

**EN BANC ORAL ARGUMENT SCHEDULED FOR MARCH 31, 2020**

No. 17-1098 (consolidated with Nos. 17-1128, 17-1263, 18-1030)

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

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ALLEGHENY DEFENSE PROJECT, *et al.*,  
*Petitioners,*

v.

FEDERAL ENERGY REGULATORY COMMISSION,  
*Respondent.*

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On Petition for Review of Orders of the Federal Energy Regulatory Commission

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**EN BANC BRIEF OF ALLIANCE FOR THE SHENANDOAH VALLEY,  
CHESAPEAKE BAY FOUNDATION, INC., CITIZENS FOR PENNSYLVANIA'S  
FUTURE, COWPASTURE RIVER PRESERVATION ASSOCIATION,  
DEFENDERS OF WILDLIFE, DELAWARE RIVERKEEPER NETWORK,  
FOOD & WATER WATCH, FRIENDS OF BUCKINGHAM, FRIENDS OF  
NELSON, HIGHLANDERS FOR RESPONSIBLE DEVELOPMENT,  
MOUNTAIN WATERSHED ASSOCIATION, NATURAL RESOURCES  
DEFENSE COUNCIL, PUBLIC JUSTICE, SOUND RIVERS, INC.,  
VIRGINIA WILDERNESS COMMITTEE, AND WINYAH RIVERS  
ALLIANCE AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS**

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## CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

Pursuant to Circuit Rule 28(a)(1), *Amici* certify as follows:

### A. Parties, Intervenors, and *Amici*

All parties and intervenors appearing in this Court are listed in the certificate to Petitioners' Joint Brief on Rehearing *En Banc* ("Petitioners' Brief"). The following have appeared or are expected to appear as *amici curiae*:

1. Alliance for The Shenandoah Valley, Chesapeake Bay Foundation, Inc., Citizens for Pennsylvania's Future, Cowpasture River Preservation Association, Defenders of Wildlife, Delaware Riverkeeper Network, Food & Water Watch, Friends of Buckingham, Friends of Nelson, Highlanders for Responsible Development, Mountain Watershed Association, Natural Resources Defense Council, Public Justice, Sound Rivers, Inc., Virginia Wilderness Committee, and Winyah Rivers Alliance, in support of Petitioners.

2. William Limpert, Carlos B. Arostegui, Richard G. Averitt III, Sandra S. Averitt, Jill Ann Averitt, Richard G. Averitt IV, Carolyn Fischer, Anne A. Norwood, Kenneth W. Norwood, Hershel Spears, Nancy Kassam-Adams, Shahir Kassam-Adams, Robert C. Day, Darlene Spears, Quinn Robinson, Delwyn A. Dyer, Cliff Shaffer, Maury Johnson, the New Jersey Conservation Foundation, Catherine Holleran, Alisa Acosta, Stacey McLaughlin, Craig McLaughlin, William McKinley, Pamela Ordway, Neal C. Brown Family LLC, Toni Woolsey, Ron

Schaaf, Deb Evans, the Evans Schaaf Family LLC, and the City of Oberlin, in support of Petitioners.

3. The States of Maryland, Delaware, Illinois, Minnesota, New Jersey, New York, Oregon, and Washington; the Commonwealths of Massachusetts and Pennsylvania; the District of Columbia; and the People of the State of Michigan, in support of Petitioners.

**B. Rulings Under Review**

The final agency actions under review appear in the certificate to Petitioners' Brief.

**C. Related Cases**

All related cases appear in the certificate to Petitioners' Brief.

**D. Rule 26.1 Disclosure Statement**

In accordance with Federal Rule of Appellate Procedure 26.1 and Circuit Rule 26.1, *Amici* disclose the following:

*Alliance for the Shenandoah Valley* is a 501(c)(3) nonprofit organization. Alliance for the Shenandoah Valley's mission is to maintain healthy and productive rural landscapes and communities, protect and restore natural resources, and strengthen and sustain the Shenandoah Valley region's agricultural economy. Alliance for the Shenandoah Valley has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Chesapeake Bay Foundation, Inc.* is a 501(c)(3) nonprofit organization dedicated to saving the Chesapeake Bay by fighting for effective, science-based solutions to the pollution degrading the Bay and its rivers and streams, and protecting human health. Chesapeake Bay Foundation, Inc. has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Citizens for Pennsylvania's Future (PennFuture)* is a 501(c)(3) nonprofit organization dedicated to protecting Pennsylvania's air, water and land, and empowering citizens to build sustainable communities for future generations. PennFuture has no parent companies, and no publicly held company has any ownership interest in it.

*Cowpasture River Preservation Association* is a 501(c)(3) nonprofit organization dedicated to preserving the natural condition and beauty of the Cowpasture River and its tributaries for present and future generations. Cowpasture River Preservation Association has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Defenders of Wildlife* is a 501(c)(3) nonprofit organization dedicated to the protection of all native animals and plants in their natural communities, including our country's most imperiled species and habitats. Defenders of Wildlife has no

parent companies. No publicly held company has a 10% or greater ownership interest in it.

*The Delaware Riverkeeper Network* is a 501(c)(3) nonprofit environmental organization working to protect and restore the Delaware River, its tributaries, and habitats with over 23,000 members throughout the Delaware River Watershed. The Delaware Riverkeeper Network works throughout the four states that comprise the Watershed—including Pennsylvania, New Jersey, Delaware, and New York—and at the federal level on the issues, actions, regulations, legislation, policies, programs, and decisions that impact the health of the Delaware River Watershed waterways. The Delaware Riverkeeper Network has no parent companies, and no publicly held company holds ownership interest in it.

*Food & Water Watch* is a national, 501(c)(3) non-profit consumer advocacy organization focused on protecting the fundamental human rights of our communities to clean water, safe food, and a livable climate. Food & Water Watch has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Friends of Buckingham* is a Virginia corporation dedicated to protecting the natural resources and cultural heritage of Buckingham County, Virginia, and to promoting sustainable social and economic well-being. Friends of Buckingham

has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Friends of Nelson* is incorporated and under the umbrella of Virginia Organizing, a 501(c)(3) organization, and is dedicated to protecting property rights, property values, rural heritage, and the environment for all the citizens of Nelson County, Virginia. Friends of Nelson has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Highlanders for Responsible Development* is a 501(c)(3) nonprofit organization dedicated to the preservation and responsible use of the natural environment of Highland County, Virginia. Highlanders for Responsible Development has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Mountain Watershed Association*, home of the Youghiogheny Riverkeeper, is a nonprofit organization dedicated to protecting, preserving, and restoring the Indian Creek and greater Youghiogheny River watersheds. Mountain Watershed Association has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Natural Resources Defense Council, Inc.* certifies that it is a nongovernmental corporation with no parent corporation and no publicly held company holding 10% or more of its stock. NRDC, a corporation organized and

existing under the laws of the State of New York, is a national nonprofit organization dedicated to improving the quality of the human environment and protecting the nation's endangered natural resources.

*Public Justice* is a national public-interest law firm, dedicated to pursuing justice for victims of government misconduct and abuses. Public Justice specializes in precedent-setting and socially significant civil litigation. Working in federal and state courts throughout the country, Public Justice litigates cases that advance environmental conservation, public health and safety, abating and remediating water and air pollution, and lawsuits that ensure an open and transparent court system available to all people. Public Justice has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Sound Rivers, Inc.* is a 501(c)(3) nonprofit organization dedicated to protecting the health and natural beauty of the Neuse and Tar-Pamlico River Basins in order to provide clean water to the surrounding communities for consumption, recreation, nature preservation, and agricultural use. Sound Rivers, Inc. has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Virginia Wilderness Committee* is a 501(c)(3) nonprofit organization dedicated to permanently protecting the best of Virginia's wild places for future

generations, fostering understanding and appreciation for Wilderness, and promoting enjoyment and stewardship of our last remaining wildlands. Virginia Wilderness Committee has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

*Winyah Rivers Alliance* is a 501(c)(3) nonprofit organization dedicated to protecting, preserving, monitoring, and revitalizing the health of the lands and waters of the greater Winyah Bay watershed. Winyah Rivers Alliance has no parent companies, and no publicly held company has a 10% or greater ownership interest in it.

#### **E. Statement Regarding Separate Briefing and Authorship**

*Amici's* brief is limited to a discussion of the impacts of the Federal Energy Regulatory Commission's tolling practice on conservation, community, and access-to-justice organizations challenging orders issued by FERC under the Natural Gas Act and Federal Power Act. *Amici* are aware of two other *amicus curiae* briefs to be filed in support of Petitioners in this case: (1) a brief filed on behalf of landowners in the path of pipelines approved by FERC that examines the impacts of FERC's tolling practice on landowners' private property interests, and (2) a brief filed by several governmental entities (entitled under Circuit Rule 29 to a separate brief) that addresses the effects of FERC's tolling practice on their sovereign rights. Because the three sets of *amici* have distinct interests and non-

overlapping areas of focus, a single *amicus* brief is not practicable in this case.

*Amici* have coordinated with the other *amici* to ensure that there would be no substantial overlap in issues between this brief and other *amicus* briefs.

Pursuant to Federal Rule of Appellate Procedure 29(a)(4), *Amici* state that no party's counsel authored this brief in whole or in part. No party or party's counsel, and no person other than the *Amici*, their members, or their counsel, contributed money intended to fund the brief's preparation or submission.

**F. Representation of Consent to Participate as *Amici Curiae***

*Amici* have conveyed to the parties their intent to participate as *amici curiae* in this case. All parties have indicated that they consent to the filing of *Amici*'s brief.

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## GLOSSARY

FERC or Commission	Federal Energy Regulatory Commission
FERC Opp'n	Opposition to Petition for Rehearing <i>En Banc</i> of Respondent Federal Energy Regulatory Commission
NEPA	National Environmental Policy Act
Petitioners' Brief	Petitioners' Joint Brief on Rehearing <i>En Banc</i>
Intervenors' Opp'n	Intervenors' Response in Opposition to Petitioners' Petition for Rehearing En Banc

## **INTEREST OF *AMICI CURIAE***

*Amici*, identified individually on pages iv-ix, *supra*, are nonprofit conservation, community, and access-to-justice organizations that advocate on behalf of their members and clients for the protection of public health, cultural heritage, and the environment. *Amici*'s interests are harmed when the Federal Energy Regulatory Commission ("FERC") authorizes energy infrastructure projects under the Natural Gas Act or issues energy market rules under the Federal Power Act without being subject to meaningful judicial oversight. As participants in FERC proceedings under these statutes, *Amici* have a strong interest in ensuring that FERC does not continue to obstruct timely access to the courts when parties like *Amici* challenge FERC's decisions. How the Court resolves this case and rules on the legality of FERC's tolling practice will significantly affect *Amici*'s ability to seek timely, meaningful review of challenges presently tolled by FERC and of FERC's future decisions. *Amici* are thus well-suited to speak to the Court about the unfairness of FERC's tolling practice and the irreparable harms that result.

## **STATUTES AND REGULATIONS**

All applicable statutes and regulations not contained in the Addendum to Petitioners' Brief are included in the attached Addendum.

## INTRODUCTION AND SUMMARY OF ARGUMENT

For decades, the Federal Energy Regulatory Commission has exploited this Court's precedent to forestall judicial review of its orders under all of its regulatory programs. Parties seeking judicial review of FERC's orders under the Natural Gas Act or Federal Power Act must first file a request for rehearing with FERC; unless FERC "acts upon the application for rehearing within thirty days," rehearing "may be deemed to have been denied." 15 U.S.C. § 717r(a) (Natural Gas Act); 16 U.S.C. § 825l(a) (Federal Power Act).

By issuing so-called "tolling orders" that nominally grant rehearing "for the limited purpose of further consideration," FERC consistently grants itself an indefinite extension of time in which to act on the merits of such requests, while locking requesters out of court. As its public dockets reveal, FERC does not reserve this practice for only the most complex of cases; it tolls virtually all requests for rehearing of all types of orders—certificate orders, orders authorizing construction, and even tolling orders themselves. Over the past two years, FERC tolled *every* timely filed rehearing request it received in proceedings in which it issued a decision, spanning all four of FERC's regulatory programs—natural gas, hydropower, electricity, and oil.

What is a ministerial exercise for FERC causes significant, irreparable harm to individuals, communities, and conservation organizations affected by FERC's

authorization of pipeline projects under the Natural Gas Act. While barring challengers from obtaining judicial review, FERC allows pipeline developers to trench through rivers, clear-cut forested land, destroy wildlife habitat, and construct facilities that threaten the health of vulnerable communities. In many cases, by the time FERC finally hands over the keys to the courthouse, pipelines are already in the ground, denying community and conservation groups the opportunity for meaningful judicial relief—even where courts ultimately find that FERC's orders were arbitrary, capricious, or contrary to law. In this way, FERC's tolling scheme is not simply an issue of fair process. For *Amici*—some currently held in FERC's legal purgatory—it may well be one of outcomes, too.

FERC's indiscriminate and unlawful use of tolling orders under the identical provisions of the Federal Power Act similarly causes irreparable harm to parties challenging FERC's authorization of power projects and issuance of energy market rules. Due to dramatic changes in FERC's regulatory responsibilities, FERC's tolling practice causes harms not contemplated decades ago when this Court initially upheld FERC's practice in *California Company v. Federal Power Commission*, ranging from irreversible environmental degradation and consumer costs to deprivations of constitutionally protected liberties. The interpretation upheld in *California Company* and its progeny can now be seen, in the light of

decades of abuse and the shifting responsibilities of FERC's regulatory regime, to have proven unworkable in practice in both statutory contexts.

*Amici* seek the timely access to the courts granted by Congress in the text of FERC's governing statutes and by principles of due process. Because this Court's precedent permits FERC to issue tolling orders that deny challengers timely judicial review, it should be overruled.

## ARGUMENT

### **I. FERC Habitually Tolls Requests for Rehearing Under the Natural Gas Act, Precluding Timely Judicial Review.**

Because the filing of a rehearing request is a jurisdictional prerequisite for seeking judicial review of a FERC order, 15 U.S.C. § 717r(a), (b), FERC can keep challengers out of court by extending the time the Commission takes to resolve such requests. To illustrate FERC's systematic use of tolling orders to foreclose timely judicial review, *Amici* have compiled tables documenting FERC's handling of rehearing requests filed in the certificate proceedings for every major pipeline project FERC has approved under the Natural Gas Act from 2009 to 2019. *See* Exs. A-C.<sup>1</sup> These tables reflect a practice staggering in its scope and uniformity.

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<sup>1</sup> The information in Exhibits A, B, and C was compiled from records in FERC's publicly available "eLibrary" and its list of "Approved Major Pipeline Projects." *See* <https://www.ferc.gov/docs-filing/elibrary.asp>; <https://www.ferc.gov/industries/gas/indus-act/pipelines/approved-projects.asp>.

From 2009 to 2019, parties other than project proponents filed requests for rehearing of FERC certificates of public convenience and necessity, or “certificate orders,” in 63 proceedings. *See* Ex. A. In 61 of those 63 proceedings, FERC issued an order “granting” the rehearing request “solely for the purpose of further consideration”—unilaterally extending its statutory deadline for final action on the merits. *See id.* Not one of these boilerplate tolling orders provided any explanation for FERC’s delay.

To make matters worse, FERC not only extends the period of review: it also allows its challenged decisions to take effect. First, FERC uniformly rejects requests to stay the implementation of the certificate order, allowing energy companies to take possession of landowners’ property and to seek approval for construction activities. *See* Ex. B (indicating that since 2009, FERC has denied or dismissed every stay request except for three requests still pending). In some cases, FERC did not even act on stay requests for a year or more, waiting until it finally resolved the rehearing requests and then dismissing the stay motions as moot. *See, e.g., Spire STL Pipeline LLC*, 169 FERC ¶ 61,134, at ¶ 31 & n.85 (2019) (Glick, Comm’r, dissenting). And when parties sought rehearing of FERC’s orders denying stay requests, FERC tolled those requests, too.<sup>2</sup>

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<sup>2</sup> *See, e.g.,* Order Denying Stay (Aug. 31, 2017) and Order Granting Reh’g for Further Consideration (Nov. 1, 2017), *Transcontinental Gas Pipe Line Co.*, Dkt. CP15-138 (Accession Nos. 20170831-3088 and 20171101-3006); Order Denying

Then, even as it claims to be giving “further consideration” to requests for rehearing, FERC issues orders authorizing construction of the project purportedly under review. In more than three-quarters of the challenges to certificate orders discussed above—48 of 61—FERC authorized construction activity while rehearing requests were pending. *See* Ex. A. And in every case where parties sought rehearing of orders authorizing construction activity, FERC tolled *those* rehearing requests, yet again locking the challengers out of court. *See* Ex. C.

Meanwhile, as construction proceeds apace, projects are largely or fully completed *before* FERC acts on the merits of the request for rehearing of a certificate order—that is, before challengers may seek judicial review of FERC’s approval. *See* Ex. A (indicating that projects were placed into partial or full service prior to rehearing order in 21 of 48 cases in which FERC authorized construction activity).

In short, FERC’s tolling scheme “allows a pipeline developer to build its entire project while simultaneously preventing opponents of that pipeline from having their day in court”—to challenge the underlying certificate orders, denials of stay applications, orders authorizing construction, or even tolling orders

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Stay (Aug. 21, 2017) and Order Granting Reh’g for Further Consideration (Oct. 17, 2017), *Algonquin Gas Transmission, LLC*, Dkt. CP16-9 (Accession Nos. 20170821-3024 and 20171017-3049).

themselves.<sup>3</sup> *Spire*, 169 FERC ¶ 61,134, at ¶ 33 (Glick, Comm’r, dissenting).

Through its indiscriminate tolling, “the Commission has guaranteed substantial irreparable harm occurs before any party can even set foot in court.” *Id.* ¶ 34.

**II. FERC’s Tolling Under the Natural Gas Act Limits Meaningful Judicial Relief, Compounds the Disproportionate Harm to Environmental Justice Communities, and Poses an Imminent Threat to Challengers Presently Subject to FERC’s Tolling Practice.**

**A. FERC’s tolling regime permits significant, irreparable harm to the environment, limiting meaningful judicial relief.**

The inevitable result of FERC’s tolling scheme is that significant irreparable harm occurs while parties languish in legal purgatory, unable to seek judicial review. As Judge Millett recognized in her panel concurrence, “constructing a gas pipeline is not a tidy intrusion.” *Op. of Millett, J.*, at 13. During FERC’s protracted tolling period, FERC allows pipeline companies to rush forward with construction, resulting in landslides, permanent destruction of wildlife habitat, irreversible degradation of wetlands, and fragmentation of previously undisturbed, wild areas.

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<sup>3</sup> Remarkably, when parties seek rehearing of tolling orders, FERC simply tolls *those* rehearing requests, creating a *mise en abyme* seemingly without end. *See, e.g., PennEast Pipeline Co.*, 163 FERC ¶ 61,159, at ¶ 5 (2018) (reporting that “the Commission issued a second procedural order tolling the statutory time period for consideration of the requests for rehearing of the Tolling Order”); Order Granting Reh’gs for Further Consideration (May 24, 2017), *Algonquin Gas Transmission, LLC*, Dkt. CP16-9 (Accession No. 20170524-3018) (tolling requests for rehearing of initial tolling order).

In the case of the Northeast Upgrade Project, FERC forced affected communities to stand idly by for seven months as it authorized stream crossings, tree clearing, and compressor station construction.<sup>4</sup> Even though this Court ultimately held that FERC's analysis violated the National Environmental Policy Act ("NEPA"), the damage was done. The project had crossed Pennsylvania's Delaware State Forest, New Jersey's Highpoint State Park, and the Appalachian Trail, and destroyed over 810 acres of land, including mature forests and endangered species habitat<sup>5</sup>—all based on a legally deficient environmental analysis. *See Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1309 (D.C. Cir. 2014).

For the Mountain Valley Pipeline, parties challenging the project witnessed tree-felling along the entire 300-mile route<sup>6</sup> and extensive damage to Virginia and West Virginia waterbodies<sup>7</sup> during FERC's six-month tolling period. Once a 300-

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<sup>4</sup> *See, e.g.*, Letter Orders (Oct. 24, 2012, Dec. 14, 2012, and Dec. 19, 2012), *Tenn. Gas Pipeline Co.*, Dkt. CP11-161 (Accession Nos. 20121024-3037, 20121214-3053, and 20121219-3031).

<sup>5</sup> *See* Env'tl. Assessment 1-20, 2-47, 2-69, 2-73 (Nov. 2011) and Env'tl. Compliance Monitoring Report 7-12 (Dec. 2, 2013), *Tenn. Gas Pipeline Co.*, Dkt. CP11-161 (Accession Nos. 20111121-4001 and 20131202-4001).

<sup>6</sup> Weekly Status Report, App. A at 1-4 (June 26, 2018), *Mountain Valley Pipeline, LLC*, Dkt. CP16-10 (Accession No. 20180626-5195).

<sup>7</sup> *See* Compl., *Paylor v. Mountain Valley Pipeline, LLC*, No. CL18006874-00 (Va. Cir. Dec. 7, 2018) (detailing violations of Virginia law that occurred in May and June 2018); W.V. Dep't of Env'tl. Prot., Consent Order 1-3 (Apr. 19, 2019),

mile path has been cleared and water quality degraded, “it is difficult if not impossible to unshuffle the deck. The damage to property rights, property values, and the environment is done.” *Op. of Millett, J.*, at 10.

In many cases, FERC’s tolling scheme allows projects to be placed into full or partial service prior to the conclusion of judicial review. When parties prevail in challenging FERC approvals of these projects, “bureaucratic decision-makers (when the law permits) are less likely to tear down a nearly completed project than a barely started project.” *Sierra Club v. Marsh*, 872 F.2d 497, 500-01 (1st Cir. 1989) (Breyer, J.).

This is no hypothetical problem. In *City of Oberlin v. FERC*, 937 F.3d 599 (D.C. Cir. 2019), this Court found that FERC failed to justify its reliance on capacity contracts with foreign shippers in finding a public need for the Nexus pipeline. *Id.* at 606-08. Yet the Court did not vacate FERC’s order, deeming such a remedy disruptive because the pipeline was already operational. *Id.* at 611. In *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017), the Court concluded that FERC failed to adequately consider the Sabal Trail project’s downstream greenhouse gas emissions. *Id.* at 1374. Yet the project had been operating for almost three months by the time of the opinion, causing the very harm at issue. *See* Letter Order (June 9, 2017), *Fla. S.E. Connection, LLC*, Dkt. CP14-554

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<https://bit.ly/37HtTfB> (detailing violations of West Virginia law that occurred in April, May, and June 2018).

(Accession No. 20170609-3026). Where an “agency has committed errors of law[,] ... judicial review [is] an idle ceremony if the situation [is] irreparably changed before the correction [can] be made.” *Scripps-Howard Radio v. FCC*, 316 U.S. 4, 10 (1942).

In particularly egregious cases, pipelines are fully constructed and operational *before FERC issues its rehearing order*. For the Mountaineer Xpress Pipeline project, FERC placed communities in legal purgatory nearly two years ago,<sup>8</sup> and still has not issued a final rehearing order. Meanwhile, FERC has permitted the pipeline operator to construct the entire project, crossing nearly 500 waterbodies;<sup>9</sup> traversing more than 50 miles of steep slopes and causing landslides;<sup>10</sup> and building three new polluting compressor stations.<sup>11</sup> FERC

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<sup>8</sup> Order Granting Reh’g for Further Consideration (Feb. 28, 2018), *Columbia Gas Transmission, LLC*, Dkt. CP16-357 (Accession No. 20180228-3017).

<sup>9</sup> Final Env’tl. Impact Statement 4-51 to 4-53, 4-62 (July 28, 2017), *Columbia Gas Transmission, LLC*, Dkt. CP16-357 (Accession No. 20170728-4002).

<sup>10</sup> *Id.* at 4-11; *see also, e.g.*, Env’tl. Compliance Monitoring Report 6 (Apr. 9, 2018), Env’tl. Compliance Monitoring Report 9 (June 7, 2018), and Env’tl. Compliance Monitoring Report 2-7 (Sept. 10, 2018), *Columbia Gas Transmission, LLC*, Dkt. CP16-357 (Accession Nos. 20180409-3003, 20180607-3005, and 20180910-3024).

<sup>11</sup> Final Env’tl. Impact Statement 4-273 to 4-275 (July 28, 2017), *Columbia Gas Transmission, LLC*, Dkt. CP16-357 (Accession No. 20170728-4002).

authorized full operation of the project nearly a year ago,<sup>12</sup> depriving challengers of the chance of receiving the relief to which they may be entitled.

**B. FERC's unjust practice exacerbates the disproportionate burdens pipeline infrastructure places on environmental justice communities.**

Developers disproportionately locate pipeline infrastructure in communities of color and low-income communities along pipeline routes. *See* NAACP and Clean Air Task Force, *Fumes Across the Fence-Line* 6-7 (Nov. 2017), <https://bit.ly/2NA9h1u>. FERC routinely considers environmental justice issues under NEPA; when it does, that analysis is subject to judicial review. *Sierra Club*, 867 F.3d at 1369. Yet FERC's tolling scheme has consistently disempowered environmental justice communities by barring them from challenging the siting of pipeline facilities in their backyards until after the projects are substantially under way.<sup>13</sup>

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<sup>12</sup> Env'tl. Compliance Monitoring Report 1 (Dec. 23, 2019), *Columbia Gas Transmission, LLC*, Dkt. CP16-357 (Accession No. 20191223-3047) (listing all in-service approvals for project).

<sup>13</sup> *See, e.g.*, *Kiokee-Flint Group Request for Reh'g* 6, 19-31 (Mar. 3, 2016) and *Order Granting Reh'gs for Further Consideration* (Mar. 29, 2016), *Fla. S.E. Connection, LLC*, Dkt. CP14-554 (Accession Nos. 20160303-5069 and 20160329-3008); *Town of Weymouth Request for Reh'g* 13, 70-74 (Feb. 24, 2017) and *Order Granting Reh'gs for Further Consideration* (Mar. 27, 2017), *Algonquin Gas Transmission, LLC*, Dkt. CP16-9 (Accession Nos. 20170224-5121 and 20170327-3006).

For example, the predominantly African American community bordering the Atlantic Coast Pipeline's compressor station in Northampton, North Carolina, had to watch as construction on the station proceeded for six months while FERC tolled rehearing requests. African Americans are more than twice as likely as whites to live near sources of harmful air pollution and as a result suffer disproportionately from respiratory sickness.<sup>14</sup> The Northampton Compressor Station will emit harmful air pollution that exacerbates respiratory sickness. *See* Final Env'tl. Impact Statement 4-558 to 4-559 (July 21, 2017), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession No. 20170721-4000). Yet while FERC tolled requests for rehearing raising these very concerns, it authorized construction of the station. *See* Letter Order (Feb. 12, 2018), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession No. 20180212-3034). By the time FERC denied rehearing, Atlantic had already begun building it. *See* Weekly Status Report 18 (Aug. 10, 2018), *Atl. Coast Pipeline, LLC*, Dkt. 15-554 (Accession No. 20180810-5146).

**C. Court intervention is urgently needed to prevent further harm to parties currently challenging pipeline projects.**

The Atlantic Coast Pipeline presents a stark example of a project that may yet cause much of the harm detailed above if FERC is permitted to continue its tolling practice. The proposed 600-mile pipeline would require over 1,000

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<sup>14</sup> *See* Shenandoah Valley Network Request for Reh'g 118-46 (Nov. 13, 2017) and Pub. Interest Groups Request for Reh'g 23-29 (Nov. 13, 2017), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession Nos. 20171113-5367 and 20171113-5137).

waterbody crossings, traverse two national forests and two national parks, and impact at least six endangered and threatened species.<sup>15</sup> The project also requires three compressor stations, two of which would be located in environmental justice communities in Northampton County, North Carolina, *see supra* Section II.B, and Buckingham County, Virginia.<sup>16</sup>

Meanwhile, the alleged need for the Atlantic Coast Pipeline to run power plants is in serious question, and the route is uncertain. The pipeline's capacity is subscribed entirely by pipeline developer-affiliated, monopoly power utilities that can recover their costs and the FERC-allowed return on investment from captive ratepayers. *See Atl. Coast Pipeline, LLC*, 161 FERC ¶ 61,042, at ¶¶ 9, 60 (2017). Yet in 2018, the Virginia State Corporation Commission concluded that one of those utilities—also the project's lead developer—had “consistently overstated” its energy demand forecasts. *See In re Va. Elec. & Power Co.'s Integrated Resource Plan filing*, 2018 WL 6524202, at \*5 (Va. SCC Dec. 7, 2018). Further, federal courts or the issuing agencies themselves have vacated or suspended eight required

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<sup>15</sup> Final Envtl. Impact Statement ES-6 to ES-7, ES-9 (July 21, 2017), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession No. 20170721-4000); *Defs. of Wildlife v. U.S. Dep't of the Interior*, 931 F.3d 339, 344 (4th Cir. 2019).

<sup>16</sup> *See Friends of Buckingham v. State Air Pollution Control Bd.*, 2020 WL 63295 (4th Cir. Jan. 7, 2020).

permits<sup>17</sup> that exceeded the agencies' authority or were based on inadequate environmental analysis, including analysis in FERC's own Environmental Impact Statement. *See Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150, 170-74 (4th Cir. 2018).

FERC has already subjected parties challenging the Atlantic Coast Pipeline to its tolling scheme, and they are at imminent risk of irreparable harm during additional tolling periods. During the nine-month certificate order tolling period,<sup>18</sup> Atlantic began felling trees, constructing the Northampton Compressor Station, and lowering pipe into the ground.<sup>19</sup>

When conservation groups, attempting to maintain the status quo during the tolling period, filed requests for rehearing of FERC orders authorizing construction

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<sup>17</sup> *See Friends of Buckingham*, 2020 WL 63295 (vacating state-issued air permit for compressor station); *Defs. of Wildlife v. U.S. Dep't of the Interior*, 931 F.3d 339 (4th Cir. 2019) (vacating reissued Fish and Wildlife Service authorization); *Order, Sierra Club v. U.S. Army Corps of Eng'rs*, No. 18-1743 (4th Cir. Jan. 25, 2019) (vacating Nationwide Permit 12 Verification from U.S. Army Corps of Engineers, Huntington District); *Cowpasture River Pres. Ass'n v. Forest Serv.*, 911 F.3d 150 (4th Cir. 2018) (vacating Forest Service Special Use Permit and Right-of-Way), *cert. granted*, 140 S. Ct. 36 (Oct. 4, 2019); *Sierra Club v. U.S. Dep't of the Interior*, 899 F.3d 260 (4th Cir. 2018) (vacating Fish and Wildlife Service and National Park Service authorizations).

<sup>18</sup> *See Order Granting Reh'g for Further Consideration* (Dec. 11, 2017), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession No. 20171211-3013); *Atl. Coast Pipeline, LLC*, 164 FERC ¶ 61,100 (2018).

<sup>19</sup> *See Weekly Status Report 1-3* (Feb. 2, 2018), *Letter Order* (Feb. 12, 2018), and *Weekly Status Report 17* (Aug. 10, 2018), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession Nos. 20180202-5182, 20180212-3034, and 20180810-5146).

because the project lacked critical required permits, FERC tolled those requests.<sup>20</sup>

Over 500 days have passed since the groups' last request for rehearing, and FERC has yet to issue a final, reviewable order on the rehearing requests.<sup>21</sup>

Petitions challenging FERC's approval of the Atlantic Coast Pipeline are finally pending before this Court, subject to an order holding the petitions in abeyance. *See Order, Atl. Coast Pipeline, LLC v. FERC*, No. 18-1224 (D.C. Cir. Oct. 4, 2019). These petitioners may still receive meaningful relief, because the permitting problems for the project halted construction over a year ago. *See Suppl. Information* (Dec. 7, 2018), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession No. 20181207-5147). But this may not be the case for long: the project's lead developer announced in November 2019 that it expects to receive a new biological opinion from the Fish and Wildlife Service and restart construction this winter. *See Dominion Energy*, Q3 2019 Earnings Call Presentation 13 (Nov. 1, 2019), <https://bit.ly/2QXFDol>.

What will likely happen next under FERC's tolling practice is not difficult to predict: Atlantic will seek FERC's authorization to restart construction. FERC

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<sup>20</sup> *See, e.g.*, Orders Granting Reh'g for Further Consideration (July 10, 2018 and Aug. 23, 2018) *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession Nos. 20180710-3053 and 20180823-3027).

<sup>21</sup> *See Defs. of Wildlife Request for Reh'g* (Aug. 23, 2018) and Order Granting Reh'g for Further Consideration (Sept. 24, 2018), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession Nos. 20180823-5142 and 20180924-3038).

may issue an order authorizing construction, notwithstanding the fact that Atlantic would still lack seven permits required for construction by FERC's certificate order. If parties challenge that notice—hoping to prevent even more irreparable harm from occurring before they obtain this Court's review—FERC will reflexively issue a tolling order, shutting the courthouse doors indefinitely. If FERC is permitted to continue this practice, the petitioners' ability to obtain meaningful relief in their challenge to FERC's approval of the Atlantic Coast Pipeline will be significantly diminished, regardless of the Court's ultimate decision in their case.

### **III. FERC Offers No Valid Defense of Its Unlawful Tolling Scheme.**

#### **A. The Natural Gas Act does not permit tolling orders.**

Petitioners ably refute FERC's claim that the Natural Gas Act's requirement that FERC act on rehearing requests within 30 days, 15 U.S.C. § 717r(a), permits FERC *not* to act on such requests, except to grant itself an additional, undefined amount of time. *See* Pet'rs' Br. 12-15. Congress authorized FERC only "to grant or deny rehearing or to abrogate or modify its order without further hearing," and provided that if FERC fails to so "act[]" on the rehearing request within 30 days, the request "may be deemed to have been denied," permitting judicial review. 15 U.S.C. § 717r(a). If FERC truly needs more than the 30 days provided by Congress to resolve rehearing requests, the burden should fall on FERC to seek

Congressional relief—not on the landowners, communities, and conservation groups that currently suffer the consequences of FERC’s tolling scheme.

**B. FERC’s claim that it requires additional time is belied by its indiscriminate use of tolling orders and treatment of rehearing requests.**

Even if the Natural Gas Act permitted FERC to take more than 30 days to act on rehearing requests—a reading contrary to the statute’s plain text—FERC’s claim that it needs additional time to “giv[e] careful and mature consideration to the multiple, and often clashing, arguments ... in complex cases” rings hollow. FERC Opp’n 13 (quoting *California Co. v. Fed. Power Comm’n*, 411 F.2d 720, 721 (D.C. Cir. 1969)). FERC’s own actions refute its claim.

FERC tolls rehearing requests as a matter of course—regardless of the number of parties seeking rehearing, *see generally* Ex. B, or the complexity of the issues. FERC issues tolling orders postponing final action for nearly a year in cases involving only a single rehearing request.<sup>22</sup> Even where multiple rehearing requests are filed, FERC addresses no new issues beyond those it encountered in

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<sup>22</sup> *See, e.g.*, Order Granting Reh’g for Further Consideration (Oct. 20, 2014), *Columbia Gas Transmission, LLC*, Dkt. 14-99 (Accession No. 20141020-3001) (tolling sole request for rehearing of certificate order authorizing pipeline replacement project); *Columbia Gas Transmission, LLC*, 152 FERC ¶ 61,131 (2015) (denying request 10 months later); Order Granting Reh’g for Further Consideration (Apr. 16, 2015), *Nat’l Fuel Gas Supply Corp.*, Dkt. 14-70 (Accession No. 20150416-3002) (tolling sole request for rehearing of certificate order authorizing pipeline expansion project); *Nat’l Fuel Gas Supply Corp.*, 154 FERC ¶ 61,180 (2016) (denying request 11 months later).

producing its original order—as FERC frequently reminds parties to its rehearing orders.<sup>23</sup> Tellingly, FERC tolls requests for rehearing of even simple, two-page letter orders authorizing construction.<sup>24</sup> The indiscriminate manner in which FERC tolls rehearing requests undermines any claim that its practice is motivated by complexity.

Nor does FERC’s practice serve to “limit or obviate the need for judicial review.” Intervenors’ Opp’n 4. From 2009 to 2019, FERC denied or dismissed all but two certificate order rehearing requests filed by parties other than project proponents, and made only minor modifications in response to the remaining two requests while reaffirming its underlying decision. *See* Ex. A.

Of course, if FERC truly requires more than 30 days to act on the merits of a rehearing request, FERC has a ready means to ensure that no irreparable harm from condemnation or construction will occur during that period: staying the underlying order. *See* Op. of Millett, J., at 16. At the very least, FERC could hold off on approving any requests to proceed with construction while it considers

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<sup>23</sup> *See No Gas Pipeline v. FERC*, 756 F.3d 764, 770 (D.C. Cir. 2014) (noting that FERC “regularly rejects requests for rehearing that raise issues not previously presented” unless the issue is based on newly available information); 18 C.F.R. § 385.713(c)(3).

<sup>24</sup> *See, e.g.*, Letter Order (May 11, 2018) and Order Granting Reh’g for Further Consideration (July 10, 2018), *Atl. Coast Pipeline, LLC*, Dkt. CP15-554 (Accession Nos. 20180511-3048 and 20180710-3053).

requests for rehearing of its underlying certificate order. *See id.*<sup>25</sup> But FERC, exploiting this Court’s precedent, has seen fit to take neither approach.

**C. No administrative or judicial recourse exists for parties stuck in FERC’s administrative limbo.**

It is not enough for FERC to assert that “while requests for rehearing are under consideration, parties are free to seek stays from the Commission or other interim relief from the courts.” *PennEast Pipeline Co.*, 163 FERC ¶ 61,159, at ¶ 10 (2018). FERC knows all too well that when parties seek administrative stays, it invariably denies their requests. *See* Section I, *supra*. FERC’s suggestion that parties stymied by FERC’s tolling orders may seek mandamus relief under the All Writs Act is even more disingenuous. The “extraordinary remedy” of mandamus, *Op. of Millett, J.*, at 15, is hardly a readily available avenue. FERC consistently opposes such petitions,<sup>26</sup> and has not cited a single case in which a court granted a pipeline challenger’s bid for mandamus relief. *Id.*

Relatedly, FERC’s ill-conceived proposal to expedite decisions on the merits of only “the narrow set of rehearing requests involving landowner rights,” *see*

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<sup>25</sup> While the latter approach would avert potentially unnecessary harm to the environment, it would not eliminate harm to landowners from the exercise of eminent domain. *See Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000) (“Once a certificate has been granted, the statute allows the certificate holder to obtain needed private property by eminent domain.”).

<sup>26</sup> *See, e.g.,* Opp’n to Pet. for Writ & to Mot. for Stay, *In re Appalachian Voices*, No. 18-1271 (4th Cir. Mar. 15, 2018); Resp. in Opp’n to Mot. for Stay Pending Review, *Coal. to Reroute Nexus v. FERC*, No. 17-4302 (6th Cir. Feb. 12, 2018).

FERC Opp'n at 2-3, would not only fail to resolve the statutory and fair process concerns that accompany FERC's tolling scheme, but would also create precisely the kinds of "administrative and judicial problems" that this Court has historically sought to avoid. *California Co.*, 411 F.2d at 722. Where, as here, separate requests for rehearing are filed by landowners and by non-landowner groups, FERC's proposed approach would invite piecemeal litigation in the courts of appeals, with serial petitions for review of the same FERC certificate order filed months, or even years, apart.

**IV. FERC's Practice of Issuing Tolling Orders Pursuant to the Federal Power Act Is Equally Pervasive, Is Equally Unlawful, and Equally Imposes Irreparable Harm.**

FERC's use of tolling orders to significantly delay a party's day in court is not limited to the Natural Gas Act; it is equally pervasive under the Federal Power Act. The parade of irreparable harm resulting from tolling orders under the Federal Power Act implicates electric market rules that direct infrastructure investments, licensing decisions that affect hydroelectric dam construction and operation, and numerous other authorities that can impose imminent harm to affected parties. Undefined delay of judicial review of orders under the Federal Power Act habitually imposes the threat of irreparable harms not anticipated at the time of *California Company's* decision and raises the threat of unconstitutional deprivation without due process.

**A. Tolling under the Federal Power Act is necessarily implicated by a ruling on the Natural Gas Act's parallel provisions.**

Section 313 of the Federal Power Act is “is the same in all relevant respects as section 19 of the Natural Gas Act.” FERC Opp’n 10 n.2; *compare* 15 U.S.C. § 717r *with* 16 U.S.C. § 825l(a). A new interpretation of Section 19 of the Natural Gas Act will apply with equal force to the parallel provisions of Section 313 of the Federal Power Act. *See Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 n. 7 (1981) (finding certain provisions of Federal Power Act and Natural Gas Act “are in all material respects substantially identical” and citing interchangeably decisions interpreting statutes’ parallel language).

The rejection of FERC’s tolling practice across both statutes is the only appropriate outcome. As detailed below, FERC’s practice under the Federal Power Act of indefinitely delaying final decisions on rehearing requests is as ubiquitous and egregious as its practice under the Natural Gas Act.

**B. FERC’s use of tolling orders under the Federal Power Act is pervasive and egregious.**

As displayed in Exhibit D,<sup>27</sup> FERC deploys tolling orders as a matter of course across all of its regulatory programs. Over the past two years, FERC tolled *every* timely filed rehearing request it received in proceedings in which it issued a

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<sup>27</sup> The information in Exhibit D was compiled from records in FERC’s publicly available “eLibrary” and list of “Decisions & Notices.” *See* <https://www.ferc.gov/docs-filing/elibrary.asp>; <https://www.ferc.gov/docs-filing/dec-not/archives.asp>.

decision, spanning all four of FERC's regulatory programs—natural gas, hydropower, electricity, and oil. See Ex. D (indicating tolling orders issued in 163 proceedings).

Moreover, FERC delays access to the courts for significant periods of time. For FERC proceedings in 2018 and 2019, the average tolling period was greater than six months. *See id.* And this average does not capture egregiously tolled cases in which orders were not issued in the last two years. Like under the Natural Gas Act, time has proven that FERC's interpretation of the Federal Power Act to indefinitely issue tolling orders has not led to the selective application of that purported authority only where necessary to achieve statutory objectives; instead, it reflects an abuse of power without consideration of harms to affected parties or connection to Congressional purpose.

**C. FERC's regulatory responsibilities have shifted such that tolling orders result in irreparable harm not contemplated in *California Company*.**

The regulatory regime underpinning this Court's seminal decision on FERC's use of tolling orders no longer exists. FERC's current market-based regulatory regime to oversee sale and transmission of wholesale electricity bears little resemblance to the narrow, cost-of-service ratemaking it previously administered, and which was in place at the time this Court issued its decision in *California Company*. Modern FERC tariffs now govern complex markets with

thousands of participants. Once an electricity market has been run, the harm is done, as ratepayers will pay the bill for market results without hope of refund, regardless of later decisions overturning the rules of the market.

From 1935 until the 1980s, FERC “regulated wholesale sales of electricity exclusively on a cost-of-service basis.” Ari Peskoe, *Easing Jurisdictional Tensions by Integrating Public Policy in Wholesale Electricity Markets*, 38 Energy L.J. 1, 3 (2017). However, in the late 1980s—well after *California Company* was decided—FERC “shifted from cost-of-service to market-based regulation of wholesale electricity sales.” *Id.* Under this new regime, FERC transitioned to regulating more complex “market-based rates, ... open-access transmission, ... utility-created RTOs, and ... rules for spot-market auctions.” *Id.* at 4-5.

Under FERC’s traditional ratemaking practices, it was typically true that erroneous orders could be easily unwound, and a delay getting into court resulted in limited permanent damage to aggrieved parties. *See* 16 U.S.C. § 824e(b) (describing FERC’s authority to order refunds).<sup>28</sup> However, the markets and their rules are now so complicated that it is often impossible to unwind a set of transactions where FERC’s actions are ultimately determined to be unlawful.

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<sup>28</sup> Congress provided this refund authority in 1988, well before FERC’s more complicated market-based regulatory regime fully emerged. *See* Regulatory Fairness Act of 1988, Pub. L. No. 100-473, 102 Stat. 2299.

FERC has admitted as much, finding that “[i]n cases involving changes to market design, the Commission generally exercises its discretion and *does not order refunds when doing so would require re-running a market.*” *Ameren Servs. Co. v. Midwest Indep. Transmission Sys. Operator, Inc.*, 127 FERC ¶ 61,121, at ¶ 157 (2009) (emphasis added). FERC further clarified that such refunds “would necessarily be inaccurate because they cannot take into account the changes in behavior that those market participants would have made.” *Id.* This type of financial harm is irreparable. *See, e.g., Crowe & Dunlevy, P.C. v. Stidham*, 640 F.3d 1140, 1157 (10th Cir. 2011) (“[T]he imposition of money damages that cannot later be recovered ... constitutes irreparable injury.” (internal quotation marks omitted)).

While previously such orders posed little risk of incurable harm, in this new regulatory construct they can now impose substantial, irreversible harms. Because FERC’s shifting responsibilities have significantly eroded the foundation upon which this Court decided *California Company*, it is more than appropriate for the Court to revisit, reverse, or otherwise distinguish its decision. *See Critical Mass Energy Project v. Nuclear Regulatory Comm’n*, 975 F.2d 871, 876-77 (D.C. Cir. 1992).

**D. FERC's Federal Power Act tolling orders threaten a wide range of irreparable harms and raise the specter of unconstitutional deprivation.**

While they may be less self-evident than the harms caused by pipeline construction while a Natural Gas Act order is tolled, FERC's tolling practice under the Federal Power Act implicates a broad host of irreversible harms and, in some cases, may amount to deprivation of constitutionally protected interests without due process—further underscoring that *California Company* and its progeny are fundamentally flawed, and must be reversed.

FERC's tolling of an order under the Federal Power Act can result in the same environmental harms identified in the context of pipeline construction. For example, FERC's issuance of a license pursuant to Part I of the Federal Power Act can authorize construction of dams, transmission lines, and other facilities in a manner that irreparably harms property interests, livelihood, and the environment. *See, e.g., LaFlamme v. FERC*, 852 F.2d 389, 393 (9th Cir. 1988) (staying hydroelectric license due to environmental impacts and failure to comply with NEPA).

Unlawful wholesale power market rules that are insulated from review by tolling orders can also result in irreparable harms. For example, eligibility rules can change so fundamentally as to put smaller, non-utility companies participating in the markets out of business. *See, e.g., PJM Interconnection, L.L.C.*, 150 FERC

¶ 61,251, at ¶ 16 (2015) (noting allegation of irreparable harm proposed tariff changes could cause to curtailment-service providers by pushing them out of the market). Market rules that unlawfully discriminate against new technologies—which are now predominantly cheaper sources of clean energy—in favor of incumbent generation typically have the effect of increasing emissions of greenhouse gases and air pollutants that threaten public health and welfare, while imposing higher costs on ratepayers and killing the business of entrepreneurs seeking to enter the market. *See, e.g., ISO New England Inc.*, 162 FERC ¶ 61,205, at 5 (2018) (Glick, Comm’r, dissenting in part and concurring in part) (describing rule’s “enormous costs on consumers” and effect of limiting competitive pressure from increasingly cheaper renewables). Indeed, FERC’s practice of failing to act on rehearing requests is so egregious that market rules can be further modified in ways that amplify ongoing harm before the original tariff change is reviewed in court. *See, e.g., ISO New England Inc.*, 166 FERC ¶ 61,061, at ¶ 1 (2019) (adopting revisions to tariff change while rehearing requests filed nine months earlier remained pending).

FERC’s tolling orders under the Federal Power Act can also implicate constitutionally protected rights and interests, raising the risk of due process violations. Delaying review while hydroelectric plant construction proceeds, for example, may pose the same constitutional concerns to property owner interests as

the use of tolling orders in pipeline projects. *See* Pet'rs' Br. 17-21. Tolling orders that delay review of FERC enforcement actions, which include authority to revoke licenses or certificates and impose fines, *see, e.g.*, 16 U.S.C. § 823b(b), also raise constitutional concerns, *see Ex parte Young*, 209 U.S. 123, 147 (1908). For example, one affected party recently challenged rules limiting reporting on Regional Transmission Organization/Independent System Operator stakeholder meetings, alleging, *inter alia*, that the restriction violates First Amendment freedoms. *See* Public Citizen, LLC Request for Reh'g (May 10, 2019), *RTO Insider Inc. v. New England Power Pool Participants Comm.*, Dkt. EL18-196 (May 10, 2019) (Accession No. 20190510-5008).<sup>29</sup>

**V. FERC's Use of Tolling Orders Is Inconsistent with the Supreme Court's Evaluation of Access-to-Justice Principles.**

FERC's use of tolling orders is also counter to recent Supreme Court jurisprudence regarding the public's access to justice. In *Knick v. Township of Scott*, 139 S. Ct. 2162 (2019), the Court overruled decades of precedent imposing burdensome exhaustion requirements to vindicate the right of federal judicial review for a landowner asserting an unlawful takings claim. *Id.* at 2167. In its discussion of overruling past precedent, the Court noted that the exhaustion

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<sup>29</sup> The request for rehearing is, of course, subject to a tolling order that has been pending since June 2019. Order Granting Reh'g For Further Consideration (June 7, 2019), *RTO Insider Inc. v. New England Power Pool Participants Comm.*, Dkt. EL18-196 (Accession No. 20190607-3034).

requirement proved unworkable in practice, as many takings plaintiffs “never have the opportunity to litigate” in the manner provided by the statute. *Id.* at 2179.

At its core, *Knick* affirms the centrality of meaningful access to judicial review. *See also Sackett v. EPA*, 566 U.S. 120, 127-28 (2012). It offends logic to say that an agency action that is fully operable, has legal consequences, and harms affected parties is not final for purposes of judicial review. FERC’s practice of issuing orders that go into full effect while obstructing the ability of anyone to challenge the legal sufficiency of those orders violates the clear mandate of the Natural Gas Act, Federal Power Act, and Fifth Amendment.

## CONCLUSION

The Court should hold that FERC’s tolling practice is contrary to law. To the extent this Court’s precedent authorizes FERC’s tolling practice, that precedent should be overruled.

Respectfully submitted,

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**CERTIFICATE OF COMPLIANCE**

1. This document complies with the type-volume limitation of Fed. R. App. P. 29(a)(5) and 32(a)(7) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and Circuit Rule 32(e)(1), this document contains 6,450 words.

2. This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman.

/s/ Mark Sabath

Mark Sabath

SOUTHERN ENVIRONMENTAL LAW CENTER

Dated: January 17, 2020

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**Exhibit A: Major Approved Pipeline Projects for Which Parties Other than Project Proponents Requested Rehearing of Certificate Orders, 2009-2019**

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP07-62	Sparrows Point Project	<i>AES Sparrows Point, LLC</i> , 126 FERC ¶ 61,019 (Jan. 15, 2009)	Jan. 21, 2009 (20090121-5043) Feb. 12, 2009 (20090212-5134) Feb. 13, 2009 (20090213-5173) Feb. 13, 2019 (20090213-5081) Feb. 17, 2009 (20090218-5022) Feb. 17, 2009 (20090218-5001) Feb. 17, 2009 (20090218-0173) Feb. 17, 2009 (20090218-0172) Feb. 17, 2009 (20090217-5227)* Feb. 17, 2009 (20090217-5199) Feb. 17, 2009 (20090217-5160) Feb. 17, 2009 (20090217-5154) Feb. 17, 2009 (20090217-5100)	Mar. 16, 2009 (20090316-3015)	Dec. 17, 2009 129 FERC ¶ 61,245 (Granted in part, denied in part; added two environmental conditions)		
CP08-429	2010 Expansion Project	<i>Kern River Gas Transmission Company</i> , 127 FERC ¶ 61,223 (June 4, 2009)	June 8, 2009 (20090608-5074)*  July 2, 2009 (20090702-5119)	July 8, 2009 (20090708-3018)	July 14, 2009 128 FERC ¶ 61,024 (Granted)  Nov. 9, 2009 129 FERC ¶ 61,115 (Denied)	July 17, 2009 (20090717-3050)	
CP08-462	Kleen Energy Lateral	<i>Algonquin Gas Transmission, LLC</i> , 126 FERC ¶ 62,077 (Feb. 5, 2009)	Mar. 9, 2009 (20090309-5122)	Apr. 8, 2009 (20090408-3008)	N/A (rehearing request withdrawn)		
CP09-54	Ruby Pipeline Project	<i>Ruby Pipeline, LLC</i> , 128 FERC ¶ 61,224 (Sept. 4, 2009) (need determination)  <i>Ruby Pipeline, LLC</i> , 131 FERC ¶ 61,007 (Apr. 5, 2010) (certificate order)	Sept. 28, 2009 (20090928-5123)* Oct. 5, 2009 (20091005-5102)*  May 4, 2010 (20100505-5005) May 4, 2010 (20100505-5007) May 5, 2010 (20100505-5108) May 5, 2010 (20100505-5107)	Oct. 28, 2009 (20091028-3008)  June 2, 2010 (20100602-3040)	Apr. 5, 2010 131 FERC ¶ 61,007 (Granted in part, denied in part)  Oct. 6, 2010 133 FERC ¶ 61,015 (Denied)	May 13, 2010 (20100513-3000)	
CP09-68	TEMAX and TIME III Projects	<i>Texas Eastern Transmission, LP</i> , 129 FERC ¶ 61,151 (Nov. 19, 2009)	Dec. 18, 2009 (20091218-5206) Dec. 21, 2009 (20091221-5180)*	Jan. 19, 2010 (20100119-3032)	May 20, 2010 131 FERC ¶ 61,164 (Denied all but proponent's)	Jan. 28, 2010 (20100128-3044)	
CP09-455	Mobile Bay Lateral Extension Project	<i>Florida Gas Transmission Company</i> , 132 FERC ¶ 61,040 (July 15, 2010)	Aug. 4, 2010 (20100804-5084)	Sept. 3, 2010 (20100903-3044)	Nov. 18, 2010 133 FERC ¶ 61,156 (Dismissed)		
CP10-480	MARC I Project	<i>Central New York Oil &amp; Gas Company, LLC</i> , 137 FERC ¶ 61,121 (Nov. 14, 2011)	Nov. 18, 2011 (20111118-5194) Dec. 1, 2011 (20111202-5013) Dec. 13, 2011 (20111213-5045)*	Dec. 19, 2011 (20111219-3026)	Feb. 13, 2012 138 FERC ¶ 61,104 (Denied all but proponent's)	Nov. 21, 2011 (20111121-3019)	

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP11-56	NJ-NY Project	<i>Texas East Transmission LP</i> , 139 FERC ¶ 61,138 (May 21, 2012)	June 20, 2012 (20120620-5132) June 20, 2012 (20120620-5126) June 20, 2012 (20120620-5110) June 20, 2012 (20120620-5085) June 21, 2012 (20120621-5107)	July 18, 2012 (20120718-3041)	Oct. 18, 2012 141 FERC ¶ 61,043 (Denied)	June 21, 2012 (20120621-3058)	
CP11-128	Northern Access Expansion Project	<i>National Fuel Gas Supply Corporation</i> , 137 FERC ¶ 61,054 (Oct. 20, 2011)	Nov. 18, 2011 (20111118-5034)	Dec. 19, 2011 (20111219-3027)	Apr. 13, 2012 139 FERC ¶ 61,037 (Denied)		
CP11-161	Northeast Upgrade Project	<i>Tennessee Gas Pipeline Company</i> , 139 FERC ¶ 61,161 (May 29, 2012)	June 12, 2012 (20120612-5156) June 21, 2012 (20120625-4008) June 27, 2012 (20120627-5181) June 27, 2012 (20120627-5060) June 27, 2012 (20120627-5022) June 28, 2012 (20120628-5171) June 28, 2012 (20120628-5162)*	July 9, 2012 (20120709-3002)	Jan. 11, 2013 142 FERC ¶ 61,025 (Denied all but proponent's)	Oct. 24, 2012 (20121024-3037)	
CP11-515	Minisink Compressor Station	<i>Millennium Pipeline Company, LLC</i> , 140 FERC ¶ 61,045 (July 17, 2012)	Aug. 15, 2012 (20120815-5160) Aug. 15, 2012 (20120815-5159) Aug. 15, 2012 (20120815-5141) Aug. 15, 2012 (20120815-5016) Aug. 16, 2012 (20120817-5014)	Sept. 13, 2012 (20120913-3037)	Dec. 7, 2012 141 FERC ¶ 61,198 (Denied)	Sept. 18, 2012 (20120918-3038)	
CP12-30	Northeast Supply Link Project	<i>Transcontinental Gas Supply Company, LLC</i> , 141 FERC ¶ 61,091 (Nov. 2, 2012)	Dec. 1, 2012 (20121203-5072) Dec. 3, 2012 (20121203-5184) Dec. 3, 2012 (20121203-5123)	Dec. 28, 2012 (20121228-3036)	May 16, 2013 143 FERC ¶ 61,132 (Denied)	Nov. 19, 2012 (20121119-3031)	
CP12-72	Allegheny Storage Project	<i>Dominion Transmission, Inc.</i> , 141 FERC ¶ 61,240 (Dec. 20, 2012)	Jan. 9, 2013 (20130114-0201) Jan. 19, 2013 (20130122-5099) Jan. 21, 2013 (20130122-5100) Jan. 21, 2013 (20130122-5102) Jan. 21, 2013 (20130122-5105) Jan. 22, 2013 (20130122-5106) Jan. 22, 2013 (20130122-5107) Jan. 22, 2013 (20130122-5351) Jan. 22, 2013 (20130122-5334) Jan. 22, 2013 (20130122-5333) Jan. 22, 2013 (20130122-5332) Jan. 22, 2013 (20130122-5229) Jan. 22, 2013 (20130122-5221) Jan. 22, 2013 (20130122-5218)	Feb. 11, 2013 (20130211-3019)	May 16, 2013 143 FERC ¶ 61,148 (Denied)	Apr. 25, 2013 (20130425-3024)	
CP12-351		<i>Cheniere Creole Trail Pipeline, LP</i> , 142 FERC ¶ 61,137 (Feb. 21, 2013)	Mar. 25, 2013 (20130325-5204)	Apr. 22, 2013 (20130422-3009)	Oct. 25, 2013 145 FERC ¶ 61,074 (Denied)		

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP12-507	Liquefaction Project	<i>Cheniere Corpus Christi Pipeline, LP</i> , 149 FERC ¶ 61,283 (Dec. 30, 2014)	Jan. 29, 2015 (20150129-5314)	Mar. 2, 2015 (20150302-4004)	May 6, 2015 151 FERC ¶ 61,098 (Denied)	Feb. 3, 2015 (20150203-3033)	
CP13-25	Liquefaction Project	<i>Cameron Interstate Pipeline, LLC</i> , 147 FERC ¶ 61,230 (June 19, 2014)	July 22, 2014 (20140722-5002)		July 29, 2014 148 FERC ¶ 61,073 (Dismissed as untimely)	N/A	
CP13-113	Cove Point Liquefaction Project	<i>Dominion Cove Point LNG, LP</i> , 148 FERC ¶ 61,244 (Sept. 29, 2014)	Oct. 15, 2014 (20141015-5159) Oct. 28, 2014 (20141028-5148) Oct. 29, 2014 (20141029-5143) Oct. 29, 2014 (20141030-5015)	Nov. 13, 2014 (20141113-3021)	May 4, 2015 151 FERC ¶ 61,095 (Denied)	Oct. 3, 2014 (20141003-3002)	
CP13-499	Constitution Pipeline Project	<i>Constitution Pipeline Company, LLC</i> , 149 FERC ¶ 61,199 (Dec. 2, 2014)	Dec. 30, 2014 (20141230-5288) Dec. 31, 2014 (20141231-5296) Jan. 2, 2015 (20150102-5236) Jan. 2, 2015 (20150102-5158) Jan. 2, 2015 (20150102-5100)	Jan. 27, 2015 (20150127-3038)	Jan. 28, 2016 154 FERC ¶ 61,046 (Denied)	Sept. 18, 2015 (20150918-3046)	
CP13-551	Leidy Southeast Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 149 FERC ¶ 61,258 (Dec. 18, 2014)	Jan. 16, 2015 (20150116-5100) Jan. 17, 2015 (20150120-5197) Jan. 20, 2015 (20150120-5539)	Feb. 18, 2015 (20150218-3021)	Mar. 3, 2016 154 FERC ¶ 61,166 (Denied)	Jan. 30, 2015 (20150130-3009)	Oct. 16, 2015 (20151016-3023)
CP13-552	Sabine Pass	<i>Sabine Pass Liquefaction Expansion, LLC</i> , 151 FERC ¶ 61,012 (Apr. 6, 2015)	May 6, 2015 (20150506-5237)	June 3, 2015 (20150603-3031)	June 23, 2015 151 FERC ¶ 61,253 (Denied)		
CP14-17	East Side Expansion Project	<i>Columbia Gas Transmission, LLC</i> , 149 FERC ¶ 61,255 (Dec. 18, 2014)	Jan. 16, 2015 (20150116-5291) Jan. 20, 2015 (20150120-5523) Jan. 20, 2015 (20150120-5215)	Feb. 18, 2015 (20150218-3020)	Oct. 14, 2015 153 FERC ¶ 61,064 (Denied)	Jan. 9, 2015 (20150109-3023)	
CP14-70	West Side Expansion and Modernization Project	<i>National Fuel Gas Supply Corporation</i> , 150 FERC ¶ 61,162 (Mar. 2, 2015)	Mar. 16, 2015 (20150317-5027)	Apr. 16, 2015 (20150416-3002)	Mar. 8, 2016 154 FERC ¶ 61,180 (Denied)	Mar. 10, 2015 (20150310-3022)	Oct. 8, 2015 (20151008-3046)
CP14-88	Niagara Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 150 FERC ¶ 61,160 (Feb. 27, 2015)	Mar. 16, 2015 (20150317-5027) Mar. 27, 2015 (20150327-5117)	Apr. 16, 2015 (20150416-3003)	Mar. 9, 2016 154 FERC ¶ 61,184 (Denied in part, granted in part; required National Fuel to assess incremental fuel rate for project)	Mar. 13, 2015 (20150313-4020)	Oct. 22, 2015 (20151022-3006)

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP14-96	Algonquin Incremental Market Project (AIM Project)	<i>Algonquin Gas Transmission, LLC</i> , 150 FERC ¶ 61,163 (Mar. 3, 2015)	Apr. 1, 2015 (20150401-5718) Apr. 1, 2015 (20150401-5627) Apr. 1, 2015 (20150401-5694) Apr. 1, 2015 (20150402-5308) Apr. 2, 2015 (20150402-5290) Apr. 2, 2015 (20150402-5274) Apr. 2, 2015 (20150402-5267) Apr. 2, 2015 (20150402-5265) Apr. 2, 2015 (20150402-5135) Apr. 2, 2015 (20150403-5016)	May 1, 2015 (20150501-3016)	Jan. 28, 2016 154 FERC ¶ 61,048 (Denied)	Apr. 13, 2015 (20150413-3015)	
CP14-99	Line 1655 North Project	<i>Columbia Gas Transmission, LLC</i> , 148 FERC ¶ 61,138 (Aug. 22, 2014)	Sept. 19, 2014 (20140919-5160)	Oct. 20, 2014 (20141020-3001)	Aug. 18, 2015 152 FERC ¶ 61,131 (Denied)	Aug. 22, 2014 148 FERC ¶ 61,138	
CP14-112	Tuscarora Later Project	<i>Empire Pipeline, Inc.</i> , 150 FERC ¶ 61,181 (Mar. 10, 2015)	Mar. 16, 2015 (20150317-5027) Apr. 9, 2015 (20150409-5163)*	Apr. 16, 2015 (20150416-3004)	Dec. 20, 2015 153 FERC ¶ 61,379 (Denied all but proponents')	Mar. 19, 2015 (20150319-3079)	Oct. 22, 2015 (20151022-3028)
CP14-115	Elba Express Modification Project and Elba Liquefaction Project	<i>Elba Liquefaction Company, LLC</i> , 155 FERC ¶ 61,219 (June 1, 2016)	June 29, 2016 (20160630-5029) June 30, 2016 (20160630-5312) July 1, 2016 (20160701-5315)	Aug. 1, 2016 (20160801-3012)	Dec. 9, 2016 157 FERC ¶ 61,195 (Denied)	June 7, 2016 (20160607-3026)	Sept. 20, 2016 (20160920-3007)
CP14-119 CP14-120	Pipeline Modifications and Liquefaction Projects	<i>Trunkline Gas Company, LLC</i> , 153 FERC ¶ 61,300 (Dec. 17, 2015)	Jan. 19, 2016 (20160119-5385)	Feb. 16, 2016 (20160216-3038)	June 30, 2016 155 FERC ¶ 61,328 (Denied)	Feb. 23, 2016 (20160223-3028)	
CP14-496	Clarington Project	<i>Dominion Transmission, Inc.</i> , 152 FERC ¶ 61,138 (Aug. 19, 2015)	Sept. 18, 2015 (20150918-5239)		Dec. 8, 2015 153 FERC ¶ 61,284 (Denied)	N/A	
CP14-497	New Market Project	<i>Dominion Transmission, Inc.</i> , 155 FERC ¶ 61,106 (Apr. 28, 2016)	May 31, 2016 (20160531-5685)	June 27, 2016 (20160627-3025)	May 18, 2018 163 FERC ¶ 61,128 (Denied)	Mar. 17, 2017 (20170317-3044)	Oct. 27, 2017 (20171027-3025)
CP14-498	East-to-West Project	<i>Rockies Express Pipeline LLC</i> , 150 FERC ¶ 61,161 (Feb. 27, 2015)	Mar. 27, 2015 (20150327-5341)	Apr. 27, 2015 (20150427-3048)	Apr. 7, 2016 155 FERC ¶ 61,018 (Denied)	Mar. 11, 2015 (20150311-3020)	July 30, 2015 (20150730-3045)
CP14-511	Lake Charles Expansion Project	<i>Kinder Morgan Louisiana Pipeline LLC</i> , 155 FERC ¶ 61,033 (Apr. 15, 2016)	May 16, 2016 (20160516-5392)	June 13, 2016 (20160613-3006)	Nov. 23, 2016 157 FERC ¶ 61,149 (Denied)		
CP14-513		<i>Impulsora Pipeline, LLC</i> , 151 FERC ¶ 61,117 (May 14, 2015)	June 15, 2015 (20150615-5335)	July 13, 2015 (20150713-3010)	Nov. 19, 2015 153 FERC ¶ 61,204 (Denied)		

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP14-529	Connecticut Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 154 FERC ¶ 61,191 (Mar. 11, 2016)	Apr. 8, 2016 (20160408-5149) Apr. 11, 2016 (20160411-5317) Apr. 11, 2016 (20160411-5301)*	May 9, 2016 (20160509-3010)	Aug. 25, 2017 160 FERC ¶ 61,027 (Denied all but proponent's)	Mar. 21, 2017 (20170321-3031)	
CP14-553	Ohio-Louisiana Access Project	<i>Texas Gas Transmission, LLC</i> , 152 FERC ¶ 61,160 (Aug. 28, 2015)	Sept. 28, 2015 (20150928-5318)	Oct. 27, 2015 (20151027-3063)	Apr. 27, 2016 155 FERC ¶ 61,099 (Denied)	Sept. 22, 2015 (20150922-3022)	Apr. 27, 2016 (20160427-3043)
CP14-554	Florida Southeast Project  Hillabee Expansion Project  Sabal Trail Project	<i>Florida Southeast Connection, LLC</i> , 154 FERC ¶ 61,080 (Feb. 2, 2016)	Feb. 2, 2012 (20160301-0001) Mar. 1, 2016 (20160302-5027) Mar. 2, 2016 (20160302-5236)* Mar. 2, 2016 (20160302-5062) Mar. 3, 2016 (20160303-5168)* Mar. 3, 2016 (20160303-5077)* Mar. 3, 2016 (20160303-5069) Mar. 8, 2017 (20170308-5189)	Mar. 29, 2016 (20160329-3008)	Sept. 7, 2016 156 FERC ¶ 61,160 (Denied all but proponents')	Apr. 22, 2016 (20160422-3042)	
CP14-555	Lebanon West II Project	<i>Dominion Transmission, Inc.</i> , 153 FERC ¶ 61,203 (Nov. 19, 2015)	Dec. 21, 2015 (20151222-5023)	Jan. 19, 2016 (20160119-3013)	June 2, 2016 155 FERC ¶ 61,234 (Denied)	Dec. 9, 2015 (20151209-3041)	
CP15-8	Kalama Lateral Project	<i>Northwest Pipeline LLC</i> , 155 FERC ¶ 61,026 (Apr. 11, 2016)	May 11, 2016 (20160511-5046)	June 8, 2016 (20160608-3030)	Nov. 8, 2016 157 FERC ¶ 61,093 (Denied)		
CP15-77	Broad Run Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 156 FERC ¶ 61,157 (Sept. 6, 2016)	Oct. 6, 2016 (20161006-5155) Oct. 6, 2016 (20161006-5149)* Oct. 6, 2016 (20161006-5132)	Nov. 7, 2016 (20161107-3017)	June 12, 2018 163 FERC ¶ 61,190 (Denied/Dismissed)	Dec. 7, 2016 (20161207-3009)	Mar. 20, 2018 (20180320-3049)
CP15-89	Garden State Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 155 FERC ¶ 61,016 (Apr. 7, 2016)	May 9, 2016 (20160509-5182) May 9, 2016 (20160509-5173)	June 8, 2016 (20160608-3028)	Nov. 9, 2016 157 FERC ¶ 61,095 (Denied)	July 6, 2016 (20160706-3030)	
CP15-93	Rover Pipeline Project	<i>Rover Pipeline LLC</i> , 158 FERC ¶ 61,109 (Feb. 2, 2017)	Mar. 1, 2017 (20170302-5042) Mar. 6, 2017 (20170306-5212)*	Mar. 15, 2017 (20170315-4040)	Nov. 30, 2017 161 FERC ¶ 61,244 (Denied)	Feb. 13, 2017 (20170213-3020)	Aug. 31, 2017 (20170831-3070)
CP15-115	Northern Access 2016 Project	<i>National Fuel Gas Supply Corporation</i> , 158 FERC ¶ 61,145 (Feb. 3, 2017)	Mar. 3, 2017 (20170303-5147)* Mar. 6, 2017 (20170306-5199) Mar. 6, 2017 (20170306-5203) Mar. 6, 2017 (20170306-5194)	Apr. 3, 2017 (20170403-3016)	Aug. 6, 2018 164 FERC ¶ 61,084 (Denied/Dismissed)		
CP15-117	Dalton Expansion Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 156 FERC ¶ 61,092 (Aug. 3, 2016)	Aug. 8, 2016 (20160808-5214/5209) Sept. 2, 2016 (20160902-5176)	Sept. 6, 2016 (20160906-3043)	Nov. 21, 2017 161 FERC ¶ 61,211 (Denied)	Aug. 15, 2016 (20160815-3011)	Mar. 28, 2017 (20170328-3065)

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP15-118	Virginia Southside Expansion Project II	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 156 FERC ¶ 61,022 (July 7, 2016)	Aug. 8, 2016 (20160808-5214/5209)	Sept. 6, 2016 (20160906-3044)	Nov. 21, 2017 161 FERC ¶ 61,212 (Denied)	Oct. 5, 2016 (20161005-3000)	Nov. 27, 2017 (20171127-3036)
CP15-138	Atlantic Sunrise Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 158 FERC ¶ 61,125 (Feb. 3, 2017)	Feb. 10, 2017 (20170210-5182) Feb. 24, 2017 (20170224-5106) Mar. 6, 2017 (20170306-5163) Mar. 6, 2017 (20170306-5207) Mar. 6, 2017 (20170306-5205) Mar. 6, 2017 (20170306-5204) Mar. 6, 2017 (20170306-5202) Mar. 6, 2017 (20170306-5198) Mar. 6, 2017 (20170306-5185) Mar. 6, 2017 (20170306-5184) Mar. 6, 2017 (20170306-5123) Mar. 6, 2017 (20170307-5017) Mar. 6, 2017 (20170307-5013)	Mar. 13, 2017 (20170313-3024)	Dec. 6, 2017 161 FERC ¶ 61,250 (Denied/Dismissed)	Feb. 23, 2017 (20170223-3040)	June 23, 2017 (20170623-3002)
CP15-148	Susquehanna West Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 156 FERC ¶ 61,156 (Sept. 6, 2016)	Oct. 6, 2016 (20161006-5150) Oct. 6, 2016 (20161006-5134)*	Nov. 7, 2016 (20161107-3018)	May 18, 2018 163 FERC ¶ 61,129 (Denied/Dismissed)	Oct. 25, 2016 (20161025-3034)	Aug. 30, 2017 (20170830-3013)
CP15-492	Leidy South Project	<i>Dominion Transmission, Inc.</i> , 156 FERC ¶ 61,140 (Aug. 29, 2016)	Sept. 28, 2016 (20160928-5174)	Oct. 26, 2016 (20161026-3038)	Jan. 17, 2017 158 FERC ¶ 61,029 (Denied)	Oct. 5, 2016 (20161005-3005)	Dec. 2, 2016 (20161202-3001)

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP15-500	Presidio Border Crossing Project	<i>Trans-Pecos Pipeline, LLC</i> , 155 FERC ¶ 61,140 (May 5, 2016)	May 31, 2016 (20160531-5727) May 31, 2016 (20160531-5363) May 31, 2016 (20160531-5281) June 1, 2016 (20160601-5315) June 1, 2016 (20160601-5298) June 1, 2016 (20160601-5255) June 1, 2016 (20160601-5140) June 2, 2016 (20160603-5074) June 2, 2016 (20160603-5072) June 3, 2016 (20160603-5200) June 3, 2016 (20160603-5180) June 3, 2016 (20160606-5072) June 3, 2018 (20160606-5061) June 4, 2016 (20160606-5067) June 5, 2016 (20160606-5071) June 5, 2016 (20160606-5066) June 6, 2016 (20160606-5293) June 6, 2016 (20160606-5292) June 6, 2016 (20160606-5259) June 6, 2016 (20160606-5245) June 6, 2016 (20160606-5214) June 6, 2016 (20160606-5096) June 6, 2016 (20160606-0100) June 6, 2016 (20160606-0099) June 6, 2016 (20160606-0098) June 6, 2016 (20160606-0095) June 6, 2016 (20160607-5022) June 6, 2016 (20160607-5009) June 7, 2016 (20160608-0006) June 13, 2016 (20160613-0067)	June 27, 2016 (20160627-3026)	Nov. 1, 2016 157 FERC ¶ 61,081 (Denied/Dismissed)	July 29, 2016 (20160729-3002)	
CP15-554	Atlantic Coast Pipeline and Supply Header Project	<i>Atlantic Coast Pipeline, LLC</i> , 161 FERC ¶ 61,042 (Oct. 13, 2017)	Nov. 9, 2017 (20171109-5167)* Nov. 10, 2017 (20171113-5115) Nov. 13, 2017 (20171113-5379) Nov. 13, 2017 (20171113-5373) Nov. 13, 2017 (20171113-5370) Nov. 13, 2017 (20171113-5367) Nov. 13, 2017 (20171113-5324) Nov. 13, 2017 (20171113-5276) Nov. 13, 2017 (20171113-5275) Nov. 13, 2017 (20171113-5273) Nov. 13, 2017 (20171113-5262) Nov. 13, 2017 (20171113-5137)	Dec. 11, 2017 (20171211-3013)	Aug. 10, 2018 164 FERC ¶ 61,100 (Denied/Dismissed all but proponent's)	Jan. 19, 2018 (20180119-3052)	

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP15-558	PennEast Pipeline	<i>PennEast Pipeline Company, LLC</i> , 162 FERC ¶ 61,053 (Jan. 19, 2018)	Jan. 22, 2018 (20180123-5035) Jan. 24, 2018 (20180124-5153) Jan. 28, 2018 (20180129-5074) Jan. 31, 2018 (20180131-5302) Feb. 3, 2018 (20180205-5037) Feb. 3, 2018 (20180205-5032) Feb. 5, 2018 (20180206-5017) Feb. 5, 2018 (20180206-5010) Feb. 9, 2018 (20180209-5190) Feb. 9, 2018 (20180209-5158) Feb. 12, 2018 (20180213-5082) Feb. 15, 2018 (20180215-5188) Feb. 15, 2018 (20180215-5096) Feb. 16, 2018 (20180216-5219) Feb. 16, 2018 (20180216-5183) Feb. 16, 2018 (20180216-5168) Feb. 16, 2018 (20180216-5085) Feb. 16, 2018 (20180216-5062) Feb. 19, 2018 (20180220-5107) Feb. 19, 2018 (20180220-5101) Feb. 19, 2018 (20180220-5094) Feb. 20, 2018 (20180220-5306) Feb. 20, 2018 (20180220-5272) Feb. 20, 2018 (20180220-5253) Feb. 20, 2018 (20180220-5238) Feb. 20, 2018 (20180220-5224) Feb. 20, 2018 (20180220-5221) Feb. 20, 2018 (20180220-5131) Feb. 20, 2018 (20180220-5128) Feb. 20, 2018 (20180220-5127) Feb. 20, 2018 (20180220-5111) Feb. 20, 2018 (20180220-5110)	Feb. 22, 2018 (20180222-3037)	Aug. 10, 2018 164 FERC ¶ 61,098 (Denied/Dismissed)		
CP16-4	Orion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 158 FERC ¶ 61,110 (Feb. 2, 2017)	Feb. 14, 2017 (20170214-5195) Mar. 3, 2017 (20170303-5136)* Mar. 6, 2017 (20170306-5165)	Mar. 13, 2017 (20170313-3025)	Feb. 27, 2018 162 FERC ¶ 61,167 (Denied/Dismissed)	Feb. 23, 2017 (20170223-3044)	Nov. 30, 2017 (20171130-3044)
CP16-9	Atlantic Bridge Project	<i>Algonquin Gas Transmission, LLC</i> , 158 FERC ¶ 61,061 (Jan. 25, 2017)	Feb. 24, 2017 (20170224-5187) Feb. 24, 2017 (20170224-5186) Feb. 24, 2017 (20170224-5181) Feb. 24, 2017 (20170224-5121)	Mar. 27, 2017 (20170327-3006)	Dec. 13, 2017 161 FERC ¶ 61,255 (Denied)	Mar. 27, 2017 (20170327-3018)	June 30, 2017 (20170630-3048)

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP16-10	Mountain Valley Pipeline	<i>Mountain Valley Pipeline LLC</i> , 161 FERC ¶ 61,043 (Oct. 13, 2017)	Nov. 12, 2017 (20171113-5125) Nov. 13, 2017 (20171113-5378) Nov. 13, 2017 (20171113-5376) Nov. 13, 2017 (20171113-5375) Nov. 13, 2017 (20171113-5374) Nov. 13, 2017 (20171113-5372) Nov. 13, 2017 (20171113-5371) Nov. 13, 2017 (20171113-5368) Nov. 13, 2017 (20171113-5365) Nov. 13, 2017 (20171113-5364) Nov. 13, 2017 (20171113-5363) Nov. 13, 2017 (20171113-5337) Nov. 13, 2017 (20171113-5366) Nov. 13, 2017 (20171113-5331) Nov. 13, 2017 (20171113-5330) Nov. 13, 2017 (20171113-5299) Nov. 13, 2017 (20171113-5277) Nov. 13, 2017 (20171113-5267) Nov. 13, 2017 (20171113-5260) Nov. 13, 2017 (20171113-5259) Nov. 13, 2017 (20171113-5236)	Dec. 13, 2017 (20171213-3061)	June 15, 2018 163 FERC ¶ 61,197 (Denied/Dismissed)	Jan. 22, 2018 (20180122-3009)	
CP16-17	Valley Lateral Project	<i>Millennium Pipeline Company, LLC</i> , 157 FERC ¶ 61,096 (Nov. 9, 2016)	Dec. 9, 2016 (20161209-5234) Dec. 9, 2016 (20161209-5231) Dec. 9, 2016 (20161209-5162) Dec. 9, 2016 (20161212-5303) Dec. 9, 2016 (20161212-5028)	Jan. 9, 2017 (20170109-3015)	Nov. 16, 2017 161 FERC ¶ 61,194 (Denied/Dismissed)	Oct. 27, 2017 (20171027-3049)	
CP16-22	NEXUS Project	<i>NEXUS Gas Transmission, LLC</i> , 160 FERC ¶ 61,022 (Aug. 25, 2017)	Sept. 21, 2017 (20170922-5029) Sept. 22, 2017 (20170922-5162) Sept. 22, 2017 (20170922-5161) Sept. 22, 2017 (20170922-5156)* Sept. 25, 2017 (20170925-5124) Sept. 25, 2017 (20170925-5123) Sept. 25, 2017 (20170925-5021)	Oct. 23, 2017 (20171023-3012)	July 25, 2018 164 FERC ¶ 61,054 (Denied all but proponent's)	Oct. 11, 2017 (20171011-3009)	
CP16-357	Mountaineer Xpress Project	<i>Columbia Gas Transmission, LLC</i> , 161 FERC ¶ 61,314 (Dec. 29, 2017)	Jan. 29, 2018 (20180129-5355)	Feb. 28, 2018 (20180228-3017)	Pending (as of Jan. 17, 2020)	Jan. 12, 2018 (20180112-3063)	Oct. 5, 2018 (20181005-3001)
CP16-486	Eastern System Upgrade Project	<i>Millennium Pipeline Company, LLC</i> , 161 FERC ¶ 61,229 (Nov. 28, 2017)	Dec. 1, 2017 (20171201-5112) Dec. 18, 2017 (20171219-5244)	Dec. 28, 2017 (20171228-3037)	July 19, 2018 164 FERC ¶ 61,039 (Denied/Dismissed)	Dec. 19, 2017 (20171219-3014)	
CP16-496	Lone Star Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 161 FERC ¶ 61,265 (Dec. 15, 2017)	Jan. 16, 2018 (20180116-5208)	Feb. 14, 2018 (20180214-3015)	Dec. 7, 2018 165 FERC ¶ 61,217 (Denied)	Jan. 16, 2018 (20180116-3006)	Nov. 28, 2018 (20181128-3028)

Docket No.	Project	Certificate Order	Rehearing Request (Accession No.) (*Project Proponent)	Tolling Order (Accession No.)	Rehearing Order	Construction Activity Authorized (Accession No.)	Placed into Service (Accession No.)
CP17-15	Eastern Market Access Project	<i>Dominion EnergyCove Point LNG, LP</i> , 162 FERC ¶ 61,056 (Jan. 23, 2018)	Feb. 22, 2018 (20180222-5102)	Mar. 26, 2018 (20180326-3018)	Aug. 10, 2018 164 FERC ¶ 61,102 (Denied)	Feb. 23, 2018 (20180223-3039)	
CP17-40	Spire STL Pipeline	<i>Spire STL Pipeline LLC</i> , 164 FERC ¶ 61,085 (Aug. 3, 2018)	Aug. 31, 2018 (20180831-5229) Aug. 31, 2018 (20180831-5228) Aug. 31, 2018 (20180831-5072) Sept. 4, 2018 (20180904-5078)	Oct. 1, 2018 (20181001-3017)	Nov. 21, 2019 169 FERC ¶ 61,134 (Denied/Dismissed)	Nov. 5, 2018 (20181105-3031)	Nov. 14, 2019 (20191114-3058)
CP17-80	Eastern Panhandle Expansion Project	<i>Columbia Gas Transmission, LLC</i> , 164 FERC ¶ 61,036 (July 19, 2018)	Aug. 17, 2018 (20180817-5181)	Sept. 17, 2018 (20180917-3035)	Pending (as of Jan. 17, 2020)		
CP17-101	Northeast Supply Enhancement Project	<i>Transcontinental Gas Pipe Line Company</i> , 167 FERC ¶ 61,110 (May 3, 2019)	June 3, 2019 (20190603-5198)	July 2, 2019 (20190702-3009)	Pending (as of Jan. 17, 2020)		
CP18-18	Gateway Expansion Project	<i>Transcontinental Gas Pipe Line Company</i> , 165 FERC ¶ 61,221 (Dec. 12, 2018)	Jan. 11, 2019 (20190111-5207)	Feb. 11, 2019 (20190211-3037)	Pending (as of Jan. 17, 2020)	Feb. 25, 2019 (20190225-3003)	Aug. 21, 2019 (20190821-3067)

**Exhibit B: FERC Action on Stay Requests -- Major Approved Pipeline Projects, 2009-2019**

Docket No.	Project	Certificate Order	Action on Stay Request(s)
CP07-62	Sparrows Point Project	<i>AES Sparrows Point, LLC</i> , 126 FERC ¶ 61,019 (Jan. 15, 2009)	Dec. 17, 2009 129 FERC ¶ 61,245 (Denied in rehearing order)
CP09-54	Ruby Pipeline Project	<i>Ruby Pipeline, LLC</i> , 128 FERC ¶ 61,224 (Sept. 4, 2009) (need determination)  <i>Ruby Pipeline, LLC</i> , 131 FERC ¶ 61,007 (Apr. 5, 2010) (certificate order)	Jan. 12, 2011 134 FERC ¶ 61,020 (Denied)
CP10-480	MARC I Project	<i>Central New York Oil &amp; Gas Company, LLC</i> , 137 FERC ¶ 61,121 (Nov. 14, 2011)	Feb. 13, 2012 138 FERC ¶ 61,104 (Dismissed in rehearing order)
CP11-56	NJ-NY Project	<i>Texas East Transmission LP</i> , 139 FERC ¶ 61,138 (May 21, 2012)	Oct. 18, 2012 141 FERC ¶ 61,043 (Denied in rehearing order)
CP11-128	Northern Access Expansion Project	<i>National Fuel Gas Supply Corporation</i> , 137 FERC ¶ 61,054 (Oct. 20, 2011)	Apr. 13, 2012 139 FERC ¶ 61,037 (Denied in rehearing order)
CP11-161	Northeast Upgrade Project	<i>Tennessee Gas Pipeline Company</i> , 139 FERC ¶ 61,161 (May 29, 2012)	Jan. 11, 2013 142 FERC ¶ 61,025 (Denied in rehearing order)
CP11-515	Minisink Compressor Station	<i>Millennium Pipeline Company, LLC</i> , 140 FERC ¶ 61,045 (July 17, 2012)	Oct. 9, 2012 141 FERC ¶ 61,022 (Denied)
CP12-30	Northeast Supply Link Project	<i>Transcontinental Gas Supply Company, LLC</i> , 141 FERC ¶ 61,091 (Nov. 2, 2012)	May 16, 2013 143 FERC ¶ 61,132 (Denied in rehearing order)
CP12-351		<i>Cheniere Creole Trail Pipeline, LP</i> , 142 FERC ¶ 61,137 (Feb. 21, 2013)	Oct. 25, 2013 145 FERC ¶ 61,074 (Dismissed in rehearing order)
CP13-113	Cove Point Liquefaction Project	<i>Dominion Cove Point LNG, LP</i> , 148 FERC ¶ 61,244 (Sept. 29, 2014)	May 4, 2015 151 FERC ¶ 61,095 (Dismissed in rehearing order)
CP13-499	Constitution Pipeline Project	<i>Constitution Pipeline Company, LLC</i> , 149 FERC ¶ 61,199 (Dec. 2, 2014)	Jan. 28, 2016 154 FERC ¶ 61,046 (Dismissed in rehearing order)
CP13-551	Leidy Southeast Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 149 FERC ¶ 61,258 (Dec. 18, 2014)	Mar. 12, 2015 150 FERC ¶ 61,183 (Denied)
CP14-17	East Side Expansion Project	<i>Columbia Gas Transmission, LLC</i> , 149 FERC ¶ 61,255 (Dec. 18, 2014)	Oct. 14, 2015 153 FERC ¶ 61,064 (Denied in rehearing order)

Docket No.	Project	Certificate Order	Action on Stay Request(s)
CP14-70	West Side Expansion and Modernization Project	<i>National Fuel Gas Supply Corporation</i> , 150 FERC ¶ 61,162 (Mar. 2, 2015)	Mar. 8, 2016 154 FERC ¶ 61,180 (Denied in rehearing order)
CP14-88	Niagara Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 150 FERC ¶ 61,160 (Feb. 27, 2015)	Mar. 9, 2016 154 FERC ¶ 61,184 (Denied in rehearing order)
CP14-96	Algonquin Incremental Market Project (AIM Project)	<i>Algonquin Gas Transmission, LLC</i> , 150 FERC ¶ 61,163 (Mar. 3, 2015)	Jan. 28, 2016 154 FERC ¶ 61,048 (Dismissed in rehearing order)
CP14-99	Line 1655 North Project	<i>Columbia Gas Transmission, LLC</i> , 148 FERC ¶ 61,138 (Aug. 22, 2014)	Aug. 18, 2015 152 FERC ¶ 61,131 (Denied in rehearing order)
CP14-112	Tuscarora Later Project	<i>Empire Pipeline, Inc.</i> , 150 FERC ¶ 61,181 (Mar. 10, 2015)	Dec. 20, 2015 153 FERC ¶ 61,379 (Denied in rehearing order)
CP14-497	New Market Project	<i>Dominion Transmission, Inc.</i> , 155 FERC ¶ 61,106 (Apr. 28, 2016)	June 21, 2016 155 FERC ¶ 61,292 (Denied)  June 23, 2016 155 FERC ¶ 61,296 (Denied)
CP14-529	Connecticut Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 154 FERC ¶ 61,191 (Mar. 11, 2016)	Mar. 30, 2016 154 FERC ¶ 61,263 (Denied)  Apr. 22, 2016 155 FERC ¶ 61,087 (Denied)
CP14-554	Florida Southeast Project Hillabee Expansion Project Sabal Trail Project	<i>Florida Southeast Connection, LLC</i> , 154 FERC ¶ 61,080 (Feb. 2, 2016)	Mar. 30, 2016 154 FERC ¶ 61,264 (Denied)
CP15-8	Kalama Lateral Project	<i>Northwest Pipeline LLC</i> , 155 FERC ¶ 61,026 (Apr. 11, 2016)	Aug. 1, 2016 156 FERC ¶ 61,086 (Denied)
CP15-77	Broad Run Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 156 FERC ¶ 61,157 (Sept. 6, 2016)	Nov. 29, 2016 157 FERC ¶ 61,154 (Denied)
CP15-89	Garden State Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 155 FERC ¶ 61,016 (Apr. 7, 2016)	June 8, 2016 155 FERC ¶ 61,246 (Denied)
CP15-115	Northern Access 2016 Project	<i>National Fuel Gas Supply Corporation</i> , 158 FERC ¶ 61,145 (Feb. 3, 2017)	Aug. 31, 2017 160 FERC ¶ 61,043 (Denied)
CP15-117	Dalton Expansion Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 156 FERC ¶ 61,092 (Aug. 3, 2016)	Pending (as of Jan. 17, 2020)

Docket No.	Project	Certificate Order	Action on Stay Request(s)
CP15-138	Atlantic Sunrise Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 158 FERC ¶ 61,125 (Feb. 3, 2017)	Aug. 31, 2017 161 FERC ¶ 61,250 (Denied)
CP15-148	Susquehanna West Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 156 FERC ¶ 61,156 (Sept. 6, 2016)	Jan. 3, 2017 158 FERC ¶ 61,002 (Denied)
CP15-554	Atlantic Coast Pipeline and Supply Header Project	<i>Atlantic Coast Pipeline, LLC</i> , 161 FERC ¶ 61,042 (Oct. 13, 2017)	Aug. 10, 2018 164 FERC ¶ 61,100 (Dismissed in rehearing order)
CP15-558	PennEast Pipeline	<i>PennEast Pipeline Company, LLC</i> , 162 FERC ¶ 61,053 (Jan. 19, 2018)	Aug. 10, 2018 164 FERC ¶ 61,098 (Dismissed in rehearing order)
CP16-4	Orion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 158 FERC ¶ 61,110 (Feb. 2, 2017)	Sept. 8, 2017 160 FERC ¶ 61,062 (Denied)
CP16-9	Atlantic Bridge Project	<i>Algonquin Gas Transmission, LLC</i> , 158 FERC ¶ 61,061 (Jan. 25, 2017)	Aug. 21, 2017 160 FERC ¶ 61,015 (Denied)
CP16-10	Mountain Valley Pipeline	<i>Mountain Valley Pipeline LLC</i> , 161 FERC ¶ 61,043 (Oct. 13, 2017)	June 15, 2018 163 FERC ¶ 61,197 (Dismissed in rehearing order)
CP16-17	Valley Lateral Project	<i>Millennium Pipeline Company, LLC</i> , 157 FERC ¶ 61,096 (Nov. 9, 2016)	Jan. 30, 2017 158 FERC ¶ 61,086 (Denied)
CP16-22	NEXUS Project	<i>NEXUS Gas Transmission, LLC</i> , 160 FERC ¶ 61,022 (Aug. 25, 2017)	Jan. 10, 2018 162 FERC ¶ 61,011 (Denied)
CP16-357	Mountaineer Xpress Project	<i>Columbia Gas Transmission, LLC</i> , 161 FERC ¶ 61,314 (Dec. 29, 2017)	Mar. 22, 2018 162 FERC ¶ 61,260 (Denied)
CP16-486	Eastern System Upgrade Project	<i>Millennium Pipeline Company, LLC</i> , 161 FERC ¶ 61,229 (Nov. 28, 2017)	Mar. 19, 2018 162 FERC ¶ 61,241 (Denied)
CP17-40	Spire STL Pipeline	<i>Spire STL Pipeline LLC</i> , 164 FERC ¶ 61,085 (Aug. 3, 2018)	Nov. 21, 2019 169 FERC ¶ 61,134 (Dismissed in rehearing order)
CP17-101	Northeast Supply Enhancement Project	<i>Transcontinental Gas Pipe Line Company</i> , 167 FERC ¶ 61,110 (May 3, 2019)	Pending (as of Jan. 17, 2020)
CP18-18	Gateway Expansion Project	<i>Transcontinental Gas Pipe Line Company</i> , 165 FERC ¶ 61,221 (Dec. 12, 2018)	Pending (as of Jan. 17, 2020)

Docket No.	Project	Certificate Order	FERC Order (Accession No.)	Rehearing Request (Accession No.)	Tolling Order (Accession No.)	Rehearing Order
CP14-529	Connecticut Expansion Project	<i>Tennessee Gas Pipeline Company, LLC</i> , 154 FERC ¶ 61,191 (Mar. 11, 2016)	Apr. 12, 2017 (20170412-3003)	Apr. 24, 2017 (20170424-5148) May 10, 2017 (20170510-5019)	May 24, 2017 (20170524-3009)	Jan. 10, 2018, 162 FERC ¶ 61,013 (Denied)
CP15-138	Atlantic Sunrise Project	<i>Transcontinental Gas Pipe Line Company, LLC</i> , 158 FERC ¶ 61,125 (Feb. 3, 2017)	1. Sept. 7, 2017 (20170907-3005) 2. Sept. 15, 2017 (20170915-3021)	1. Sept. 11, 2017 (20170912-5001) 2. Sept. 19, 2017 (20170920-5023)	1. Oct. 12, 2017 (20171012-3019) 2. Oct. 17, 2017 (20171017-3050)	Mar. 1, 2018, 162 FERC ¶ 61,192 (Denied)
CP15-554	Atlantic Coast Pipeline and Supply Header Project	<i>Atlantic Coast Pipeline, LLC</i> , 161 FERC ¶ 61,042 (Oct. 13, 2017)	1. Feb. 16, 2018 (20180216-3053) 2. May 11, 2018 (20180511-3048) 3. June 25, 2018 (20180625-3036) 4. July 3, 2018 (20180703-3043) 5. July 24, 2018 (20180724-3057)	1. Feb. 22, 2018 (20180223-5027) 2. June 11, 2018 (20180611-5183) 3. July 24, 2018 (20180724-5047) 4. Aug. 2, 2018 (20180802-5140) 5. Aug. 23, 2018 (20180823-5142)	1. Mar. 26, 2018 (20180326-3028) 2. July 10, 2018 (20180710-3053) 3. Aug. 23, 2018 (20180823-3027) 4. Sept. 4, 2018 (20180904-3009) 5. Sept. 24, 2018 (20180924-3038)	1. May 4, 2018, 163 FERC ¶ 61,098 (Denied) 2. Pending (as of Jan. 17, 2020) 3. Pending (as of Jan. 17, 2020) 4. Pending (as of Jan. 17, 2020) 5. Pending (as of Jan. 17, 2020)
CP16-9	Atlantic Bridge Project	<i>Algonquin Gas Transmission, LLC</i> , 158 FERC ¶ 61,061 (Jan. 25, 2017)	1. Mar. 27, 2017 (20170327-3018) 2. May 19, 2017 (20170519-3018) 3. Nov. 27, 2019 (20191127-3025)	1. Apr. 7, 2017 (20170407-5231) 2. June 19, 2017 (20170619-5152) 3. Dec. 9, 2019 (20191209-5260) Dec. 27, 2019 (20191227-5021)	1. May 8, 2017 (20170508-3013) 2. July 17, 2017 (20170717-3009) 3. Jan. 8, 2020 (20200108-3028)	1-2. Dec. 21 2017, 161 FERC ¶ 61,287 (Denied) 3. Pending (as of Jan. 17, 2020)
CP16-10	Mountain Valley Pipeline	<i>Mountain Valley Pipeline LLC</i> , 161 FERC ¶ 61,043 (Oct. 13, 2017)	1. Jan. 22, 2018 (20180122-3009) Jan. 29, 2018 (20180129-3032) Feb. 8, 2018 (20180208-3017) Feb. 9, 2018 (20180209-3001) Feb. 12, 2018 (20180212-3009) Feb. 13, 2018 (20180213-3001) Feb. 14, 2018 (20180214-3019) Feb. 15, 2018 (20180215-3007) Feb. 16, 2018 (20180216-3040)  2. Apr. 6, 2018 (20180406-3021)  3. Apr. 23, 2018 (20180423-3015)	1. Feb. 22, 2018 (20180223-5185) Feb. 26, 2018 (20180226-5131)        2. May 4, 2018 (20180504-5234)  3. May 3, 2018 (20180503-5141)	1. Mar. 26, 2018 (20180326-3052)        2. June 4, 2018 (20180604-3012)  3. June 4, 2018 (20180604-3013)	1. May 4, 2018, 163 FERC ¶ 61,099 (Denied)        2-3. Aug. 3, 2018, 164 FERC ¶ 61,086 (Denied)

**Exhibit D: Proceedings in Which FERC Issued Decisions, 2018-2019**

<b>Docket No.</b>	<b>Industry</b>	<b>Rehearing Requested</b>	<b>Request Tolloed</b>	<b>Tolling Period (Days)</b>
AC18-59	General	No	No	
AC19-75	General	No	No	
CP08-454	Natural Gas	No	No	
CP09-465	Natural Gas	No	No	
CP13-520	Natural Gas	No	No	
CP15-499	Natural Gas	No	No	
CP16-20	Natural Gas	Yes	Yes	171
CP16-116	Natural Gas	No	No	
CP16-454	Natural Gas	No	No	
CP16-480	Natural Gas	No	No	
CP16-486	Natural Gas	Yes	Yes	230
CP17-20	Natural Gas	No	No	
CP17-40	Natural Gas	Yes	Yes	417
CP17-41	Natural Gas	No	No	
CP17-46	Natural Gas	No	No	
CP17-58	Natural Gas	No	No	
CP17-74	Natural Gas	No	No	
CP17-80	Natural Gas	Yes	Yes	Pending (as of Jan. 17, 2020)
CP17-117	Natural Gas	No	No	
CP17-219	Natural Gas	Yes	Yes	178
CP17-257	Natural Gas	No	No	
CP17-409	Natural Gas	No	No	
CP17-441	Natural Gas	No	No	
CP17-468	Natural Gas	No	No	
CP17-469	Natural Gas	No	No	
CP17-470	Natural Gas	No	No	
CP17-476	Natural Gas	Yes	Yes	228
CP18-1	Natural Gas	No	No	
CP18-5	Natural Gas	Yes	Yes	76
CP18-10	Natural Gas	No	No	
CP18-13	Natural Gas	No	No	
CP18-26	Natural Gas	No	No	
CP18-46	Natural Gas	No	No	
CP18-48	Natural Gas	No	No	
CP18-66	Natural Gas	No	No	
CP18-102	Natural Gas	No	No	
CP18-186	Natural Gas	No	No	
CP18-332	Natural Gas	No	No	
CP18-485	Natural Gas	Yes	Yes	Pending (as of Jan. 17, 2020)
CP18-506	Natural Gas	No	No	
CP18-512	Natural Gas	No	No	
CP18-525	Natural Gas	No	No	

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
CP18-532	Natural Gas	No	No	
CP18-534	Natural Gas	No	No	
CP18-548	Natural Gas	No	No	
CP19-3	Natural Gas	Yes	Yes	Pending (as of Jan. 17, 2020)
CP19-7	Natural Gas	No	No	
CP19-20	Natural Gas	No	No	
CP19-26	Natural Gas	No	No	
CP19-31	Natural Gas	No	No	
CP19-34	Natural Gas	No	No	
CP19-52	Natural Gas	No	No	
CP19-191	Natural Gas	No	No	
DI18-1	Hydropower	Yes	Yes	113
EC17-49	Electricity	No	No	
EC17-126	Electricity	No	No	
EC18-21	Electricity	No	No	
EC18-63	Electricity	Yes	Yes	251
EC18-117	Electricity	No	No	
EC19-36	Electricity	No	No	
EC19-63	Electricity	No	No	
EC19-68	Electricity	No	No	
EC19-99	Electricity	No	No	
EC19-100	Electricity	No	No	
EC98-2	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
EL00-95	Electricity	No	No	
EL01-88-015	Electricity	Yes	Yes	182
EL01-88-017	Electricity	No	No	
EL01-88-020	Electricity	Yes	Yes	213
EL01-88-022	Electricity	Yes	Yes	182
EL05-121	Electricity	Yes	Yes	535
EL08-14	Electricity	Yes	Yes	99
EL09-61	Electricity	Yes	Yes	379
EL10-65	Electricity	Yes	Yes	28
EL14-9	Electricity	Yes	Yes	391
EL14-12	Electricity	Yes	No (filed within last 30 days)	
EL14-37	Electricity	No	No	
EL15-3	Electricity	Yes	No (filed within last 30 days)	
EL15-67-003	Electricity	Yes	Yes	458
EL15-67-004	Electricity	Yes	Yes	93
EL15-68	Electricity	Yes	Yes	445
EL15-70	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)

Docket No.	Industry	Rehearing Requested	Request Told	Tolling Period (Days)
EL15-95	Electricity	Yes	Yes	262
EL16-49	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
EL16-64	Electricity	No	No	
EL16-71-000	Electricity	Yes	Yes	28
EL16-71-001	Electricity	Yes	Yes	150
EL16-89	Electricity	No	No	
EL16-100	Electricity	No	No	
EL16-107	Electricity	Yes	Yes	90
EL16-108	Electricity	Yes	Yes	157
EL16-110	Electricity	Yes	Yes	178
EL16-120	Electricity	Yes	Yes	274
EL17-29	Electricity	Yes	Yes	157
EL17-31	Electricity	Yes	Yes	157
EL17-41	Electricity	No	No	
EL17-44	Electricity	No	No	
EL17-45	Electricity	Yes	Yes	336
EL17-54	Electricity	Yes	Yes	157
EL17-59	Electricity	Yes	Yes	150
EL17-70	Electricity	No	No	
EL17-83	Electricity	No	No	
EL17-89	Electricity	No	No	
EL17-94	Electricity	Yes	Yes	93
EL17-95	Electricity	No	No	
EL18-17	Electricity	No	No	
EL18-20	Electricity	Yes	Yes	28
EL18-26	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
EL18-33	Electricity	No	No	
EL18-34	Electricity	No	No	
EL18-45	Electricity	No	No	
EL18-48	Electricity	Yes	Yes	126
EL18-50	Electricity	No	No	
EL18-56	Electricity	No	No	
EL18-58	Electricity	No	No	
EL18-61	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
EL18-62	Electricity	No	No	
EL18-64	Electricity	No	No	
EL18-66	Electricity	No	No	
EL18-67	Electricity	No	No	
EL18-68	Electricity	No	No	
EL18-71	Electricity	Yes	Yes	213
EL18-72	Electricity	No	No	

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
EL18-75	Electricity	No	No	
EL18-79	Electricity	No	No	
EL18-89	Electricity	No	No	
EL18-91	Electricity	No	No	
EL18-93	Electricity	No	No	
EL18-95	Electricity	No	No	
EL18-98	Electricity	No	No	
EL18-104	Electricity	Yes	Yes	100
EL18-107	Electricity	No	No	
EL18-108	Electricity	No	No	
EL18-109	Electricity	No	No	
EL18-111	Electricity	No	No	
EL18-115	Electricity	No	No	
EL18-118	Electricity	No	No	
EL18-119	Electricity	No	No	
EL18-131	Electricity	No	No	
EL18-138	Electricity	No	No	
EL18-140	Electricity	Yes	Yes	249
EL18-142	Electricity	Yes	Yes	269
EL18-143	Electricity	Yes	Yes	345
EL18-145	Electricity	No	No	
EL18-146	Electricity	No	No	
EL18-152	Electricity	No	No	
EL18-155	Electricity	No	No	
EL18-157	Electricity	No	No	
EL18-158	Electricity	No	No	
EL18-159	Electricity	No	No	
EL18-163	Electricity	No	No	
EL18-164	Electricity	No	No	
EL18-165	Electricity	No	No	
EL18-167	Electricity	No	No	
EL18-168	Electricity	No	No	
EL18-172	Electricity	No	No	
EL18-174	Electricity	No	No	
EL18-176	Electricity	Yes	Yes	205
EL18-177	Electricity	Yes	Yes	302
EL18-183	Electricity	No	No	
EL18-188	Electricity	No	No	
EL18-189	Electricity	No	No	
EL18-194	Electricity	Yes	Yes	244
EL18-197	Electricity	Yes	Yes	103
EL18-199	Electricity	No	No	
EL18-200	Electricity	No	No	

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
EL18-203	Electricity	Yes	Yes	206
EL18-203	Electricity	Yes	Yes	206
EL18-204	Electricity	No	No	
EL18-205	Electricity	No	No	
EL19-2	Electricity	No	No	
EL19-6	Electricity	No	No	
EL19-10	Electricity	No	No	
EL19-11	Electricity	Yes	Yes	213
EL19-16	Electricity	No	No	
EL19-17	Electricity	No	No	
EL19-27	Electricity	No	No	
EL19-30	Electricity	No	No	
EL19-39	Electricity	Yes	Yes	150
EL19-40	Electricity	No	No	
EL19-42	Electricity	No	No	
EL19-50	Electricity	Yes	No (filed within last 30 days)	
EL19-60	Electricity	No	No	
EL19-72	Electricity	No	No	
EL19-81	Electricity	No	No	
EL19-88	Electricity	No	No	
EL19-90	Electricity	No	No	
EL19-94	Electricity	No	No	
ER09-548	Electricity	No	No	
ER09-1256	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER10-1350	Electricity	Yes	Yes	969
ER10-1791	Electricity	Yes	Yes	769
ER10-2126	Electricity	No	No	
ER10-2564	Electricity	No	No	
ER11-2774	Electricity	No	No	
ER13-75	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER13-102	Electricity	No	No	
ER13-343	Electricity	No	No	
ER13-535	Electricity	Yes	Yes	710
ER14-225	Electricity	Yes	Yes	87
ER14-874	Electricity	No	No	
ER14-1409	Electricity	No	No	
ER14-2154	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER14-2529	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER15-623	Electricity	Yes	Yes	
ER15-2028	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
ER15-2059	Electricity	No	No	
ER15-2115	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER16-120	Electricity	No	No	
ER16-204-001	Electricity	Yes	Yes	244
ER16-204-004	Electricity	Yes	Yes	216
ER16-1169-001	Electricity	Yes	Yes	48
ER16-1169-002	Electricity	Yes	Yes	142
ER16-1251	Electricity	No	No	
ER16-2186	Electricity	No	No	
ER16-2217	Electricity	No	No	
ER16-2401	Electricity	No	No	
ER16-2493	Electricity	No	No	
ER17-156	Electricity	No	No	
ER17-219	Electricity	No	No	
ER17-419	Electricity	No	No	
ER17-603	Electricity	No	No	
ER17-706-001	Electricity	No	No	
ER17-706-002	Electricity	Yes	Yes	150
ER17-801	Electricity	No	No	
ER17-802	Electricity	No	No	
ER17-905	Electricity	Yes	Yes	773
ER17-910	Electricity	No	No	
ER17-1016	Electricity	No	No	
ER17-1198	Electricity	Yes	Yes	87
ER17-1236	Electricity	Yes	Yes	
ER17-1357	Electricity	No	No	
ER17-1459	Electricity	No	No	
ER17-1561	Electricity	No	No	
ER17-1568	Electricity	No	No	
ER17-1575	Electricity	Yes	Yes	178
ER17-1750	Electricity	Yes	Yes	427
ER17-2073	Electricity	Yes	Yes	345
ER17-2113	Electricity	No	No	
ER17-2154	Electricity	Yes	Yes	700
ER17-2201	Electricity	Yes	Yes	720
ER17-2229	Electricity	Yes	Yes	171
ER17-2267	Electricity	Yes	Yes	318
ER17-2323	Electricity	Yes	Yes	353
ER17-2495	Electricity	No	No	
ER17-2536	Electricity	No	No	
ER17-2577	Electricity	No	No	
ER17-2579	Electricity	No	No	

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
ER18-1	Electricity	No	No	
ER18-99	Electricity	Yes	Yes	28
ER18-136	Electricity	Yes	Yes	413
ER18-156	Electricity	No	No	
ER18-164	Electricity	No	No	
ER18-370	Electricity	Yes	Yes	336
ER18-465	Electricity	No	No	
ER18-614	Electricity	Yes	Yes	323
ER18-783	Electricity	No	No	
ER18-809	Electricity	No	No	
ER18-810	Electricity	No	No	
ER18-829	Electricity	No	No	
ER18-840	Electricity	No	No	
ER18-855	Electricity	No	No	
ER18-1122	Electricity	No	No	
ER18-1169	Electricity	Yes	Yes	213
ER18-1169	Electricity	Yes	Yes	213
ER18-1222	Electricity	No	No	
ER18-1225	Electricity	Yes	Yes	428
ER18-1259	Electricity	Yes	Yes	238
ER18-1360	Electricity	No	No	
ER18-1418	Electricity	No	No	
ER18-1596	Electricity	No	No	
ER18-1598	Electricity	No	No	
ER18-1632	Electricity	No	No	
ER18-1704	Electricity	No	No	
ER18-1730	Electricity	Yes	Yes	413
ER18-1737	Electricity	No	No	
ER18-1788	Electricity	No	No	
ER18-1899	Electricity	Yes	Yes	290
ER18-1952	Electricity	No	No	
ER18-1953	Electricity	No	No	
ER18-2273	Electricity	No	No	
ER18-2318	Electricity	No	No	
ER18-2324	Electricity	No	No	
ER18-2340	Electricity	No	No	
ER18-2362	Electricity	No	No	
ER18-2370	Electricity	No	No	
ER18-2377	Electricity	No	No	
ER18-2397	Electricity	No	No	
ER18-2401	Electricity	No	No	
ER18-2428	Electricity	Yes	Yes	101
ER19-34	Electricity	Yes	Yes	217

Docket No.	Industry	Rehearing Requested	Request Told	Tolling Period (Days)
ER19-158	Electricity	Yes	Yes	134
ER19-166	Electricity	No	No	
ER19-169	Electricity	No	No	
ER19-266	Electricity	No	No	
ER19-283	Electricity	Yes	Yes	141
ER19-308	Electricity	No	No	
ER19-355	Electricity	No	No	
ER19-360	Electricity	No	No	
ER19-366	Electricity	Yes	Yes	73
ER19-460	Electricity	No	No	
ER19-465	Electricity	Yes	No (filed within last 30 days)	
ER19-467	Electricity	No	No	
ER19-468	Electricity	No	No	
ER19-469	Electricity	No	No	
ER19-470	Electricity	Yes	No (filed within last 30 days)	
ER19-538	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER19-550	Electricity	No	No	
ER19-585	Electricity	No	No	
ER19-654	Electricity	No	No	
ER19-697	Electricity	No	No	
ER19-875	Electricity	No	No	
ER19-945	Electricity	Yes	Yes	169
ER19-1112	Electricity	No	No	
ER19-1357	Electricity	No	No	
ER19-1507	Electricity	No	No	
ER19-1661	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
ER19-1823	Electricity	No	No	
ER19-1864	Electricity	No	No	
ER19-1876	Electricity	No	No	
ER19-1900	Electricity	No	No	
ER19-1910	Electricity	No	No	
ER19-1920	Electricity	No	No	
ER19-1922	Electricity	No	No	
ER19-1924	Electricity	No	No	
ER19-1925	Electricity	No	No	
ER19-1926	Electricity	No	No	
ER19-1927	Electricity	No	No	
ER19-1948	Electricity	No	No	
ER19-1955	Electricity	No	No	
ER19-1957	Electricity	No	No	
ER19-1958	Electricity	No	No	

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
ER19-1959	Electricity	No	No	
ER19-2023	Electricity	No	No	
ER19-2273	Electricity	No	No	
ER19-2422	Electricity	No	No	
ER19-2488	Electricity	No	No	
ER19-2681	Electricity	Yes	Yes	
ER19-2846	Electricity	Yes	No (filed within last 30 days)	
ER20-153	Electricity	No	No	
ER20-227	Electricity	No	No	
ES19-5	Electricity	No	No	
ES19-14	Electricity	No	No	
ES19-15	Electricity	No	No	
IS08-390-008	Oil	Yes	Yes	28
IS08-390-010	Oil	Yes	Yes	311
IS09-437	Oil	Yes	Yes	28
IS11-444	Oil	No	No	
IS17-498	Oil	Yes	Yes	86
IS18-228	Oil	Yes	Yes	201
NJ19-10	Electricity	No	No	
OR11-13	Oil	No	No	
OR14-4	Oil	Yes	Yes	213
OR14-35	Oil	No	No	
OR15-6	Oil	No	No	
OR15-25	Oil	No	No	
OR16-26	Oil	No	No	
OR17-11	Oil	No	No	
OR18-2	Oil	No	No	
OR18-7	Oil	Yes	Yes	360
OR18-8	Oil	No	No	
OR18-9	Oil	No	No	
OR18-15	Oil	Yes	Yes	275
OR18-18	Oil	No	No	
OR19-26	Oil	No	No	
OR19-31	Oil	No	No	
P-5	Hydropower	No	No	
P-13	Hydropower	Yes	Yes	258
P-785	Hydropower	Yes	Yes	38
P-1889	Hydropower	Yes	Yes	102
P-2035	Hydropower	Yes	Yes	76
P-2079	Hydropower	Yes	Yes	153
P-2082-062	Hydropower	Yes	Yes	66
P-2082-065	Hydropower	Yes	Yes	38

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
P-2107-021	Hydropower	Yes	Yes	93
P-2114-293	Hydropower	Yes	Yes	91
P-2114-296	Hydropower	Yes	Yes	66
P-2242	Hydropower	Yes	Yes	157
P-2290	Hydropower	Yes	Yes	111
P-2426	Hydropower	Yes	Yes	85
P-2485-074	Hydropower	Yes	Yes	101
P-2485-076	Hydropower	No	No	
P-2611	Hydropower	Yes	Yes	161
P-2744	Hydropower	Yes	Yes	143
P-2829	Hydropower	No	No	
P-2833	Hydropower	Yes	Yes	114
P-2897	Hydropower	No	No	
P-4253	Hydropower	No	No	
P-6461	Hydropower	Yes	Yes	108
P-9709	Hydropower	Yes	Yes	87
P-10808-056	Hydropower	Yes	Yes	31
P-10808-062	Hydropower	Yes	Yes	104
P-10808-066	Hydropower	Yes	Yes	261
P-12514	Hydropower	Yes	Yes	182
P-12569-015	Hydropower	Yes	Yes	90
P-12569-018	Hydropower	Yes	Yes	101
P-12611	Hydropower	Yes	Yes	48
P-12715	Hydropower	No	No	
P-13123	Hydropower	Yes	Yes	108
P-13753	Hydropower	Yes	Yes	139
P-14329	Hydropower	Yes	Yes	70
P-14655	Hydropower	No	No	
P-14805	Hydropower	Yes	Yes	64
P-14856	Hydropower	Yes	Yes	100
P-14858	Hydropower	Yes	Yes	Pending (as of Jan. 17, 2020)
P-14896	Hydropower	Yes	Yes	90
P-14983	Hydropower	No	No	
PL10-2	General	No	No	
PL17-1	General	No	No	
PL18-1	General	No	No	
PL19-2	General	No	No	
PL19-3	General	No	No	
PL19-4	General	No	No	
PL20-1	General	No	No	
PR17-60	Natural Gas	No	No	
PR19-42	Natural Gas	No	No	

Docket No.	Industry	Rehearing Requested	Request Told	Tolling Period (Days)
QF18-452	Electricity	Yes	Yes	Pending (as of Jan. 17, 2020)
RD19-3	Electricity	No	No	
RM01-8	Rulemaking	No	No	
RM05-5	Rulemaking	No	No	
RM16-6	Rulemaking	No	No	
RM16-15	Rulemaking	Yes	Yes	514
RM16-17	Rulemaking	Yes	Yes	Pending (as of Jan. 17, 2020)
RM16-23	Rulemaking	Yes	Yes	28
RM16-23	Rulemaking	Yes	Yes	426
RM17-2	Rulemaking	No	No	
RM17-8-000	Rulemaking	Yes	Yes	144
RM17-8-001	Rulemaking	Yes	Yes	275
RM17-11	Rulemaking	No	No	
RM17-12	Rulemaking	No	No	
RM17-13	Rulemaking	No	No	
RM18-2	Rulemaking	No	No	
RM18-7	Rulemaking	No	No	
RM18-8	Rulemaking	No	No	
RM18-11-000	Rulemaking	Yes	Yes	31
RM18-11-001	Rulemaking	Yes	Yes	244
RM18-12	Rulemaking	No	No	
RM18-14	Rulemaking	No	No	
RM18-15	Rulemaking	Yes	Yes	115
RM18-15	Rulemaking	Yes	Yes	115
RM18-20	Rulemaking	No	No	
RM19-2	Rulemaking	Yes	Yes	Pending (as of Jan. 17, 2020)
RM19-4	Rulemaking	No	No	
RM19-5	Rulemaking	Yes	No (filed within last 30 days)	
RM19-6	Rulemaking	No	No	
RM19-10	Rulemaking	No	No	
RM19-12	Rulemaking	No	No	
RM19-13	Rulemaking	No	No	
RM19-15	Rulemaking	No	No	
RM96-1	Rulemaking	No	No	
RP15-23	Natural Gas	No	No	
RP15-1022	Natural Gas	No	No	
RP16-618	Natural Gas	No	No	
RP16-1299	Natural Gas	No	No	
RP17-811-001	Natural Gas	Yes	Yes	232
RP17-811-003	Natural Gas	Yes	Yes	113
RP17-944	Natural Gas	No	No	

Docket No.	Industry	Rehearing Requested	Request Tolloed	Tolling Period (Days)
RP18-354	Natural Gas	No	No	
RP18-441	Natural Gas	No	No	
RP18-442	Natural Gas	Yes	Yes	Pending (as of Jan. 17, 2020)
RP18-851	Natural Gas	No	No	
RP18-922	Natural Gas	Yes	Yes	306
RP18-923	Natural Gas	Yes	Yes	Pending (as of Jan. 17, 2020)
RP18-987	Natural Gas	Yes	Yes	241
RP18-1038	Natural Gas	Yes	Yes	199
RP18-1126	Natural Gas	Yes	Yes	265
RP18-1219	Natural Gas	No	No	
RP19-55	Natural Gas	No	No	
RP19-60	Natural Gas	No	No	
RP19-65	Natural Gas	No	No	
RP19-71	Natural Gas	No	No	
RP19-238	Natural Gas	No	No	
RP19-240	Natural Gas	No	No	
RP19-266	Natural Gas	No	No	
RP19-276	Natural Gas	No	No	
RP19-307	Natural Gas	No	No	
RP19-310	Natural Gas	No	No	
RP19-352	Natural Gas	No	No	
RP19-389	Natural Gas	Yes	Yes	123
RP19-395	Natural Gas	No	No	
RP19-420	Natural Gas	No	No	
RP19-810	Natural Gas	No	No	
RP19-872	Natural Gas	Yes	Yes	153
RP19-996	Natural Gas	No	No	
RP19-1371	Natural Gas	No	No	
RP19-1598	Natural Gas	No	No	
RP20-216	Natural Gas	No	No	
RR17-6	Electricity	No	No	
RR18-9	Electricity	No	No	
RR19-8	Electricity	No	No	
TX17-1	Electricity	No	No	
TX19-1	Electricity	No	No	

# **Addendum**

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United States Code Annotated Title 16. Conservation Chapter 12. Federal Regulation and Development of Power (Refs & Annos) Subchapter I. Regulation of the Development of Water Power and Resources (Refs & Annos)

16 U.S.C.A. § 823b

§ 823b. Enforcement

Currentness

**(a) Monitoring and investigation**

The Commission shall monitor and investigate compliance with each license and permit issued under this subchapter and with each exemption granted from any requirement of this subchapter. The Commission shall conduct such investigations as may be necessary and proper in accordance with this chapter. After notice and opportunity for public hearing, the Commission may issue such orders as necessary to require compliance with the terms and conditions of licenses and permits issued under this subchapter and with the terms and conditions of exemptions granted from any requirement of this subchapter.

**(b) Revocation orders**

After notice and opportunity for an evidentiary hearing, the Commission may also issue an order revoking any license issued under this subchapter or any exemption granted from any requirement of this subchapter where any licensee or exemptee is found by the Commission:

(1) to have knowingly violated a final order issued under subsection (a) after completion of judicial review (or the opportunity for judicial review); and

(2) to have been given reasonable time to comply fully with such order prior to commencing any revocation proceeding.

In any such proceeding, the order issued under subsection (a) shall be subject to de novo review by the Commission. No order shall be issued under this subsection until after the Commission has taken into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation.

**(c) Civil penalty**

Any licensee, permittee, or exemptee who violates or fails or refuses to comply with any rule or regulation under this subchapter, any term, or condition of a license, permit, or exemption under this subchapter, or any order issued under subsection (a) shall be subject to a civil penalty in an amount not to exceed \$10,000 for each day that such violation or failure or refusal continues. Such penalty shall be assessed by the Commission after notice and opportunity for public hearing. In determining the amount of a proposed penalty, the Commission shall take into consideration the nature and seriousness of the violation, failure, or refusal and the efforts of the licensee to remedy the violation, failure, or refusal in a timely manner. No civil penalty shall be assessed where revocation is ordered.

**(d) Assessment**

(1) Before issuing an order assessing a civil penalty against any person under this section, the Commission shall provide to such person notice of the proposed penalty. Such notice shall, except in the case of a violation of a final order issued under subsection (a), inform such person of his opportunity to elect in writing within 30 days after the date of receipt of such notice to have the procedures of paragraph (3) (in lieu of those of paragraph (2)) apply with respect to such assessment.

(2)(A) In the case of the violation of a final order issued under subsection (a), or unless an election is made within 30 calendar days after receipt of notice under paragraph (1) to have paragraph (3) apply with respect to such penalty, the Commission shall assess the penalty, by order, after a determination of violation has been made on the record after an opportunity for an agency hearing pursuant to section 554 of Title 5 before an administrative law judge appointed under section 3105 of such Title 5. Such assessment order shall include the administrative law judge's findings and the basis for such assessment.

(B) Any person against whom a penalty is assessed under this paragraph may, within 60 calendar days after the date of the order of the Commission assessing such penalty, institute an action in the United States court of appeals for the appropriate judicial circuit for judicial review of such order in accordance with chapter 7 of Title 5. The court shall have jurisdiction to enter a judgment affirming, modifying, or setting aside in whole or in Part<sup>1</sup>, the order of the Commission, or the court may remand the proceeding to the Commission for such further action as the court may direct.

(3)(A) In the case of any civil penalty with respect to which the procedures of this paragraph have been elected, the Commission shall promptly assess such penalty, by order, after the date of the receipt of the notice under paragraph (1) of the proposed penalty.

(B) If the civil penalty has not been paid within 60 calendar days after the assessment order has been made under subparagraph (A), the Commission shall institute an action in the appropriate district court of the United States for an order affirming the assessment of the civil penalty. The court shall have authority to review de novo the law and the facts involved, and shall have jurisdiction to enter a judgment enforcing, modifying, and enforcing as so modified, or setting aside in whole or in Part<sup>1</sup>, such assessment.

(C) Any election to have this paragraph apply may not be revoked except with the consent of the Commission.

(4) The Commission may compromise, modify, or remit, with or without conditions, any civil penalty which may be imposed under this subsection, taking into consideration the nature and seriousness of the violation and the efforts of the licensee to remedy the violation in a timely manner at any time prior to a final decision by the court of appeals under paragraph (2) or by the district court under paragraph (3).

(5) If any person fails to pay an assessment of a civil penalty after it has become a final and unappealable order under paragraph (2), or after the appropriate district court has entered final judgment in favor of the Commission under paragraph (3), the Commission shall institute an action to recover the amount of such penalty in any appropriate district court of the United States. In such action, the validity and appropriateness of such final assessment order or judgment shall not be subject to review.

(6)(A) Notwithstanding the provisions of Title 28 or of this chapter, the Commission may be represented by the general counsel of the Commission (or any attorney or attorneys within the Commission designated by the Chairman) who shall supervise, conduct, and argue any civil litigation to which paragraph (3) of this subsection applies (including any related collection action under paragraph (5)) in a court of the United States or in any other court, except the Supreme Court. However, the Commission or

the general counsel shall consult with the Attorney General concerning such litigation, and the Attorney General shall provide, on request, such assistance in the conduct of such litigation as may be appropriate.

(B) The Commission shall be represented by the Attorney General, or the Solicitor General, as appropriate, in actions under this subsection, except to the extent provided in subparagraph (A) of this paragraph.

#### CREDIT(S)

(June 10, 1920, c. 285, § 31, as added Pub.L. 99-495, § 12, Oct. 16, 1986, 100 Stat. 1255.)

#### Notes of Decisions (26)

#### Footnotes

1 So in original. Probably should not be capitalized.

16 U.S.C.A. § 823b, 16 USCA § 823b

Current through P.L. 116-91.

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United States Code Annotated Title 16. Conservation Chapter 12. Federal Regulation and Development of Power (Refs & Annos) Subchapter II. Regulation of Electric Utility Companies Engaged in Interstate Commerce

16 U.S.C.A. § 824e

§ 824e. Power of Commission to fix rates and charges; determination of cost of production or transmission

Effective: August 8, 2005

Currentness

**(a) Unjust or preferential rates, etc.; statement of reasons for changes; hearing; specification of issues**

Whenever the Commission, after a hearing held upon its own motion or upon complaint, shall find that any rate, charge, or classification, demanded, observed, charged, or collected by any public utility for any transmission or sale subject to the jurisdiction of the Commission, or that any rule, regulation, practice, or contract affecting such rate, charge, or classification is unjust, unreasonable, unduly discriminatory or preferential, the Commission shall determine the just and reasonable rate, charge, classification, rule, regulation, practice, or contract to be thereafter observed and in force, and shall fix the same by order. Any complaint or motion of the Commission to initiate a proceeding under this section shall state the change or changes to be made in the rate, charge, classification, rule, regulation, practice, or contract then in force, and the reasons for any proposed change or changes therein. If, after review of any motion or complaint and answer, the Commission shall decide to hold a hearing, it shall fix by order the time and place of such hearing and shall specify the issues to be adjudicated.

**(b) Refund effective date; preferential proceedings; statement of reasons for delay; burden of proof; scope of refund order; refund orders in cases of dilatory behavior; interest**

Whenever the Commission institutes a proceeding under this section, the Commission shall establish a refund effective date. In the case of a proceeding instituted on complaint, the refund effective date shall not be earlier than the date of the filing of such complaint nor later than 5 months after the filing of such complaint. In the case of a proceeding instituted by the Commission on its own motion, the refund effective date shall not be earlier than the date of the publication by the Commission of notice of its intention to initiate such proceeding nor later than 5 months after the publication date. Upon institution of a proceeding under this section, the Commission shall give to the decision of such proceeding the same preference as provided under section 824d of this title and otherwise act as speedily as possible. If no final decision is rendered by the conclusion of the 180-day period commencing upon initiation of a proceeding pursuant to this section, the Commission shall state the reasons why it has failed to do so and shall state its best estimate as to when it reasonably expects to make such decision. In any proceeding under this section, the burden of proof to show that any rate, charge, classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential shall be upon the Commission or the complainant. At the conclusion of any proceeding under this section, the Commission may order refunds of any amounts paid, for the period subsequent to the refund effective date through a date fifteen months after such refund effective date, in excess of those which would have been paid under the just and reasonable rate, charge, classification, rule, regulation, practice, or contract which the Commission orders to be thereafter observed and in force: *Provided*, That if the proceeding is not concluded within fifteen months after the refund effective date and if the Commission determines at the conclusion of the proceeding that the proceeding was not resolved within the fifteen-month period primarily because of dilatory behavior by the public utility, the Commission may order refunds of any or all amounts paid for the period subsequent to the refund effective date and prior to the conclusion of the proceeding. The refunds shall be made, with interest, to those persons who have paid those rates or charges which are the subject of the proceeding.

**(c) Refund considerations; shifting costs; reduction in revenues; “electric utility companies” and “registered holding company” defined**

Notwithstanding subsection (b), in a proceeding commenced under this section involving two or more electric utility companies of a registered holding company, refunds which might otherwise be payable under subsection (b) shall not be ordered to the extent that such refunds would result from any portion of a Commission order that (1) requires a decrease in system production or transmission costs to be paid by one or more of such electric companies; and (2) is based upon a determination that the amount of such decrease should be paid through an increase in the costs to be paid by other electric utility companies of such registered holding company: *Provided*, That refunds, in whole or in part, may be ordered by the Commission if it determines that the registered holding company would not experience any reduction in revenues which results from an inability of an electric utility company of the holding company to recover such increase in costs for the period between the refund effective date and the effective date of the Commission's order. For purposes of this subsection, the terms “electric utility companies” and “registered holding company” shall have the same meanings as provided in the Public Utility Holding Company Act of 1935, as amended.

**(d) Investigation of costs**

The Commission upon its own motion, or upon the request of any State commission whenever it can do so without prejudice to the efficient and proper conduct of its affairs, may investigate and determine the cost of the production or transmission of electric energy by means of facilities under the jurisdiction of the Commission in cases where the Commission has no authority to establish a rate governing the sale of such energy.

**(e) Short-term sales**

**(1) In this subsection:**

**(A)** The term “short-term sale” means an agreement for the sale of electric energy at wholesale in interstate commerce that is for a period of 31 days or less (excluding monthly contracts subject to automatic renewal).

**(B)** The term “applicable Commission rule” means a Commission rule applicable to sales at wholesale by public utilities that the Commission determines after notice and comment should also be applicable to entities subject to this subsection.

**(2)** If an entity described in section 824(f) of this title voluntarily makes a short-term sale of electric energy through an organized market in which the rates for the sale are established by Commission-approved tariff (rather than by contract) and the sale violates the terms of the tariff or applicable Commission rules in effect at the time of the sale, the entity shall be subject to the refund authority of the Commission under this section with respect to the violation.

**(3) This section shall not apply to--**

**(A)** any entity that sells in total (including affiliates of the entity) less than 8,000,000 megawatt hours of electricity per year; or

**(B)** an electric cooperative.

(4)(A) The Commission shall have refund authority under paragraph (2) with respect to a voluntary short term sale of electric energy by the Bonneville Power Administration only if the sale is at an unjust and unreasonable rate.

(B) The Commission may order a refund under subparagraph (A) only for short-term sales made by the Bonneville Power Administration at rates that are higher than the highest just and reasonable rate charged by any other entity for a short-term sale of electric energy in the same geographic market for the same, or most nearly comparable, period as the sale by the Bonneville Power Administration.

(C) In the case of any Federal power marketing agency or the Tennessee Valley Authority, the Commission shall not assert or exercise any regulatory authority or power under paragraph (2) other than the ordering of refunds to achieve a just and reasonable rate.

#### CREDIT(S)

(June 10, 1920, c. 285, pt. II, § 206, as added Aug. 26, 1935, c. 687, Title II, § 213, 49 Stat. 852; amended Pub.L. 100-473, § 2, Oct. 6, 1988, 102 Stat. 2299; Pub.L. 109-58, Title XII, §§ 1285, 1286, 1295(b), Aug. 8, 2005, 119 Stat. 980, 981, 985.)

#### Notes of Decisions (177)

16 U.S.C.A. § 824e, 16 USCA § 824e  
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United States Code Annotated Title 16. Conservation Chapter 12. Federal Regulation and Development of Power (Refs & Annos) Subchapter III. Licensees and Public Utilities; Procedural and Administrative Provisions

16 U.S.C.A. § 825l

§ 825l. Review of orders

Effective: August 8, 2005

Currentness

**(a) Application for rehearing; time periods; modification of order**

Any person, electric utility, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, electric utility, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order. The application for rehearing shall set forth specifically the ground or grounds upon which such application is based. Upon such application the Commission shall have power to grant or deny rehearing or to abrogate or modify its order without further hearing. Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied. No proceeding to review any order of the Commission shall be brought by any entity unless such entity shall have made application to the Commission for a rehearing thereon. Until the record in a proceeding shall have been filed in a court of appeals, as provided in subsection (b), the Commission may at any time, upon reasonable notice and in such manner as it shall deem proper, modify or set aside, in whole or in part, any finding or order made or issued by it under the provisions of this chapter.

**(b) Judicial review**

Any party to a proceeding under this chapter aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order in the United States court of appeals for any circuit wherein the licensee or public utility to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia, by filing in such court, within sixty days after the order of the Commission upon the application for rehearing, a written petition praying that the order of the Commission be modified or set aside in whole or in part. A copy of such petition shall forthwith be transmitted by the clerk of the court to any member of the Commission and thereupon the Commission shall file with the court the record upon which the order complained of was entered, as provided in section 2112 of Title 28. Upon the filing of such petition such court shall have jurisdiction, which upon the filing of the record with it shall be exclusive, to affirm, modify, or set aside such order in whole or in part. No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing unless there is reasonable ground for failure so to do. The finding of the Commission as to the facts, if supported by substantial evidence, shall be conclusive. If any party shall apply to the court for leave to adduce additional evidence, and shall show to the satisfaction of the court that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence in the proceedings before the Commission, the court may order such additional evidence to be taken before the Commission and to be adduced upon the hearing in such manner and upon such terms and conditions as to the court may seem proper. The Commission may modify its findings as to the facts by reason of the additional evidence so taken, and it shall file with the court such modified or new findings which, if supported by substantial evidence, shall be conclusive, and its recommendation, if any, for the modification or setting aside of the original order. The judgment and decree of the court, affirming, modifying, or setting aside, in whole or in part, any such order of the Commission, shall be final, subject to review by the Supreme Court of the United States upon certiorari or certification as provided in section 1254 of Title 28.

**(c) Stay of Commission's order**

The filing of an application for rehearing under subsection (a) shall not, unless specifically ordered by the Commission, operate as a stay of the Commission's order. The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.

**CREDIT(S)**

(June 10, 1920, c. 285, Pt. III, § 313, as added Aug. 26, 1935, c. 687, Title II, § 213, 49 Stat. 860; amended June 25, 1948, c. 646, § 32(a), 62 Stat. 991; May 24, 1949, c. 139, § 127, 63 Stat. 107; Pub.L. 85-791, § 16, Aug. 28, 1958, 72 Stat. 947; Pub.L. 109-58, Title XII, § 1284(c), Aug. 8, 2005, 119 Stat. 980.)

Notes of Decisions (449)

16 U.S.C.A. § 825I, 16 USCA § 825I

Current through P.L. 116-91.

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Code of Federal Regulations Title 18. Conservation of Power and Water Resources Chapter I. Federal Energy Regulatory Commission, Department of Energy Subchapter X. Procedural Rules Part 385. Rules of Practice and Procedure (Refs & Annos) Subpart G. Decisions

18 C.F.R. § 385.713

§ 385.713 Request for rehearing (Rule 713).

Effective: March 23, 2006

Currentness

(a) Applicability.

(1) This section applies to any request for rehearing of a final Commission decision or other final order, if rehearing is provided for by statute, rule, or order.

(2) For the purposes of rehearing under this section, a final decision in any proceeding set for hearing under subpart E of this part includes any Commission decision:

(i) On exceptions taken by participants to an initial decision;

(ii) When the Commission presides at the reception of the evidence;

(iii) If the initial decision procedure has been waived by consent of the participants in accordance with Rule 710;

(iv) On review of an initial decision without exceptions under Rule 712; and

(v) On any other action designated as a final decision by the Commission for purposes of rehearing.

(3) For the purposes of rehearing under this section, any initial decision under Rule 709 is a final Commission decision after the time provided for Commission review under Rule 712, if there are no exceptions filed to the decision and no review of the decision is initiated under Rule 712.

(b) Time for filing; who may file. A request for rehearing by a party must be filed not later than 30 days after issuance of any final decision or other final order in a proceeding.

(c) Content of request. Any request for rehearing must:

(1) State concisely the alleged error in the final decision or final order;

(2) Conform to the requirements in Rule 203(a), which are applicable to pleadings, and, in addition, include a separate section entitled “Statement of Issues,” listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying; any issue not so listed will be deemed waived; and

(3) Set forth the matters relied upon by the party requesting rehearing, if rehearing is sought based on matters not available for consideration by the Commission at the time of the final decision or final order.

(d) Answers.

(1) The Commission will not permit answers to requests for rehearing.

(2) The Commission may afford parties an opportunity to file briefs or present oral argument on one or more issues presented by a request for rehearing.

(e) Request is not a stay. Unless otherwise ordered by the Commission, the filing of a request for rehearing does not stay the Commission decision or order.

(f) Commission action on rehearing. Unless the Commission acts upon a request for rehearing within 30 days after the request is filed, the request is denied.

#### Credits

[49 FR 21316, May 21, 1984; 60 FR 4860, Jan. 25, 1995; 60 FR 16567, March 31, 1995; Order 663, 70 FR 55725, Sept. 23, 2005; 71 FR 14642, March 23, 2006]

AUTHORITY: 5 U.S.C. 551–557; 15 U.S.C. 717–717z, 3301–3432; 16 U.S.C. 791a–825r, 2601–2645; 28 U.S.C. 2461; 31 U.S.C. 3701, 9701; 42 U.S.C. 7101–7352; 49 U.S.C. 60502; 49 App. U.S.C. 1–85.

#### Notes of Decisions (90)

Current through January 9, 2020; 85 FR 1128.

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