

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

ASSOCIATED ELECTRIC
COOPERATIVE, INC., DESERET
GENERATION & TRANSMISSION
CO-OPERATIVE d/b/a DESERET
POWER ELECTRIC COOPERATIVE,
OHIO VALLEY ELECTRIC
CORPORATION, WABASH VALLEY
POWER ASSOCIATION, INC. d/b/a
WABASH VALLEY POWER
ALLIANCE, AMERICA'S POWER,
NATIONAL RURAL ELECTRIC
COOPERATIVE ASSOCIATION,
PORTLAND CEMENT
ASSOCIATION,

Petitioners,

v.

U.S. ENVIRONMENTAL
PROTECTION AGENCY and
MICHAEL S. REGAN, Administrator,
U.S. EPA,

Respondents.

Case No.: 23-1324

PETITION FOR REVIEW

Pursuant to Clean Air Act section 307(b)(1), 42 U.S.C. § 7607(b)(1), the Administrative Procedure Act, 5 U.S.C. § 702, Federal Rule of Appellate Procedure 15(a), and D.C. Circuit Rule 15, Associated Electric Cooperative, Inc., Deseret Generation & Transmission Co-Operative d/b/a Deseret Power Electric Cooperative, Ohio Valley Electric Corporation, Wabash Valley Power Association, Inc. d/b/a Wabash Valley Power Alliance, America's Power, National Rural Electric Cooperative Association, and the Portland Cement Association hereby petition this Court for review of Respondent United States Environmental Protection Agency's ("EPA") and Administrator Michael S. Regan's published Interim Final Rule entitled "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards; Response to Additional Judicial Stays of SIP Disapproval Action for Certain States." 88 Fed. Reg. 67,102 (Sept. 29, 2023) ("Second Interim Final Rule").

In a closely related prior EPA rule entitled "Federal 'Good Neighbor Plan' for the 2015 Ozone National Ambient Air Quality Standards; Response to Judicial Stays of SIP Disapproval Action for Certain States." 88 Fed. Reg. 49,295 (July 31, 2023) ("First Interim Final Rule"), EPA stayed the effectiveness of federal implementation plans for 6 states but failed to do so with respect to the other 17 states EPA previously included in a final rule purporting to implement the requirements of 42 U.S.C. § 7410(a)(2)(D)(i)(I) for the 2015 8-hour ozone national ambient air quality

standards. *See* Federal “Good Neighbor Plan” for the 2015 Ozone National Ambient Air Quality Standards, 88 Fed. Reg. 36,654 (June 5, 2023) (“Ozone Transport Rule”). The Second Interim Final Rule extends the stays of the effectiveness of federal implementation plans for 6 additional states (Alabama, Minnesota, Nevada, Oklahoma, Utah, and West Virginia). The Second Interim Final Rule fails, however, to: (1) toll the compliance deadline included in the Ozone Transport Rule to reflect the length of judicial stays; and (2) stay the effectiveness of the Ozone Transport Rule in the remaining 11 states.

The Ozone Transport Rule and the First Interim Final Rule are the subject of numerous challenges before this Court consolidated in *Utah v. EPA*, No. 23-1157 (D.C. Cir.) (challenges to the Ozone Transport Rule) and in *National Mining Ass’n v. EPA*, No. 23-1275 (D.C. Cir.) (challenges to the First Interim Final Rule). All petitioners challenging the Ozone Transport Rule as too stringent in *Utah* and *National Mining Ass’n* have urged this Court to further consolidate the cases into one single consolidated case. *See* Joint Response, *Utah v. EPA*, No. 23-1157, Doc. No. 2026766 (D.C. Cir. Nov. 11, 2023). Because this petition for review and the cases consolidated in *Utah* and *National Mining* are closely related, petitioners believe this petition should be consolidated with both *Utah* and *National Mining*.

This petition for review is timely filed, as it is filed within sixty days of the challenged action’s publication in the Federal Register. *See* 42 U.S.C. § 7607(b)(1);

88 Fed. Reg. at 67,106 (stating petition for review must be filed by November 28, 2023). This Court has jurisdiction for this action under 42 U.S.C. § 7607(b)(1). Moreover, in order to proceed expeditiously and avoid delay over venue disputes, petitioners acquiesce to venue in this Court. *See Tex. Mun. Power Agency v. EPA*, 89 F.3d 858, 867 (D.C. Cir. 1996) (noting that “§ 307(b)(1) is a venue provision, the application of which can be waived”). Respondents also assert in the Second Interim Final Rule that venue lies in this Court. *See* 88 Fed. Reg. at 67,106.

Dated: November 21, 2023

Respectfully submitted,

/s/ Allison D. Wood

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Power Alliance, America's Power, National
Rural Electric Cooperative Association, and
Portland Cement Association*

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RULE 26.1 CORPORATE DISCLOSURE STATEMENTS

AMERICA’S POWER

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and D.C. Circuit Rule 26.1, America’s Power submits the following statement:

1. America’s Power is a nonprofit membership corporation organized under the laws of the District of Columbia and is recognized as a tax-exempt trade association by the Internal Revenue Service under Section 501(c)(6) of the Internal Revenue Code. America’s Power is the only national trade association whose sole mission is to advocate at the federal and state levels on behalf of coal-fueled electricity, the coal fleet, and its supply chain. America’s Power supports policies that promote the use of coal to assure a reliable, resilient, and affordable supply of electricity to meet our nation’s demand for energy.

2. America’s Power is a “trade association” within the meaning of Circuit Rule 26.1(b). It has no parent corporation, and no publicly held company owns a 10 percent or greater interest in America’s Power.

ASSOCIATED ELECTRIC COOPERATIVE, INC.

Associated Electric Cooperative, Inc. (“AECI”) is a rural electric cooperative that provides whole power and high-voltage transmission to its six regional generation and transmission cooperative member-owners. In addition to providing power sales and transmission service to its member cooperatives, AECI also takes and provides transmission service through enabling transmission

agreements with and makes off-system power sales to various counterparties in the United States. These six regional generation and transmission cooperatives, in turn, supply wholesale power to fifty-one distribution cooperatives in Missouri, three distribution cooperatives in southeast Iowa, and nine distribution cooperatives in northeast Oklahoma, serving more than 910,000 customers. AECEI has no parent company and no publicly held company has a 10% or greater ownership interest in AECEI.

DESERET POWER ELECTRIC COOPERATIVE

Deseret Generation & Transmission Co-Operative d/b/a Deseret Power Electric Cooperative (“Deseret”) certifies that it is a nonprofit, regional generation and transmission cooperative, owned by its five member systems, serving approximately 65,000 customers in Utah, Colorado, Wyoming, Nevada, and Arizona. Neither Deseret, nor its member cooperatives issue stock, and therefore no publicly-traded company owns 10% or more of their stock.

NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION

Pursuant Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, the National Rural Electric Cooperative Association (“NRECA”) states that it is the nonprofit national trade association for electric cooperatives. On behalf of its members, NRECA participates in administrative and judicial proceedings involving or affecting its members’ interests. NRECA has no parent company. No

publicly held company has a ten percent (10%) or greater ownership interest in NRECA. NRECA is an incorporated entity.

OHIO VALLEY ELECTRIC CORPORATION

The Ohio Valley Electric Corporation (“OVEC”) is a corporation originally formed by a consortium of utility companies for purposes of constructing and operating electric generating units to serve the electric energy needs of uranium processing facilities owned by the United States Department of Energy. OVEC owns the Kyger Creek generating station in Ohio, and OVEC’s wholly owned subsidiary Indiana-Kentucky Electric Corporation owns the Clifty Creek generating station in Indiana. OVEC has no parent company. American Electric Power Company, Inc., and Buckeye Power, Inc., each owns greater than 10 percent of the equity in OVEC.

PORTLAND CEMENT ASSOCIATION

The Portland Cement Association (“PCA”), founded in 1916, is the premier policy, research, education, and market intelligence organization serving America’s cement manufacturers. PCA represents a majority of U.S. cement production capacity. PCA promotes safety, sustainability, and innovation in all aspects of construction, fosters continuous improvement in cement manufacturing and distribution, and generally promotes economic growth and sound infrastructure investment. PCA states that it is a “trade association” for purposes of Circuit Rule

26.1(b). PCA has no parent corporation, and no publicly held company owns a 10 percent or greater interest in PCA.

WABASH VALLEY POWER ALLIANCE

Wabash Valley Power Association, Inc. d/b/a Wabash Valley Power Alliance (“WVPA”) certifies that it is a nonprofit, generation and transmission cooperative, owned by twenty-three member-owned rural cooperative systems, serving more than 330,000 homes, businesses, farms, and schools – impacting more than a million people – across 50 counties in Indiana, 30 counties in Illinois, and four counties in Missouri. Neither WVPA, nor its member cooperatives issue stock, and therefore no publicly-traded company owns 10% or more of their stock.

CERTIFICATE OF SERVICE

I hereby certify that I have caused a true and correct copy of the foregoing Petition for Review to be served by U.S. Mail, postage prepaid, addressed to the following:

Hon. Michael S. Regan
Office of the Administrator (1101A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, N.W.
Washington, D.C. 20460

Hon. Merrick Garland
Attorney General of the United States
United States Department of Justice
950 Pennsylvania Avenue, N.W.
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Correspondence Control Unit
Office of General Counsel (2310A)
United States Environmental Protection Agency
1200 Pennsylvania Avenue, NW
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Dated: November 21, 2023

/s/ Allison D. Wood
