

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

)	
Calpine Corporation, et al.)	
)	
Petitioner,)	
)	
v.)	Case No. 20-1177
)	(and consolidated cases)
EPA, et al.,)	
)	NOT YET SCHEDULED FOR
Respondents.)	ORAL ARGUMENT
)	
)	

**RESPONSE TO MOTION OF ALL PETITIONERS, STATE AND LOCAL
GOVERNMENT INTERVENORS, AND PUBLIC INTEREST
ORGANIZATION INTERVENORS TO ESTABLISH BRIEFING
SCHEDULE AND FORMAT**

Intervenors BMW of North America, LLC, Ford Motor Company, American Honda Motor Co., Inc., Rolls-Royce Motor Cars NA, LLC and Volkswagen Group of America, Inc. (the “Automobile Manufacturers”) submit this response to the Motion of Petitioners and Intervenors supporting Petitioners to establish a briefing schedule and format. The motion submitted a proposed briefing schedule and also a proposed briefing format for Petitioners and Intervenors supporting Petitioners. In addition, the motion requested that the Court establish a briefing format for all non-movants, including the Automobile Manufacturers, that is “consonant” with the proposed briefing format established for movants. Mot. at 3.

The Government has proposed a separate schedule in response that requests 22,400 words for the briefs of Intervenor supporting Respondents, excluding the Automobile Manufacturers whose intervention the Government opposes. *Opp.* at 18. The Government further indicated in its response that it will consent to a request by Intervenor Alliance for Automotive Innovation (the “Alliance”) to be allocated 9,100 words for its intervenor brief. *Id.* at 20-21.

The Government’s opposition to the Automobile Manufacturers’ pending motion to intervene while supporting an allocation of 9,100 words to the Alliance makes little sense. The Automobile Manufacturers are among the largest automobile manufacturers in the United States and collectively manufacture approximately one out of every three light-duty automobiles sold in this country. *See Reply Br. in Support of Mot. to Intervene of Automobile Mfrs.* at 1. The Automobile Manufacturers’ standing to intervene rests on the same basis as the Alliance’s standing. *See Mot. to Intervene of Alliance* at 2-3.

The Automobile Manufacturers respectfully request that the Court allocate 3,000 words for the Automobile Manufacturers’ intervenor brief. The Automobile Manufacturers’ intervenor brief will take no position on the merits and will instead address the issue of remedy. *See Automobile Mfrs. Mot. to Intervene* at 1-2. Because the remedy issue arises only in the event a petition for review is granted, because it will be informed by the scope of Petitioners’ requested relief, and because

the Automobile Manufacturers expect to coordinate with Intervenors supporting Respondents to avoid duplication regarding the remedy issue, the Automobile Manufacturers' brief should be filed at the same time as the briefs of Intervenors supporting Respondents.

An allocation of 3,000 words will be sufficient for the Automobile Manufacturers to address their particular perspective regarding the remedy issue without duplicating any merits arguments by any other intervenor. To the extent the Court provides a single word allocation for all would-be intervenors, the Automobile Manufacturers respectfully request that they be included in any such allocation.

Respondents have advised that they oppose the Automobile Manufacturers' proposal consistent with their position on the Automobile Manufacturers' motion to intervene.

Dated: September 14, 2020

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g)(1), the undersigned hereby certifies:

1. The foregoing motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because it contains 457 words, excluding the parts of the motion exempted by Fed. R. App. P. 32(f). As permitted by Fed. R. App. P. 32(g)(1), the undersigned has relied upon the word count feature of this word processing system in preparing this certificate.

2. This foregoing motion complies with the typeface and type style requirements of Fed. R. App. P. 27(a)(5)-(6) because it was prepared in proportionally spaced typeface using Microsoft Word for Office 365 in 14-point Times New Roman font.

/s/ Elisabeth S. Theodore
Elisabeth S. Theodore

CERTIFICATE OF SERVICE

I certify that, on September 14, 2020, I caused the foregoing motion to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the CM/ECF system.

All participants in the consolidated cases are registered CM/ECF users and will be served by the CM/ECF system.

/s/ Elisabeth S. Theodore
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