

ORAL ARGUMENT NOT YET SCHEDULED

No. 23-1157 (consolidated with Nos. 23-1181, 23-1193, 23-1202, 23-1205)

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

STATE OF UTAH, by and through its Governor, SPENCER J. COX,
and its Attorney General, SEAN D. REYES,

Petitioners,

v.

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

Respondents.

On Petitions for Review of a Final Rule
of the U.S. Environmental Protection Agency

**UNOPPOSED MOTION OF ENERGY INFRASTRUCTURE COUNCIL
FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

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CORPORATE DISCLOSURE STATEMENT

The Energy Infrastructure Council is a non-profit trade association dedicated to advancing the interests of companies that develop and operate energy infrastructure. The Energy Infrastructure Council has no parent corporation and no publicly held company has 10% or greater ownership therein.

Date: August 11, 2023

Respectfully submitted,

/s/ Jeremy C. Marwell
Jeremy C. Marwell

**UNOPPOSED MOTION OF ENERGY INFRASTRUCTURE COUNCIL
FOR LEAVE TO FILE BRIEF OF *AMICUS CURIAE***

Pursuant to Fed. R. App. P. 29(a)(3) and D.C. Cir. R. 29(b), the Energy Infrastructure Council (“Council”) respectfully moves this Court for leave to file the attached brief as *amicus curiae* in support of the motions for a stay pending review filed by Petitioners Kinder Morgan, Inc. (case 23-1181), Interstate Natural Gas Association of America and American Petroleum Institute (case 23-1193), Enbridge Inc. (case 23-1202), and TransCanada Pipeline USA Ltd. (case 23-1205).¹

Consistent with Federal Rule of Appellate Procedure 29 and Circuit Rule 29, this Court has previously granted leave to file *amicus* briefs when deciding whether to grant motions for stays or injunctions pending appeal. *E.g.*, *Doe 1 v. Trump*, No. 17-5267, 2017 WL 6553389, at *1 (D.C. Cir. Dec. 22, 2017); Order, *Planned Parenthood of Wis., Inc. v. Azar*, No. 18-5218 (D.C. Cir. Aug. 10, 2018), ECF No. 1745089. Here, the motion is unopposed. Undersigned counsel is authorized to represent that the United States “consents to [the Council’s] participation as *amicus*, conditioned on compliance with Fed. R. App. P. 29.” Counsel is further authorized to represent that Petitioners in the lead case (23-1157) and the four above-captioned

¹ Pursuant to Fed. R. App. P. 29(a)(4)(E), *amicus curiae* states that no counsel for a party authored this brief in whole or in part, and no party or counsel for a party contributed money intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel contributed money intended to fund the preparation or submission of this brief.

consolidated cases, as well as the state and local government respondent-intervenors, consent to the filing of this brief.² Private respondent-intervenors have indicated they take no position on this motion.³

The Council is a non-profit trade association dedicated to advancing the interests of companies that develop and operate energy infrastructure. Its membership comprises a large segment of the pipeline community, including numerous interstate and intrastate natural gas and liquids pipelines, gatherers of natural gas, crude oil, and natural gas liquids, as well as owners and developers of, and investors in, other energy-related infrastructure. The Council's members include the owners and operators of natural gas pipelines that rely on the kinds of reciprocating internal combustion engines regulated by the Environmental Protection Agency ("EPA") rule at issue here to transport natural gas through their lines.

² State and local government respondent-intervenors are the District of Columbia, the State of New Jersey, the State of Illinois, the State of Maryland, the State of New York, the State of Connecticut, the State of Delaware, the City of New York, the Commonwealth of Pennsylvania, the Commonwealth of Massachusetts, the State of Wisconsin, and Harris County, Texas.

³ The private respondent-intervenors are Air Alliance Houston, Appalachian Mountain Club, Center for Biological Diversity, Chesapeake Bay Foundation, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Louisiana Environmental Action Network, Sierra Club, Southern Utah Wilderness Alliance, and Utah Physicians for a Healthy Environment.

This motion and proposed brief align with Federal Rule of Appellate Procedure 29, to the extent that rule is read to apply to amicus briefs at the stay stage, as well as the merits and rehearing stages. The Council is seeking leave of Court to file this brief, following consultation with the parties to the consolidated cases, many of whom have consented to the filing of this brief, and none of whom oppose the filing of this brief. Fed. R. App. P. 29(a)(2)-(3). In this motion, the Council explains why it has an interest in the case and why the proposed *amicus* brief would be relevant to the Court's disposition of the case. *Id.* 29(a)(3). The proposed brief complies with the content and form requirements of Rule 29(a)(4), and is limited to half the maximum length allowed under the rules for the pleading being supported (here, 2,600 words, to support a motion governed by Rule 27(d)(2)(A)), *see* Rule 29(a)(6). The Council has filed this motion within 7 days of the August 4, 2023, stay motions filed by Enbridge Inc. in case 23-1202, ECF No. 2011121, and by TransCanada Pipeline USA Ltd. in case 23-1205, ECF No. 2011451.⁴

As an association representing energy infrastructure companies and other entities in the energy supply chain on a nationwide basis, the Council has a significant interest in, and can offer a unique and broader perspective on, the issues

⁴ The Council's proposed brief also supports the stay motions filed on July 27, 2023 in cases 23-1181 and 23-1193. To conserve resources of the parties and the Court, the Council is filing one single proposed *amicus* brief in these consolidated cases, in support of four separate stay motions. As noted, this motion is filed within 7 days of the stay motions in cases 23-1202 and 23-1205.

presented in this case and in the pending motions for stay. *See* Fed. R. App. P. 29(a)(3). The Council's proposed *amicus* brief, attached to this motion, explains that, absent a stay pending judicial review, the need to begin near-term implementation of EPA's rule will result in cascading adverse financial, operational, and market consequences across the natural gas supply chain—including widespread natural gas pipeline outages as numerous compressor stations are taken offline simultaneously for equipment replacement or upgrades, with impacts on everything from natural gas pricing and availability to the reliability of the electric grid. The proposed brief further explains why and how those impacts would disserve the public interest. Among other things, efforts to begin complying with the rule during the pendency of this case would also impose staggering and unrecoverable financial costs on pipeline operators and ultimately their customers.

This Court should grant leave for the Council to file a brief as *amicus curiae* in support of the motions for a stay pending review.

Date: August 11, 2023

Respectfully submitted,

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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to D.C. Circuit Rule 28(a)(1), *amicus curiae* Energy Infrastructure Council submits this certificate as to parties, rulings, and related cases.

A. PARTIES AND AMICI

Except as follows, all parties, intervenors, and *amici* appearing in this Court are listed in Petitioners' Motion for Stay in consolidated case No. 23-1193.

The Energy Infrastructure Council files this *amicus* brief in support of the motions for stay. The Chamber of Commerce of the United States of America has also filed an *amicus* brief in support of the motions for stay.

The following are petitioners in recently consolidated cases:

1. No. 23-1195; *Associated Electric Cooperative, Inc. v. EPA*

- a. Petitioners: 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.

2. No. 23-1199, *National Mining Association v. EPA*

- a. Petitioner: National Mining Association

3. No. 23-1200, *American Iron & Steel Institute v. EPA*

- a. Petitioner: American Iron and Steel Institute
4. No. 23-1201, *Wisconsin v. EPA*
 - a. Petitioner: State of Wisconsin
5. No. 23-1202, *Enbridge Inc. v. EPA*
 - a. Petitioner: Enbridge Inc.
6. No. 23-1203, *American Chemistry Council v. EPA*
 - a. Petitioners: American Chemistry Council; American Fuel & Petrochemical Manufacturers
7. No. 23-1205, *TransCanada Pipeline USA Ltd. v. EPA*
 - a. Petitioner: TransCanada Pipeline USA Ltd.
8. No. 23-1206, *Hybar LLC v. EPA*
 - a. Petitioner: Hybar LLC
9. No. 23-1207, *United States Steel Corp. v. EPA*
 - a. Petitioner: United States Steel Corporation
10. No. 23-1208, *Union Electric Co. v. EPA*
 - a. Petitioner: Union Electric Company, d/b/a/ Ameren Missouri
11. No. 23-1209, *State of Nevada v. EPA*
 - a. Petitioner: State of Nevada
12. No. 23-1211, *Arkansas League of Good Neighbors v. EPA*
 - a. Petitioner: Arkansas League of Good Neighbors

In all but one of the consolidated cases, Respondents are the Environmental Protection Agency and its Administrator, Michael S. Regan.⁵

The following are Intervenor for Respondents in the consolidated cases: District of Columbia; State of New Jersey; State of Illinois; State of Maryland; State of New York; State of Connecticut; State of Delaware; City of New York; Commonwealth of Pennsylvania; Commonwealth of Massachusetts; State of Wisconsin; Harris County, Texas; Air Alliance Houston, Appalachian Mountain Club, Center for Biological Diversity, Chesapeake Bay Foundation, Citizens for Pennsylvania's Future, Clean Air Council, Clean Wisconsin, Downwinders at Risk, Environmental Defense Fund, Louisiana Environmental Action Network, Sierra Club, Southern Utah Wilderness Alliance, and Utah Physicians for a Healthy Environment.

B. RULING UNDER REVIEW

References to the rulings at issue appear in Petitioners' Motion for Stay in consolidated case No. 23-1193.

C. RELATED CASES

This case has not previously been before this Court or any other court. The following cases have been consolidated in this matter: *State of Utah v. EPA*, No. 23-

⁵ Michael S. Regan is not named as a Respondent in case No. 23-1203.

1157; *Kinder Morgan, Inc. v. EPA*, No. 23-1181; *Ohio v. EPA*, No. 23-1183; *American Forest & Paper Association v. EPA*, No. 23-1190; *Midwest Ozone Group v. EPA*, No. 23-1191; *Interstate Natural Gas Association of America v. EPA*, No. 23-1193; *Associated Electric Cooperative, Inc. v. EPA*, No. 23-1195; *National Mining Association v. EPA*, No. 23-1199; *American Iron & Steel Institute v. EPA*, No. 23-1200; *Wisconsin v. EPA*, No. 23-1201; *Enbridge Inc. v. EPA*, No. 23-1202; *American Chemistry Council v. EPA*, 23-1203; *TransCanada Pipeline USA Ltd. v. EPA*, 23-1205; *Hybar LLC v. EPA*, 23-1206; *United States Steel Corp. v. EPA*, 23-1207; *Union Electric Co. v. EPA*, 23-1208; *State of Nevada v. EPA*, 23-1209; *Arkansas League of Good Neighbors v. EPA*, 23-1211.

Date: August 11, 2023

Respectfully submitted,

/s/ Jeremy C. Marwell

Jeremy C. Marwell

CERTIFICATE OF COMPLIANCE

1. This motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 974 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f) and D.C. Cir. R. 32(e)(1).

2. This motion complies with the typeface and type-style requirements of Fed. R. App. P. 27(d)(1)(E) because it has been prepared in a proportionally spaced typeface using Microsoft Word in Times New Roman 14-point font.

Date: August 11, 2023

/s/ Jeremy C. Marwell

Jeremy C. Marwell

CERTIFICATE OF SERVICE

Pursuant to Rule 25 of the Federal Rules of Appellate Procedure, I hereby certify that, on August 11, 2023, I electronically filed the foregoing *Unopposed Motion of Energy Infrastructure Council for Leave to File Brief as Amicus Curiae* with the Clerk of the Court for the U.S. Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system, and served copies of the foregoing via the Court's CM/ECF system on all ECF-registered counsel.

/s/ Jeremy C. Marwell

Jeremy C. Marwell