

UNITED STATES COURT OF APPEALS  
FOR THE DISTRICT OF COLUMBIA CIRCUIT

CHAMBER OF COMMERCE OF THE	)	
UNITED STATES OF AMERICA and	)	
NATIONAL AUTOMOBILE DEALERS	)	
ASSOCIATION,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 09-1237
	)	
U. S. ENVIRONMENTAL PROTECTION	)	
AGENCY, and LISA P. JACKSON,	)	
Administrator, U. S. ENVIRONMENTAL	)	
PROTECTION AGENCY,	)	
	)	
Respondent.	)	
	)	

**MOTION OF PG&E CORPORATION AND SEMPRA ENERGY FOR  
LEAVE TO PARTICIPATE AS *AMICI CURIAE***

Pursuant to D.C. Circuit Rule 29(b), PG&E Corporation (PG&E) and Sempra Energy respectfully move for leave to participate in this case as *amici curiae*. PG&E and Sempra Energy have conferred with the parties to this action; petitioners Chamber of Commerce of the United States of America and National Automobile Dealers Association and respondent Environmental Protection Agency (EPA) are not taking a position on this motion.

The grounds for this motion are as follows:

1. PG&E is an energy-based holding company headquartered in San Francisco. It is the parent corporation of Pacific Gas and Electric Company (the

“Company”). The Company supplies natural gas and electricity services to 15 million people throughout a 70,000-square-mile service area in northern and central California. Its rates for such services are regulated by the Federal Energy Regulatory Commission (FERC) and the California Public Utilities Commission (CPUC).

2. Sempra Energy is an energy-based holding company headquartered in San Diego. It is the parent corporation of San Diego Gas and Electric Company (“SDG&E”) and Southern California Gas Company (together with SDG&E, the “Sempra Utilities”). The Sempra Utilities supply natural gas and/or electricity to approximately 23 million people throughout a combined 24,000-square-mile service area in southern and central California. Its rates for such services are regulated by the FERC and CPUC.

3. PG&E and the Company have been, and are committed to being, industry leaders in addressing the challenge of global climate change as it relates to greenhouse gas (GHG) emissions. For instance, they were among the first companies in California to support enactment of the California Global Warming Solutions Act of 2006 (commonly known as “AB 32”). In addition, PG&E was a founding member of the United States Climate Action Partnership (<http://www.us-cap.org/about/index.asp>). The Company has invested in a clean, electric

generating portfolio which makes its GHG emissions among the lowest of any utility in the Nation.

4. Sempra Energy and the Sempra Utilities have been, and are committed to being, industry leaders in addressing the challenge of global climate change as it relates to GHG emissions. For instance, the Sempra Utilities have converted over 1,200 of their fleet vehicles to natural gas fuel, assisted many other fleets to make similar conversions, and provided natural gas vehicle fueling infrastructure, including 16 refueling stations that are accessible to the public. Likewise, as a member of the California Electric Transportation Coalition, SDG&E is supporting the development and use of zero-emission electric vehicles, hybrid electric vehicles, and electric transit buses and rail.

5. While doing what they can to reduce GHG emissions, PG&E, the Company, Sempra Energy, and the Sempra Utilities also have a vital interest in ensuring that all sectors of the California economy, including the transportation sector, contribute their fair share toward achieving the necessary GHG emission reductions under AB 32. To that end, PG&E and Sempra Energy actively supported the 2005 request of the California Air Resources Board (CARB) that EPA waive federal pre-emption of CARB's motor vehicle GHG emission standards, pursuant to Section 209(b) of the Clean Air Act (CAA), 42 U.S.C. §7543(b). One example of that support was during the hearings held by EPA in

2007 on CARB's waiver request, when a Company representative emphasized that: "Achievement of significant greenhouse gas reductions in the transportation sector is crucial to the state's ability to meet its goals under AB 32. If motor vehicle greenhouse gas emissions cannot be reduced as expected other sectors of California's economy will have to make up the difference and will be unduly burdened by the need to reduce emissions by more than their fair share." Transcript, Public Hearing, at 85 (May 30, 2007) (EPA-HQ-OAR-2006-0173-0421). Similarly, a Sempra Energy representative testified that "[s]ince mobile sources account for almost 41 percent of statewide greenhouse gas emissions it is vital for the state to be able to look at the transportation sector for a fair share of emission reductions in order to help the state achieve its goals." *Id.*, at 82

6. On September 8, 2009 Petitioners filed this action seeking review of EPA's decision to grant California's request for a waiver of federal preemption, pursuant to the Clean Air Act Section 209(b), 42 U.S.C. Section 7543(b), for its new motor vehicle greenhouse gas emissions. See California State Motor Vehicle Pollution Control Standards; Notice of Decision Granting a Waiver of Clean Air Act Preemption for California's 2009 and Subsequent Model Year Greenhouse Gas Emission Standards for New Motor Vehicles, 74 Fed. Reg. 32,744 (July 8, 2009), attached to the Petition for Review.

7. PG&E's and Sempra Energy's participation in the briefing of this case as *amici curiae* would bring significant additional value to the court's deliberations. As the parent corporations of large, regulated, gas and electric utilities in California, and as industry leaders on climate change issues, PG&E and Sempra Energy can provide a first-hand and real world perspective on the practical implications of EPA's waiver decision from a business standpoint. Among other things, PG&E and Sempra can explain how invalidating EPA's waiver decision would severely reduce California's ability to take an active hand in addressing the challenges of climate change and, hence, to provide the full measure of leadership and innovation that California has shown in addressing prior air pollution challenges, especially air pollution from motor vehicles. The parties do not share the same perspective and interest which PG&E and Sempra Energy have.

8. PG&E and Sempra Energy have been granted *amici curiae* status in related litigation filed in this Court. After EPA initially denied California's request for a waiver, California and others petitioned this Court for review. California v. EPA, Nos. 08-1178, 08-1179 and 08-1180 (D.C. Dir. filed May 5, 2008 and dismissed Sept. 3, 2009).<sup>1</sup> PG&E and Sempra Energy moved for leave to

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<sup>1</sup> On February 6, 2009, EPA announced that it was reconsidering its denial of the waiver. 74 Fed. Reg. at 32,747. On June 20, 2009, EPA granted the waiver and that decision is the subject of Petitioners' action. 74 Fed. Reg. 32,744.

participate as *amici curiae* and this Court granted that motion on September 19, 2008.

Therefore, for the foregoing reasons, PG&E and Sempra Energy respectfully move this court for leave to participate as *amici curiae*.

November 4, 2009

Respectfully submitted,

FOR PG&E CORPORATION

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CERTIFICATE OF SERVICE

Case Name: Chamber of Commerce v. EPA

Nos. 09-1237

I hereby certify that on November 4, 2009, I electronically filed the following documents with the Clerk of the Court by using the CM/ECF system:

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

I further certify that some of the participants in the case are not registered CM/ECF users. On November 4, 2009, I have mailed the foregoing document(s) by First-Class Mail, postage prepaid, or have dispatched it to a third party commercial carrier for delivery within three (3) calendar days to the following non-CM/ECF participants:

Normand L. Rave, Jr.  
Environmental Defense Section  
Environment & Natural Resources Division  
United States Department of Justice  
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I declare under penalty of perjury under the laws of the State of California the foregoing is true and correct and that this declaration was executed on November 4, 2009, at San Francisco, California.

Amy E. Nonaka  
\_\_\_\_\_  
Declararant

/S/  
\_\_\_\_\_  
Signature