No. 22-1347

In the United States Court of Appeals for the Seventh Circuit

NATIONAL WILDLIFE REFUGE ASSOCIATION, ET AL.,
Plaintiffs-Appellees,

v.

RURAL UTILITIES SERVICE, ET AL.,
Defendants-Appellants.

On Appeal from the
United States District Court for the Western District of Wisconsin
Nos. 21-cv-000096-wmc & 21-cv-003-06, Consolidated
(Hon. William M. Conley)

BRIEF OF AMICUS CURIAE THE NATIONAL RURAL ELECTRIC COOPERATIVE ASSOCIATION SUPPORTING DEFENDANTS-APPELLANTS

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Appellate Court No: 22-1347

Short Caption: National Wildlife Refuge Association, et al. v. Rural Utilities Service, et al.

To enable the judges to determine whether recusal is necessary or appropriate, an attorney for a non-governmental party, amicus curiae, intervenor or a private attorney representing a government party, must furnish a disclosure statement providing the following information in compliance with Circuit Rule 26.1 and Fed. R. App. P. 26.1.

The Court prefers that the disclosure statements be filed immediately following docketing; but, the disclosure statement must be filed within 21 days of docketing or upon the filing of a motion, response, petition, or answer in this court, whichever occurs first. Attorneys are required to file an amended statement to reflect any material changes in the required information. The text of the statement must also be included in the front of the table of contents of the party's main brief. **Counsel is required to complete the entire statement and to use N/A for any information that is not applicable if this form is used.**

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(1) The full name of every party that the attorney represents in the case (if the party is a corporation, you must provide the corporate disclosure information required by Fed. R. App. P. 26.1 by completing item #3):
National Rural Electric Cooperative Association

(2) The names of all law firms whose partners or associates have appeared for the party in the case (including proceedings in the district court or before an administrative agency) or are expected to appear for the party in this court:
Lehotsky Keller

(3) If the party, amicus or intervenor is a corporation:

i) Identify all its parent corporations, if any; and

NRECA is a not-for-profit corporation with no parent corporations.

ii) list any publicly held company that owns 10% or more of the party's, amicus' or intervenor's stock:

No company owns 10% or more of NRECA

(4) Provide information required by FRAP 26.1(b) Organizational Victims in Criminal Cases:

NA

(5) Provide Debtor information required by FRAP 26.1 (c) 1 & 2:

NA

Attorney's Signature: /s/ Scott A. Keller Date: April 20, 2020

Attorney's Printed Name: Scott A. Keller

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☑ No ☐

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Attorney's Printed Name: Michael B. Schon

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NA

Attorney's Signature: s/ Michael C. Cotton Date: April 20, 2020

Attorney's Printed Name: Michael C. Cotton

Please indicate if you are *Counsel of Record* for the above listed parties pursuant to Circuit Rule 3(d). Yes ☐ No ☑

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CIRCUIT RULE 26.1 DISCLOSURE STATEMENT

Under Federal Rule of Appellate Procedure 26.1 and Seventh Circuit Rules 26.1(a) and (b), the National Rural Electric Cooperative Association (NRECA) certifies that it is incorporated under the laws of the District of Columbia. NRECA has no parent entity, and no publicly held corporation or similarly situated legal entity has 10% or greater ownership of NRECA.

/s/ Scott A. Keller
Scott A. Keller
Counsel of Record for Amicus Curiae The National Rural Electric Cooperative Association

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INTEREST OF AMICUS CURIAE

The National Rural Electric Cooperative Association (NRECA) is the national trade association representing nearly 900 local electric cooperatives and other rural electric utilities.[1] America's electric cooperatives are owned by the people whom they serve and comprise a unique segment of the electric industry. From growing regions to remote farming communities, electric cooperatives provide safe, reliable, and affordable power to 1 in 8 Americans and serve as engines of economic development for 42 million Americans. Collectively, rural electric cooperatives ("cooperatives") own and maintain 2.7 million miles, or 42 percent, of the Nation's electric distribution lines. In addition to providing electric services, cooperatives provide critical jobs and tax revenue in rural areas, employing more than 71,000 people and paying $1.4 billion in state and local taxes annually. Cooperatives also operate at cost and without a profit. In short: Cooperatives are motived by people, not profits.

NRECA's member cooperatives include 63 generation and transmission cooperatives and 832 distribution cooperatives. The generation and transmission cooperatives generate and transmit power to distribution cooperatives that provide it to the end-of-line cooperative consumer-

[1] No counsel for a party authored this brief in whole or in part, and no person other than *Amicus*, its members, and its counsel made a monetary contribution to fund the preparation or submission of this brief. *See* Fed. R. App. P. 29(a)(2).

members. Both distribution and generation and transmission cooperatives share an obligation to serve their members by providing safe, reliable, and affordable electric service. The cooperatives' ability to continually provide safe, reliable, affordable, and increasingly lower-emitting energy depends on diversifying sources of electric generation, which in turn requires heavy investment in infrastructure projects like the one at hand. Erroneous applications of the National Environmental Policy Act (NEPA), as in the decision below, threaten the ability of NRECA's members to provide affordable and reliable power to the communities they serve, as well as our Nation's ability to meet our renewable-energy goals and maintain and upgrade our long-neglected infrastructure.

NRECA files this amicus curiae brief pursuant to Federal Rule of Appellate Procedure 29(a)(2), by filing a concurrent motion for leave to file, under Rule 29(a)(3).[2]

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[2] All Defendants-Appellants have consented to the filing of this amicus brief. Plaintiffs-Appellees do not consent, and their counsel has stated they "will oppose non-party NRECA filing an amicus curiae brief before the 7th Circuit on the pending appeal."

ARGUMENT

I. NRECA Supports NEPA's Important Objectives, But Those Objectives Have Been Undermined by Misapplications of the NEPA Process.

A. NRECA supports the fundamental goals of NEPA.

NRECA fully supports the fundamental goals of NEPA, which plays a critical role in ensuring that federal agencies carefully consider significant environmental impacts of their decisions. A growing American population will always need more food, water, energy, and goods, which necessitates continual development and improvement of infrastructure. Yet growth and development come with trade-offs to our natural environment. And the federal government has made important strides in balancing environmental objectives with economic growth and the needs of modern society.

When Congress passed NEPA, it rightfully recognized "the critical importance of restoring and maintaining environmental quality to the overall welfare and development of man." 42 U.S.C. § 4331(a). NEPA announced the policy of the federal government in meeting the challenges that new technology and a growing population pose to our environment: "to create and maintain conditions under which man and nature can exist in productive harmony, and fulfill the social, economic, and other requirements of present and future generations of Americans." 42 U.S.C. § 4331(a).

NEPA looked to achieve this goal of "productive harmony" by ensuring that federal agencies consider the potential significant environmental impacts of major federal actions and weigh them against the value of the federal action. 42 U.S.C. § 4331(a). NEPA's core requirement is that for all "major Federal actions significantly affecting the quality of the human environment," federal agencies must prepare a "detailed statement" on "the environmental impact of the proposed action," including alternatives and adverse environmental effects. 42 U.S.C. § 4332(C)(i)-(iii). But crucially, "'NEPA itself does not mandate particular results' in order to accomplish these ends." *Dep't of Transp. v. Pub. Citizen*, 541 U.S. 752, 756 (2004) (quoting *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989)). In other words, NEPA does not put a thumb on the scale of any particular outcome when agencies weigh the value of the proposed project up against the project's environmental impact. "Rather, NEPA imposes only procedural requirements on federal agencies with a particular focus on requiring agencies to undertake analyses of the environmental impact of their proposals and actions." *Id.* at 756-57. So long as "the adverse environmental effects of the proposed action are adequately identified and evaluated, the agency is not constrained by NEPA from deciding that other values outweigh the environmental costs." *Robertson*, 490 U.S. at 350.

Moreover, the agency's Environmental Impact Statement (EIS) "need not be exhaustive to the point of discussing all possible details bearing on the

proposed action . . ." *Suffolk Cty. v. Sec. of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977). Rather, the EIS "will be upheld as adequate if it has been compiled in good faith and sets forth sufficient information to enable the decision-maker to consider fully the environmental factors involved and to make a reasoned decision after balancing the risks of harm to the environment against the benefits to be derived from the proposed action . . ." *Id.* NEPA requires agencies only to evaluate *significant* impacts of their actions—not to "discuss every impact in great detail . . ." *Forest Guardians v. U.S. Forest Serv.*, 495 F.3d 1162, 1172 (10th Cir. 2007).

Similarly, the agency must provide a detailed discussion of reasonable alternatives, *see* 42 U.S.C. § 4332(2)(C)(iii), but "an agency should focus its energies only on the potentially feasible, not the unworkable." *Simmons v. U.S. Army Corps of Eng'rs*, 120 F.3d 664, 669 (7th Cir. 1997). In reviewing the agency's evaluation, "courts have approached their review . . . with a view that Congress did not intend to mandate perfection." *Sierra Club v. Morton*, 510 F.2d 813, 820 (5th Cir. 1975).

NEPA's core objective is to ensure that federal agencies make *informed decisions*—with a thorough understanding of the potential environmental impacts of proposed actions—when deciding whether to issue permits for proposed projects. With a rapidly expanding population that will require more energy, mobility, and essential goods and services, informed decision-making is crucial. And NRECA recognizes that the environmental review

process mandated by NEPA is critical to that end. However, as shown below, erroneous applications of NEPA undermine informed decision-making and harm communities badly in need of energy, modernized infrastructure, and jobs.

B. Despite Congress's clear intentions to the contrary, pervasive NEPA litigation has incentivized federal agencies to prioritize the avoidance of lawsuits over informed decision-making.

As discussed above, NEPA was designed to ensure informed decision-making, as agencies balance the goals of projects requiring federal permitting with potential environmental concerns. But in part because of its wide-ranging applicability across industries and agencies, NEPA is often at the heart of project opponents' litigation strategy. Groups that are opposed to the use and development of land and natural resources have learned to exploit NEPA's well-intentioned process, which has incentivized boundless bureaucratic analyses focused more on staving off lawsuits than on informing federal decision-makers. When agencies must prioritize anticipating every conceivable objection that might be raised in a lawsuit, the need to provide useful information about meaningful environmental impacts to the public and to decision-makers becomes a secondary concern.

For example, the Council on Environmental Quality ("CEQ")—the agency within the White House charged with guiding other agencies through NEPA's requirements—stated in its first set of regulations promulgated in 1978 that EISs should normally be less than 150 pages, with

a maximum length of 300 pages for proposals of "unusual scope or complexity." 40 C.F.R. § 1502.7 (2022). Today, the average length for a final EIS has grown to over 660 pages, and a quarter exceed 748 pages—plus an additional 1,000 pages counting appendices. Update to the Regulations Implementing the Procedural Provisions of the National Environmental Policy Act, 85 Fed. Reg. 43,304, 43,305-06 (July 16, 2020) ("Update"). The final regulations promulgated by CEQ in 1978 stated that "NEPA documents must concentrate on the issues that are truly significant to the action in question, rather than amassing needless detail." 40 C.F.R. § 1500.1(b) (2020).[3] Those same regulations insisted that "Environmental Impact Statements shall be concise, clear, and to the point . . . " *Id.* at § 1500.2(b) (2020). They made clear that "NEPA's purpose is not to generate paperwork—even excellent paperwork—but to foster excellent action." *Id.* at § 1500.1(c) (2020); *see also* 40 C.F.R. § 1500.1(a) (2022).

Similarly, CEQ originally explained that completion of an EIS should take no longer than one year. *Id.* Today, it takes on average four and a half years simply to get a green light to *begin work* on projects that require permitting. Update, 85 Fed. Reg. at 43,305. But it was not the intention of

[3] This section was revised effective September 14, 2020. 85 Fed. Reg. 43,357 (July 16, 2020). However, the NEPA regulations remain focused on avoiding needless paperwork and promoting timely and efficient decision-making.

Congress in enacting NEPA to devise a system wherein the permitting process takes longer than it takes to build the project itself.

These enormous waiting periods for necessary permits and other approvals have not only delayed projects, but have stifled investment into and the development of key infrastructure projects. These multi-year delays have also accompanied vast over- and under-inclusion in NEPA analysis—as agencies focus their efforts and limited resources on stemming the tide of litigation, rather than on analysis that will actually aid decision-makers. Moreover, despite this unfortunate shift in focus away from informed decision-making to litigation-risk-management, these years-long efforts to produce voluminous EISs have not successfully reduced the risk or reality of endless and costly litigation. *See* Update, 85 Fed. Reg. at 43,309 (finding that "NEPA is the most litigated environmental statute in the United States").

When courts misapply NEPA's requirements—sending projects back to agencies for unnecessary re-review—the stakes are higher than they may seem at first blush. Navigating the NEPA process to obtain approval from an agency can take years or even decades.[4] So multiple rounds through

[4] For example, the EIS for the I-70 Expansion Project in Colorado took 13 years to complete, requiring an EIS of 15,951 pages. Unlock American Investment, *I-70 Expansion | Colorado*, https://bit.ly/3xDIl8V (last visited Apr. 20, 2022). The Allison Creek Hydroelectric Project suffered years-long delays in receiving permits, costing the electric cooperative millions of dollars, including the cost of nearly a million gallons of diesel fuel, which would not

NEPA's environmental review process, even when the permit-issuing agency is ultimately vindicated, can be the death knell of projects. For example, after nearly seven years of litigation regarding approval for the Atlantic Coast Pipeline, which culminated in a favorable ruling from the Supreme Court, *U.S Forest Serv. v. Cowpasture River Preservation Assoc.*, 140 S. Ct. 1837 (2020), the project proponents ultimately canceled the project due to legal uncertainty and delays affecting the project's costs.[5] When the road to a final decision is unpredictable, companies simply cannot undertake the

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have been necessary if the Federal Energy Regulatory Commission ("FERC") had met project-review milestones. Unlock American Investment, *Allison Creek Hydroelectric Project | Alaska,* https://bit.ly/38Z1tnj (last visited Apr. 20, 2022). The Northern Integrated Supply Project in Colorado aimed to bring necessary water reservoirs to Northern Colorado but was mired in NEPA review for over 15 years. Unlock American Investment, *Northern Integrated Supply Project | Colorado,* https://bit.ly/3K0uax2 (last visited Apr. 20, 2022). The Purple Line Transit System, a 16-mile light rail connecting parts of Maryland, which was estimated to lead to 17,000 fewer vehicles on local roads, suffered 14 years of NEPA-litigation delay. Unlock American Investment, *Purple Line Transit System | Maryland*, https://bit.ly/3rGk8L7 (last visited Apr. 20, 2022). The Taos Regional Airport Improvements were delayed for over 20 years. Unlock American Investment, *Taos Regional Airport Improvements | New Mexico,* https://bit.ly/3v1DeOb (last visited Apr. 20, 2022). And the Grand Haven Traffic Congestion Improvement in Michigan was delayed for 16 years. Unlock American Investment, *Grand Haven Traffic Congestion Improvement | Michigan,* https://bit.ly/36vMMaw (last visited Apr. 20, 2022).

[5] Dominion Energy and Duke Energy cancel the Atlantic Coast Pipeline (July 5, 2020), https://bit.ly/38bQg2B.

major investments necessary to improve our infrastructure and realize the full potential of green energy projects like the wind and solar projects enabled by the Cardinal-Hickory Creek transmission line.

The case at hand is yet another example. The Rural Utilities Service based the EIS's purpose and need statement on extensive expert analysis done by the non-profit, FERC-approved MISO—the regional transmission organization charged under federal law with transmission expansion planning. Initial Brief of Intervenor-Defendant-Appellants, at 46-47. MISO chose this project, within a package of other projects, that were intended to benefit the MISO region. *Id.* at 11. The Co-owners identified the project's goals based on MISO's decisions in its role as regional transmission planner. *Id.* at 48. And the Rural Utilities Service developed a purpose and need statement based on these goals, along with the analysis performed by MISO and the Co-owners. *Id.* at 52-53. The Rural Utilities Service thoroughly analyzed a reasonable range of alternatives and concluded that the alternatives failed to meet multiple goals of the purpose and need statement. *Id*. at 54. The Rural Utilities Service—a lender—has no statutory authority (or practical expertise) to second-guess MISO's determination that the grid needed more interconnection capacity between the Cardinal and Hickory Creek substations. It was simply not the role of Rural Utilities Service to decide that MISO was wrong about what the grid needed. And NEPA does not require otherwise.

Despite the Rural Utilities Service's careful evaluation of the potential environmental impacts and the viability of alternatives to the project, the district court faulted the agency for less relevant technicalities, such as adopting the statement of purpose for the project from MISO and failing to consider alternatives that are clearly inconsistent with the very purpose of the project. *Nat. Wildlife Refuge Assoc., et al. v. Rural Utils. Serv.*, 2022 WL 136829, at *15-17 (W.D. Wis. Jan. 14, 2022). In so doing, the district court misapplied NEPA by substituting its judgment for the agency. NEPA does not forbid the Rural Utilities Service—an agency whose mission is not focused on regional transmission grid planning—from relying on the experience and expertise of MISO, the entity charged under federal law with that very undertaking. *See Friends of Capital Crescent Trail v. FTA*, 877 F.3d 1051, 1066 (D.C. Cir. 2017) (holding that it was appropriate for the agency to adopt the findings of the state of Maryland that alternatives to the light rail were not reasonable, in so doing narrowing its comparison to the light rail and "no-build" alternatives).[6]

The Rural Utilities Service did not entertain every *conceivable* alternative to the project, but it had no statutory or practical obligation to do so. NEPA

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[6] Appellants have aptly explained why *Simmons*, 120 F.3d at 664 is not applicable here because, among other things, distinctions between the agency authority involved and the purpose of the project. Initial Brief of Intervenor-Defendant-Appellants at 48-54. Accordingly, Amicus will not rehash those arguments.

was not designed to create needless and costly paperwork by mandating that agencies meticulously explore alternative options that are manifestly incongruous with the goals of the project in question. *Protect Our Parks v. Buttigieg*, 10 F.4th 758, 764 (7th Cir. 2021) (per curiam) ("Put another way, the agencies must take the objectives they are given and consider alternative means of achieving those objectives, not alternative objectives"); *Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 195 (D.C. Cir. 1990) ("When the purpose is to accomplish one thing, it makes no sense to consider the alternative ways by which another thing might be achieved.") (quoting *City of Angoon v. Hodel*, 803 F.2d 1016, 1021 (9th Cir. 1986) (per curiam)). The Rural Utilities Service was only required to provide detailed analysis of reasonable alternatives that would achieve the purpose of the Project—connecting the Cardinal and Hickory Creek substations with a 345kV line. And the Rural Utilities Service did consider alternatives to achieve this purpose. For example, the Rural Utilities Service considered alternative crossings of the Mississippi River and the 261 mile-long Upper Mississippi River National Wildlife Refuge. *See* Initial Brief of Intervenor-Defendant-Appellants, at 54, 58-61.

But even if there were flaws in the NEPA analysis, the court had far narrower remedies at its disposal, including a remand to address specific infirmities. Instead, the court vacated and remanded the entire NEPA record of decision and the EIS, effectively sending project approval back to the drawing board, promising extensive re-review, delay, and likely additional

litigation. But none of this would change the reality that MISO decided how to expand the grid that it operates, the states approved the route, and thousands of megawatts of new renewable generation are depending on completion of the project.

The district court misapplied NEPA, aggregating to itself discretion better left to agency experts. *See Protect Our Parks*, 10 F.4th at 763 (noting that courts owe deference to agencies "with respect to the relevant scope of a project"). The erroneous application of NEPA will fail to further NEPA's goals because time-consuming and costly explorations of unreasonable alternatives do not lead to a better-informed public or decision-makers. In isolation, decisions like the one below cause serious delay for much needed infrastructure projects. But in the aggregate, draconian applications of NEPA cause even greater harm because they incentivize litigious exploitations of NEPA's process. This leads to agencies spending enormous time, energy, and taxpayer dollars on voluminous paperwork that is ultimately of no use to the public or decision-makers. Moreover, as shown below, these NEPA-review delays can make the development of crucial infrastructure all but impossible.

II. The United States Cannot Meet Its Infrastructure and Clean-Energy Goals if Meritless NEPA Litigation Proliferates.

A. Investment in projects like the one at hand are critical for sustaining our national economy and reaching our renewable-energy goals.

Delays and associated cost increases may result in projects being canceled altogether. But even when projects can stay alive after decade-long reviews, these delays still have devastating impacts on the individual communities affected, which are waiting for critical infrastructure, energy, development, and investment. These setbacks harm employees and contractors as well, whose livelihoods are tied to projects precariously navigating NEPA review. But isolated communities and workers are not alone in suffering the consequences of the abuses of the NEPA process. These delays and increased costs also curb investment that is needed to achieve our Nation's renewable-energy goals and to sustain and grow our national economy. Uncertainty and delays in the NEPA environmental review process inevitably drive investors to more stable, predictable markets, where project timelines can be reasonably anticipated.

This problem is not just financial. These investor dollars are crucial not only for economic growth, but also for the quality of life of communities that most need critical infrastructure, energy, resources, and jobs. Infrastructure investment, especially in renewable energy projects like the one at issue, is also critical to public safety, national security, and protecting the

environment. In fact, the need to upgrade our power infrastructure and to facilitate the expansion of renewable and clean energy, while lowering costs, was part of the motivation for the massive bipartisan infrastructure deal Congress struck last year.[7] These investments are essential, and NRECA is at the forefront of helping rural communities enjoy a brighter, safter, and more environmentally friendly future.

B. NRECA's members' work demonstrates the sustained need for power-infrastructure development.

A resilient and reliable electric grid that affordably keeps the lights on is the cornerstone of American energy security and the national economy. And the need for investment in the Nation's power infrastructure is no better exemplified than by the rural, cost-sensitive population served by NRECA's members. Rural electric cooperatives serve areas where it is especially challenging and costly to supply electricity: where aggregate demand for electricity is comparatively low; but where the average resident needs and consumes more electricity than residents elsewhere; and where many of the Nation's poorest citizens live. Infrastructure improvements, like the project at hand, allow cooperatives to fulfill their mission to provide safe, reliable,

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[7] The White House, *Fact Sheet: The Bipartisan Infrastructure Deal* (Nov. 6, 2021) https://bit.ly/3v2lAd7. The White House noted that, "according to the Department of Energy, power outages cost the U.S. economy up to $70 billion annually." *Id.*

and affordable electricity to their members, while providing access to renewable options, like the wind energy that would be transmitted by the Cardinal-Hickory Creek transmission line.

NRECA members keep the lights on for more than 42 million people across 48 States and over 56% of the land mass within those States. Electric cooperatives serve all or parts of 88% of the Nation's counties and 13% of the Nation's electric customers, while accounting for approximately 12% of all electricity sold in the United States. Importantly, many cooperative consumers are among the least able to afford rising electricity rates. In 2019, the mean household income for electric cooperative consumers was 11% below the national average. That is unsurprising, given that electric cooperatives serve 92% of the persistent poverty counties (364 out of 395) in the United States.

Not only do cooperative customers need affordable and reliable power, there are profound practical obstacles that lie in the path of providing that power to rural Americans. Rural electric cooperatives serve large expanses of the country that are primarily residential and typically sparsely populated. These characteristics make it more expensive for rural electric cooperatives to provide electric service than it is for other utility sectors, which usually serve more compact, industrialized, and densely populated areas. Low population density affects demand for and the cost of providing electricity. In this respect, rural Americans are uniquely vulnerable to rising

electricity costs. For instance, in America's rural expanses, people generally do not live in apartments or in tight clusters of houses, but in detached, single-unit homes that endure significant exposure to the elements. And more than 14% of cooperative consumers live in manufactured housing, which is often energy inefficient. This contrasts with just 6% of consumers nationwide. For these reasons, among others, the average household served by electric cooperatives uses 1,141 kWh of electricity each month, significantly higher than the 809-kWh monthly average for households served by investor-owned utilities (IOUs), or the 890-kWh monthly average for households served by municipal-owned utilities (MOUs).

Moreover, many of these economically disadvantaged customers live in areas with harsh winters and without access to natural gas. Most other heating alternatives, like propane and heating oil, are relatively expensive. Many cooperative customers thus depend on cooperative-generated electricity for warmth during the coldest months of the year. Especially because they lack viable, affordable heating alternatives, it is vitally important to these households that electric rates remain reasonable and that electric supplies remain reliable. In addition, electric cooperatives are not-for-profit entities; they have no investors or equity shareholders who can bear the costs of stranded generation assets or investment in new or alternative generation resources. Consequently, electric cooperatives must ultimately pass along all capital needs and operating costs directly to their customers through electricity rates.

Cooperatives proudly shoulder the burden of providing affordable and reliable power to America's rural communities, despite the challenges of doing so. But diversity of electric generation is essential to this commitment. Fuel diversity mitigates the regional impacts of differing energy sources and short-term supply disruptions. Diversity of generation also helps cooperatives maintain affordable rates for reliable power and reduces carbon dioxide ("CO2") emissions.

Cooperatives have made tremendous strides in obtaining fuel diversity, especially from cleaner fuels like natural gas and renewable sources like wind, solar, and hydropower. Natural gas has emerged as the leading source of electric cooperative power, surpassing coal for the first time in 2020. The growing use of natural gas has significantly contributed to the reduction of cooperative CO2 emissions, along with renewable sources.

NRECA is deeply committed to environmental stewardship and is leading by example in accelerating energy innovation. Between 2005 and 2020, electric cooperatives lowered their CO2 emissions by 23%—the equivalent of taking nearly 9 million cars off the road. But achieving fuel diversity and continued reduction of CO2 emissions, and realizing the full potential of the technologies that will facilitate these goals, will require significantly more infrastructure and investment. And, as stated above, this is essential for providing affordable and reliable power to those who need it most, not to mention making our communities better protected from national security threats and extreme weather events.

Cooperatives continue to play a vital role in life and development in rural communities across the country, despite the obstacles they face in keeping rates reasonable and electricity supply reliable. NRECA fully supports NEPA's fundamental goals. But erroneous applications of NEPA, as in the decision below, cause serious harm to cooperatives and the communities they serve. Boundless NEPA reviews and related litigation delay important projects for years or even decades. NRECA members cannot provide the communities they serve with safe, affordable, and reliable electricity without increased fuel diversity, enabled by infrastructure projects like the one at hand. Simply put, when it comes to the proper application of NEPA, the stakes are high. Courts play a vital role in enforcing NEPA's important commands, but when courts overstep the boundaries created by Congress in NEPA review, the harm to the public can be severe.

CONCLUSION

The Court should reverse the district court's judgment.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

This brief complies with: (1) the type-volume limitation of Federal Rule of Appellate Procedure 5(c)(1) and Seventh Circuit Rule 29 because it contains 4,266 words, excluding the parts of the brief exempted by Rule 32(f); and (2) the typeface requirements of Rule 32(a)(5) because it has been prepared in a proportionally spaced typeface (14-point Palatino Linotype) using Microsoft Word (the same program used to calculate the word count).

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CERTIFICATE OF SERVICE

On April 20, 2022, this brief was served via CM/ECF on all registered counsel and transmitted to the Clerk of the Court.

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