

IN THE UNITED STATES COURT OF APPEALS  
FOR THE EIGHTH CIRCUIT

**FILED**

SOUTHWESTERN ELECTRIC POWER )  
COMPANY AND ARKANSAS ELECTRIC )  
COOPERATIVE CORPORATION )

APR 14 2023

**MICHAEL GANS  
CLERK OF COURT**

*Petitioners,*

**23-1765**

v.

Case No. 23-\_\_\_\_\_

UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY AND )  
MICHAEL S. REGAN, ADMINISTRATOR, )  
UNITED STATES ENVIRONMENTAL )  
PROTECTION AGENCY, )

*Respondents.*

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**PETITION FOR REVIEW**

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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, and Federal Rule of Appellate Procedure 15(a), Petitioners Southwestern Electric Power Company (“SWEPCO”) and Arkansas Electric Cooperative Corporation (“AECC”) hereby petition this Court for review of the Respondents United States Environmental Protection Agency (“EPA”) and Administrator Michael S. Regan’s disapproval of Arkansas’s state implementation plan, included as part of the final rule of EPA titled “Air Plan Reapproval as

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Interstate Transport of Air Pollution for the 2015 8-Hour Ozone National Ambient Air Quality Standards,” published in the Federal Register at 88 Fed. Reg. 9,336 (February 13, 2023). *See* Fed. R. App. P. 15(a)(2)(C) (reflecting that a petition for review may challenge only a “part” of an agency order). A copy of EPA’s final rule is attached to this Petition as Exhibit A.

Petitioner SWEPCO is an Arkansas investor-owned electric utility. SWEPCO owns and operates electric generating units located in Arkansas. Petitioner AECC is a not-for-profit electric utility owned by 17 distribution cooperatives across the State of Arkansas. AECC co-owns electric generating units located in Arkansas. Petitioners have a strong and persistent interest in the lawful promulgation of thoughtful, fair, and consistent emissions regulations that preserve the State’s role in the state implementation plan (“SIP”) process according to the principles of cooperative federalism envisioned under the Clean Air Act. SWEPCO is the co-owner of an electric generating unit at the Flint Creek Power Plant in Gentry, Arkansas evaluated in the Arkansas SIP. AECC is the co-owner of five electric generating units evaluated in the Arkansas SIP. It co-owns the Flint Creek unit with SWEPCO and four units with Entergy

Arkansas, LLC, two units at the White Bluff Power Plant in Redfield, Arkansas and two units at the Independence Steam Electric Station in Newark, Arkansas. EPA's action in rejecting the Arkansas SIP triggers a federal implementation plan ("FIP") to address the NAAQS requirements relating to the interstate transport of ground-level ozone. EPA issued a proposed FIP for 26 states, including Arkansas, on April 6, 2022, and signed the Final FIP on March 15, 2023. The Final FIP impacts the units owned and operated by SWEPCO and AECC by requiring NO<sub>x</sub> emission reductions that were determined to be unnecessary in the disapproved Arkansas SIP.

This Court has jurisdiction, and is the proper venue for this action, under 42 U.S.C. 7607(b)(1) because Petitioners are seeking review of only the portion of the final rule disapproving Arkansas's state implementation plan, which is a "locally or regionally applicable" action not "based on a determination of nationwide scope or effect." 42 U.S.C. 7607(b)(1). *See Nat'l Parks Conservation Ass'n v. McCarthy*, 816 F.3d 989, 993 (8<sup>th</sup> Cir. 2016) ("EPA's action in approving or promulgating any implementation plan is the prototypical locally or regionally applicable action that may be challenged only in the appropriate regional court of

appeals.”) (internal quotation marks omitted). This Petition for Review is timely filed within sixty days of the date of publication in the Federal Register. 42 U.S.C. 7607(b)(1).

Dated: April 14, 2023

Respectfully Submitted,

/s/ Sarah Tacker

G. Alan Perkins, Ark. Bar No. 91115

Sarah Tacker, Ark. Bar No. 2002189

PPGMR Law, PLLC

P.O. Box 3446

Little Rock, AR 72203

Telephone: (501) 603-9000

Facsimile: (501) 603-0556

alan@ppgmrlaw.com

sarah@ppgmrlaw.com

*Counsel for SWEPCO and AECC*

## CERTIFICATE OF SERVICE

I caused a true and correct copy of this petition for review to be served on April 14, 2023, by United States first-class mail, on the following:

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

Correspondence Control Unit  
Office of General Counsel (2311)  
United States Environmental Protection Agency  
Mail Code 1101A  
1200 Pennsylvania Avenue NW  
Washington, D.C. 20460

The Honorable Merrick B. Garland  
Attorney General of the United States  
U.S. Department of Justice  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

Todd Kim  
Assistant Attorney General  
U.S. Department of Justice  
Environmental and Natural Resources Division  
950 Pennsylvania Avenue NW  
Washington, D.C. 20530

/s/ Sarah Tacker  
*Counsel for SWEPCO and AECC*