
No. 23-_____

**IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT**



ENERGY TRANSFER LP,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY;
MICHAEL S. REGAN, Administrator,
United States Environmental Protection Agency,

Respondents.

Petition for Review of a Final Rule of the
Environmental Protection Agency

Aaron M. Streett
Matthew L. Kuryla
BAKER BOTTS L.L.P.
910 Louisiana St.
Houston, Texas 77002
(713) 229-1855 (phone)
(713) 229-7855 (fax)
aaron.streett@bakerbotts.com

*Counsel for Energy Transfer
LP*

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CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons and entities as described in the fourth sentence of Fifth Circuit Rule 28.2.1 have an interest in the outcome of this case. These representations are made so that the judges of this court may evaluate possible disqualification or recusal.

- Abrams, Michael R. (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, Railroad Commission of Texas)
- Air Alliance Houston (Intervenor)
- Association of Electric Companies of Texas (Petitioner)

- Baker Botts L.L.P. (Counsel for Petitioners Association of Electric Companies of Texas, BCCA Appeal Group, Energy Transfer LP, Texas Chemical Council, Texas Oil & Gas Association, and Texas Lehigh Cement Company)
- Balch & Bingham LLP (Counsel for Petitioner, Mississippi Power Company)
- BCCA Appeal Group (Petitioner)
- Berge, Megan H. (Counsel for Texas Lehigh Cement Company)
- Brody, Elizabeth A. (Counsel for *Amici Curiae*)
- Burdette, Courtney (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Clean Air Task Force (Counsel for Intervenor Clean Wisconsin)
- Clean Wisconsin (Intervenor)
- Cole, William F. (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas)
- Coletto Creek Power, L.L.C. (Petitioner)
- Davis, Bill (Counsel for Petitioners State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas)
- District of Columbia (*Amicus Curiae*)
- Downwinders at Risk (Intervenor)
- Eagle Materials Inc. (parent company of Petitioner Texas Lehigh Cement Company)

- Earthjustice Legal Defense Fund (Counsel for Intervenor Air Alliance Houston)
- Energy Transfer LP (Petitioner)
- Ennis Power Company, L.L.C. (Petitioner)
- Fabish, Zachary Max (Counsel for Intervenor Sierra Club)
- Garland, Merrick B., Attorney General, United States Department of Justice (Counsel for Respondents)
- Gidiere, P. Stephen (Counsel for Petitioners Luminant Generation Company LLC, Coletto Creek Power, LLC, Ennis Power Company, LLC, Hays Energy, LLC, Midlothian Energy, LLC, Oak Grove Management Company LLC, and Wise County Power Company LLC)
- Goho, Shaun (Counsel for Intervenor Clean Wisconsin)
- Hall, Jeffrey Aaron (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Harris County, Texas (*Amicus Curiae*)
- Hays Energy, L.L.C. (Petitioner)
- Johnson, Seth L. (Counsel for Intervenors Air Alliance Houston, Downwinders at Risk, Louisiana Environmental Action Network, and Sierra Club)
- Kim, Todd, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice (Counsel for Respondents)
- Kolman, Chloe H. (Counsel for Respondent U.S. Environmental Protection Agency)

- Kuryla, Matthew L. (Counsel for Petitioners Association of Electric Companies of Texas, BCCA Appeal Group, Energy Transfer LP, Texas Chemical Council, and Texas Oil & Gas Association)
- Little, J. Mark (Counsel for Texas Lehigh Cement Company)
- Louisiana Department of Environmental Quality (Petitioner)
- Louisiana Environmental Action Network (Intervenor)
- Luminant Generation Company, L.L.C. (Petitioner)
- Matheny, Justin Lee (Counsel for Petitioner State of Mississippi and Mississippi Department of Environmental Quality)
- Midlothian Energy, L.L.C. (Petitioner)
- Mississippi Department of Environmental Quality (Petitioner)
- Mississippi Power Company (Petitioner)
- Moore, C. Grady III (Counsel for Petitioner Mississippi Power Company)
- Murrill, Elizabeth Baker (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- Oak Grove Management Company, L.L.C. (Petitioner)
- Public Utility Commission of Texas (Petitioner)
- Public Utility Commissions of Texas (Petitioner)
- Railroad Commission of Texas (Petitioner)
- Railroad Commission of Texas (Petitioner)

- Regan, Michael S., Administrator, United States Environmental Protection Agency (Respondent)
- Riley, Kathleen Lea (Counsel for Intervenors Air Alliance Houston, Downwinders at Risk, Louisiana Environmental Action Network, and Sierra Club)
- Shurden, Shawn S. (General Counsel for Petitioner Mississippi Power Company)
- Sierra Club (Intervenor)
- Smith, Joshua (Counsel for Intervenor Sierra Club)
- Southern Company (Parent Company of Petitioner Mississippi Power Company)
- St. John, Joseph Scott (Counsel for Petitioners State of Louisiana and Louisiana Department of Environmental Quality)
- State of Connecticut (*Amicus Curiae*)
- State of Delaware (*Amicus Curiae*)
- State of Illinois (*Amicus Curiae*)
- State of Louisiana (Petitioner)
- State of Maryland (*Amicus Curiae*)
- State of Mississippi (Petitioner)
- State of New Jersey (*Amicus Curiae*)
- State of New York (*Amicus Curiae*)
- State of Texas (Petitioner)

- Streett, Aaron Michael (Counsel for Petitioners Association of Electric Companies of Texas, BCCA Appeal Group, Energy Transfer LP, Texas Chemical Council, and Texas Oil & Gas Association)
- Stutts, Susan Scaggs (Counsel for Petitioner Mississippi Power Company)
- Texas Chemical Council (Petitioner)
- Texas Commission on Environmental Quality (Petitioner)
- Texas Lehigh Cement Company L.P. (Petitioner)
- Texas Oil & Gas Association (Petitioner)
- Tong, William (Counsel for *Amici Curiae*)
- United States Environmental Protection Agency (Respondent)
- Wise County Power Company, L.L.C. (Petitioner)

/s/ Aaron M. Streett

Aaron M. Streett

Counsel for Petitioner

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PETITION FOR REVIEW

Under 42 U.S.C. § 7607(b)(1) and Federal Rule of Appellate Procedure 15(a), Petitioner Energy Transfer LP petitions this Court for review of Respondents United States Environmental Protection Agency and Administrator Michael S. Regan’s promulgation of a federal implementation plan for Texas regarding the interstate transport requirements of 42 U.S.C. § 7410(a)(2)(d)(i)(I) for the 2015 8-hour ozone national ambient air quality standard, titled “Federal ‘Good Neighbor Plan’ for the 2015 Ozone National Ambient Air Quality Standards,” 88 Fed. Reg. 36,654 (June

5, 2023) (“Final Rule”).¹ See FED. R. APP. P. 15(a)(2)(C) (“The petition must . . . specify the order or part thereof to be reviewed.”). EPA has no authority to promulgate a FIP for Texas unless and until it has lawfully disapproved Texas’s state implementation plan. 42 U.S.C. § 7410(c)(1). This Court recently granted Texas Petitioners a stay of EPA’s disapproval of Texas’s state implementation plan. Order, *Texas v. EPA*, No. 23-60069 (5th Cir. May 1, 2023).

Jurisdiction and venue lie in this Court under 42 U.S.C. § 7607(b)(1). The challenged action’s promulgation of a FIP for Texas is a “locally or regionally applicable” action and is not “based on a determination of nationwide scope or effect.” See *id.*; Order, *Texas v. EPA*, No. 23-60069 (5th Cir. May 1, 2023); *Texas v. EPA*, 829 F.3d 405, 418–24 (5th Cir. 2016). This petition for review is timely filed within sixty days of the challenged action’s publication in the Federal Register. See 42 U.S.C. § 7607(b)(1). Petitioner requests that the Court vacate, set aside, and hold unlawful the EPA’s promulgation of the FIP for Texas.²

¹ A copy of the Final Rule is attached to this petition. 5TH CIR. R. 15.1.

² Per this Court’s July 20, 2023 Order, this case is being held in abeyance pending resolution of Texas Petitioners’ challenge to EPA’s disapproval of Texas’s state implementation plan. Energy Transfer files this petition to preserve its ability to challenge Texas’s FIP if EPA’s disapproval of Texas’s SIP is ultimately upheld.

August 3, 2023

Respectfully submitted,

/s/ Aaron M. Streett

Aaron M. Streett

Matthew L. Kuryla

BAKER BOTTS L.L.P.

910 Louisiana St.

Houston, Texas 77002

(713) 229-1855 (phone)

(713) 229-7855 (fax)

aaron.streett@bakerbotts.com

Counsel for Energy Transfer

LP

CERTIFICATE OF SERVICE

On August 3, 2023, this petition for review was served by Petitioner's counsel by first-class mail, postage prepaid, upon the following:

The Honorable Merrick B. Garland
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Michael S. Regan
Administrator
U.S. Environmental Protection Agency
Mail Code 1101A
William Jefferson Clinton Building
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Todd Kim
Assistant Attorney General
U.S. Department of Justice
Environment and Natural
Resources Division
RFK DOJ Building, Room 2143
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

Correspondence Control Unit
Office of General Counsel (2311)
U.S. Environmental Protection Agency
1200 Pennsylvania Avenue, NW
Washington, DC 20460

Earthea Nance
Regional Administrator
U.S. Environmental Protection Agency
Region 6
1201 Elm Street
Suite 500
Dallas, Texas 75270

*/s/ Aaron M. Streett
Counsel for Petitioner*