UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

UNITED STATES OF AMERICA

and

STATE OF TEXAS,

Plaintiffs,

v.

CONSTELLATION ENERGY CORPORATION,

CALPINE CORPORATION,

and

CPN CS HOLCO CORP.

Defendants.

Case No. 1:25-cv-04235-ABJ

UNITED STATES' UNOPPOSED MOTION AND MEMORANDUM IN SUPPORT OF ENTRY OF FINAL JUDGMENT

Pursuant to Section 2(b) of the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h) ("APPA"), the United States of America ("United States") moves the Court to enter the proposed Final Judgment filed in this civil antitrust proceeding on December 5, 2025 (Dkt. No. 2-2) (attached as Exhibit A).

The proposed Final Judgment may be entered at this time without further proceedings if the Court determines that entry is in the public interest. 15 U.S.C. § 16(e). The Competitive Impact Statement ("CIS") and Response of the United States to Public Comment on the Proposed Final Judgment ("Response to Public Comment") filed in this matter on December 12, 2025 and April 9, 2026, respectively (Dkt. Nos. 20 and 27) explain why entry of the proposed Final Judgment is in the public interest. The United States is also filing a Certificate of Compliance (attached as Exhibit B) showing that the parties have complied with all applicable provisions of the APPA and certifying that the United States has satisfied the 60-day statutory public comment period requirement.

I. BACKGROUND

On December 5, 2025, the United States filed a civil antitrust Complaint seeking to enjoin the proposed acquisition of Calpine Corporation ("Calpine") by Constellation Energy Corporation ("Constellation"). The Complaint alleges that the likely effect of this acquisition would be to substantially lessen competition in the market for wholesale electricity in ERCOT[1] and PJM Coastal Mid-Atlantic[2] in violation of Section 7 of the Clayton Act, 15 U.S.C. § 18. This loss of competition likely would result in increased wholesale electricity prices in ERCOT and PJM Coastal Mid-Atlantic and increased market power wielded by Constellation in wholesale electricity markets in ERCOT and PJM Coastal Mid-Atlantic.

At the same time the Complaint was filed, the United States also filed a proposed Final Judgment (Dkt. No. 2-2), an Asset Preservation and Hold Separate Stipulation and Order ("APHSSO") (Dkt. No. 2-1), and, subsequently, a CIS describing the events giving rise to the alleged violation and the proposed Final Judgment (Dkt. No. 20). The APHSSO, which was agreed to by the parties and entered by the Court on January 2, 2026 (Dkt. No. 25), provides that the proposed Final Judgment may be entered by the Court once the requirements of the APPA

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[1] ERCOT is The Electric Reliability Council of Texas which is the major electricity grid that encompasses most of Texas. *See* Complaint ¶ 6 (Dkt. No. 7-1).

[2] PJM Interconnection LLC ("PJM") is the major electricity grid that includes all or parts of Delaware, Illinois, Indiana, Kentucky, Maryland, Michigan, New Jersey, North Carolina, Ohio, Pennsylvania, Tennessee, Virginia, West Virginia, and the District of Columbia. *See* Complaint ¶ 6 (Dkt. No. 7-1). PJM Coastal Mid-Atlantic is a distinct area within the PJM region that includes southeastern Pennsylvania, New Jersey, Delaware, and the eastern shores of Maryland and Virginia. *Id*. ¶ 33.

have been met. The proposed Final Judgment identifies Divestiture Assets (the ERCOT Divestiture Assets and PJM Divestiture Assets, as defined therein) for which "Defendants must enter into a definitive contract or contracts for sale … within 240 calendar days after consummation of the Transaction," subject to an extension of time at the discretion of the United States (Dkt. No. 2-2 § IV.A). The United States may move this Court for the appointment of a divestiture trustee if Defendants fail to divest the Divestiture Assets within the time allotted in the proposed Final Judgment.

Entry of the proposed Final Judgment will terminate this action, except that the Court will retain jurisdiction to construe, modify, or enforce the provisions of the Final Judgment and to punish violations thereof.

II. COMPLIANCE WITH THE APPA

The Certificate of Compliance filed with this Motion and Memorandum states that all the requirements of the APPA have been satisfied. In particular, the APPA requires a period of at least 60 days for the submission of written comments relating to the proposed Final Judgment. 15 U.S.C. § 16(b). In compliance with the APPA, the United States filed the proposed Final Judgment and the CIS with the Court on December 5, 2025 and December 12, 2025, respectively (Dkt Nos. 2-2 and 20); published the proposed Final Judgment and CIS in the *Federal Register* on December 18, 2025 (*see* 90 Fed. Reg. 59,205 (2025)); and caused a summary of the terms of the proposed Final Judgment and the CIS, along with directions for the submission of written comments, to be published in *The Washington Post* and the *Houston Chronicle* for seven days during the period December 20, 2025 to December 26, 2025 (see Dkt. No. 22). The United States received one comment. Pursuant to 15 U.S.C. § 16(d), the United States filed a Response to

Comment on April 9, 2026 (Dkt. No. 27) and published it and the public comment in the *Federal Register* on April 24, 2026 (*see* 91. Fed. Reg. 22,167 (2026)).

III. STANDARD OF JUDICIAL REVIEW

Before entering the proposed Final Judgment, the APPA requires the Court to determine whether the proposed Final Judgment "is in the public interest." 15 U.S.C. § 16(e)(1). In making that determination, the Court, in accordance with the statute as amended in 2004, "shall consider":

> (A) the competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration of relief sought, anticipated effects of alternative remedies actually considered, whether its terms are ambiguous, and any other competitive considerations bearing upon the adequacy of such judgment that the court deems necessary to a determination of whether the consent judgment is in the public interest; and
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> (B) the impact of entry of such judgment upon competition in the relevant market or markets, upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial.

15 U.S.C. § 16(e)(1)(A), (B). Section 16(e)(2) of the APPA states that "[n]othing in this section shall be construed to require the court to conduct an evidentiary hearing or to require the court to permit anyone to intervene." 15 U.S.C. § 16(e)(2). In its CIS and Response to Public Comment, the United States explained the meaning and the proper application of the public interest standard under the APPA to this case and now incorporates those statements by reference.

IV. ENTRY OF THE PROPOSED FINAL JUDGEMENT IS IN THE PUBLIC INTEREST

The United States alleged in its Complaint that the acquisition of Calpine by Constellation would lessen competition substantially for wholesale electricity in ERCOT and PJM Coastal Mid-Atlantic in violation of Section 7 of the Clayton Act. As explained in the CIS and the Response to Public Comment, the proposed Final Judgment is designed to eliminate the likely anticompetitive effects of the acquisition alleged by the United States by requiring Defendants to divest the Divesture Assets within 240 calendar days after consummation of the transaction. The public, including affected competitors and customers, has had the opportunity to comment on the proposed Final Judgment. As explained in the CIS and the Response to Public Comment, entry of the proposed Final Judgment is in the public interest.

V. CONCLUSION

For the reasons set forth in this Motion and Memorandum, the CIS, and the Response to Public Comment, the United States respectfully requests that the Court find that the proposed Final Judgment is in the public interest and enter the proposed Final Judgment.

Dated: May 21, 2026

Respectfully submitted,

/s/ Joseph Chandra Mazumdar
Joseph Chandra Mazumdar
Jeremy Evans (DC Bar #478097)
Trial Attorneys
U.S. Department of Justice
Antitrust Division
450 5th St. NW, Suite 8000
Washington, DC 20530
Tel: 202-353-1560
Email: Chan.Mazumdar@usdoj.gov

COUNSEL FOR PLAINTIFF
UNITED STATES OF AMERICA