

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

TEXAS LEHIGH CEMENT COMPANY
LP,

Petitioner,

v.

UNITED STATES ENVIRONMENTAL
PROTECTION AGENCY, and MICHAEL
S. REGAN, Administrator, U.S.
Environmental Protection Agency,

Respondents.

No. _____

PETITION FOR REVIEW

Megan H. Berge
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Cement Company 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 (counsel for State of Texas and Texas Commission on Environmental Quality)
- Association of Electric Companies of Texas (Petitioner)
- Baake Law, L.L.C. (counsel for *amicus curiae*)

- Baake, David R. (counsel for *amicus curiae* New Mexico Environment Department)
- Baker Botts L.L.P. (Petitioner's counsel)
- Balch & Bingham L.L.P.
- BCCA Appeal Group (Petitioner)
- Berge, Megan H. (Petitioner's counsel)
- Brookfield Asset Management Inc. (together with its affiliates and managed entities owns 10% or more of Vistra Corp.'s stock)
- Cole, William Francis (counsel for State of Texas and Texas Commission on Environmental Quality)
- Coletto Creek Power, LLC (Petitioner)
- Davis, Bill L., Deputy Solicitor General (counsel for State of Texas, Texas Commission on Environmental Quality, Public Utility Commission of Texas, and Railroad Commission of Texas)
- Eagle Materials Inc. (parent company of Petitioner)
- Ennis Power Company, LLC (Petitioner)
- Garland, Merrick B., Attorney General, United States Department of Justice (Counsel for Respondents)
- Gidiere, P. Stephen III (Counsel for Luminant Generation Company, L.L.C., Coletto Creek Power, L.L.C., Ennis Power Company, L.L.C., Hays Energy, L.L.C., Midlothian Energy, L.L.C., Oak Grove Management Company, L.L.C., and Wise County Power Company, L.L.C., L.L.P.)
- Hays Energy, LLC (Petitioner)

- Heidelberg Materials (parent company of Petitioner)
- Kelly, Daniel J. (Counsel for Petitioners and Senior Vice President and Deputy General Counsel for Vistra Corp.)
- Kim, Todd, Assistant Attorney General, Environment and Natural Resources Division, United States Department of Justice (Counsel for Respondents)
- Kuryla, Matthew Lynn (counsel for Association of Electric Companies of Texas, BCCA Appeal Group, Texas Chemical Council, and Texas Oil & Gas Association)
- Lee, Jin Hyung, United States Department of Justice, Environment & Natural Resources Division (counsel for Respondents)
- Little, J. Mark (Petitioner's counsel)
- Luminant Generation Company LLC (Petitioner)
- Mazzara, Joseph N. (counsel for State of Texas and Texas Commission on Environmental Quality)
- Midlothian Energy, LLC (Petitioner)
- Mitchell, David W. (Counsel for Petitioners and Senior Counsel, Environmental for Vistra Corp.)
- Moore, Stephanie Zapata (Counsel for Petitioners and Executive Vice President and General Counsel for Vistra Corp.)
- Nance, Earthea (Region 6 Administrator, United States Environmental Protection Agency)
- New Mexico Environment Department (*Amicus Curiae*)
- Oak Grove Management Company LLC (Petitioner)

- Prieto, Jeffrey M. (General Counsel for Respondent United States Environmental Protection Agency)
- Regan, Michael S., Administrator, United States Environmental Protection Agency (Respondent)
- State of Texas (Petitioner)
- Streett, Aaron Michael (counsel for Association of Electric Companies of Texas, BCCA Appeal Group, Texas Chemical Council, and Texas Oil & Gas Association)
- Texas Chemical Council (Petitioner)
- Texas Commission on Environmental Quality (Petitioner)
- Texas Lehigh Cement Company LP (Petitioner)
- Texas Oil & Gas Association (Petitioner)
- The Vanguard Group, Inc. (together with its affiliates and managed entities owns 10% or more of Vistra Corp.'s stock)
- United States Environmental Protection Agency (Respondent)
- Vistra Asset Company LLC (Parent company of Petitioners)
- Vistra Corp. (Parent company of Petitioners)
- Vistra Intermediate Company LLC (Parent company of Petitioners)
- Vistra Operations Company LLC (Parent company of Petitioners)
- Wise County Power Company, LLC (Petitioner)

DATED: April 13, 2023

/s/ Megan Berge
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PETITION FOR REVIEW

Pursuant to Section 307(b)(1) of the Clean Air Act, 42 U.S.C. § 7607(b)(1), the Administrative Procedure Act, 5 U.S.C. § 702, and Federal Rule of Appellate Procedure Rule 15(a), Texas Lehigh Cement Company LP (“Texas Lehigh”) hereby petitions this Court for review of the final rule of respondents United States Environmental Protection Agency (“EPA”) and Michael S. Regan, EPA Administrator, entitled “Air Plan Disapprovals; 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. 9336 (Feb. 13, 2023). A copy of EPA’s final rule is attached as Exhibit A, in accordance with 5th Cir. R. 15.1.

EPA's final rule disapproving the State of Texas' State Implementation Plan should be vacated and remanded because it is arbitrary, capricious, and not otherwise in accordance with law. This Court has jurisdiction, and is the proper venue for this action, under 42 U.S.C. § 7607(b)(1) because Texas Lehigh is petitioning for review of only the portion of the final rule disapproving Texas' State Implementation Plan.

DATED: April 13, 2023

Respectfully submitted,

/s/ Megan Berge

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CERTIFICATE OF SERVICE

Pursuant to Rule 15(c) of the Federal Rules of Appellate Procedure, I hereby certify that on April 13, 2023, I caused a true and correct copy of the foregoing Petition for Review and Certificate of Interested Parties to be served by Certified Mail, return receipt requested, 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

Correspondence Control Unit
Office of General Counsel (2311)
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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Assistant Attorney General
United States Department of Justice
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