September 6, 2018 motion), and (3) the Consumer Federation of America amicus (described in its October 19, 2018 notice) all parties, intervenors, and amici appearing in this court are, to the best of my knowledge, listed in the Certificate as to Parties, Rulings, and Related Cases filed by the South Coast Air Quality Management District in its unopposed motion for leave to participate as amicus curiae in support of petitioners (dated August 3, 2018).

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CERTIFICATE OF COMPLIANCE

This motion complies with Federal Rules of Appellate Procedure 27(d)(1)&(2) and 29(b) and D.C. Circuit Rule 29(c) because it meets the prescribed format requirements, does not exceed 5,200 words, and is being filed as promptly as practicable after the case was docketed in this Court. This motion also complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because it has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

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CERTIFICATE OF FILING AND SERVICE

I hereby certify that on this 14th day of January, 2019, a true and correct copy of the foregoing Motion for Leave to Participate as an *Amicus Curiae* was filed with the Clerk of the United States Court of Appeals for the D.C. Circuit via the Court's CM/ECF system. Counsel for all parties are registered CM/ECF users and will be served by the appellate CM/ECF system.

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