ORAL ARGUMENT NOT YET SCHEDULED

No. 25-1252

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

CENTRAL JERSEY SAFE ENERGY COALITION, FOOD & WATER WATCH, NEW JERSEY LEAGUE OF CONSERVATION VOTERS EDUCATION FUND, NY/NJ BAYKEEPER, PRINCETON MANOR HOMEOWNERS ASSOCIATION, SIERRA CLUB, AND NATURAL RESOURCES DEFENSE COUNCIL,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent,

KEYSPAN GAS EAST CORPORATION D/B/A NATIONAL GRID, BROOKLYN UNION GAS COMPANY D/B/A NATIONAL GRID NY, AND TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC,

Intervenors for Respondent.

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

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CERTIFICATE AS TO PARTIES, RULINGS UNDER REVIEW, AND RELATED CASES

I. Parties and Amici Curiae

A. Petitioners

Petitioners in this case are Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, Raritan Baykeeper d/b/a NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Natural Resources Defense Council.

Petitioner Central Jersey Safe Energy Coalition is a nonprofit organization incorporated under the laws of New Jersey and based in Princeton, New Jersey. The Coalition is not publicly traded, does not have any parent companies, and there are no publicly held companies having a 10% or greater ownership interest in the Coalition.

Petitioner Food & Water Watch is a 501(c)(3) not-for-profit organization founded in 2005 to ensure access to clean drinking water, safe and sustainable food, and a livable climate. Food & Water Watch has no parent companies, and there are no publicly held corporations that have a ten percent or greater ownership interest in Food & Water Watch.

Petitioner New Jersey League of Conservation Voters Education Fund is a 501(c)(3) nonprofit committed to safeguarding our natural resources, communities, and families for a sustainable future. New Jersey League of Conservation Voters Education Fund has no parent companies, and there are no publicly held corporations that have a ten percent or greater ownership interest in New Jersey League of Conservation Voters Education Fund.

Petitioner Raritan Baykeeper d/b/a NY/NJ Baykeeper is a nonprofit membership-based organization with a mission to protect, preserve, and restore the ecological integrity and productivity of the NY-NJ Harbor Estuary. NY/NJ Baykeeper has no parent companies, and there are no publicly held companies that have a ten percent (10%) or greater ownership interest in NY/NJ Baykeeper.

Petitioner Princeton Manor Homeowners Association is an association with more than 720 residents incorporated under the laws of New Jersey. Princeton Manor Homeowners Association is not publicly traded, has no parent companies, and no publicly held companies have a 10% or greater ownership interest in the Association.

Petitioner Sierra Club, a corporation organized and existing under the laws of the State of California, is a national nonprofit organization dedicated to the protection and enjoyment of the environment. Sierra Club is a non-governmental corporate party with no parent corporation, and there are no publicly held corporations that have a ten percent or greater ownership in Sierra Club.

Petitioner Natural Resources Defense Council ("NRDC") is a non-profit environmental and public health membership organization committed to protecting the public and environment through research and advocacy. NRDC has no parent corporation, and no publicly owned corporation has a ten percent or greater ownership interest in NRDC.

B. Respondent

The Respondent in this case is the Federal Energy Regulatory Commission.

C. Intervenors

Intervenors for Respondent are KeySpan Gas East Corporation d/b/a National Grid; Brooklyn Union Gas Company d/b/a National Grid NY; and Transcontinental Gas Pipe Line Company, LLC ("Transco").

D. Amici

Amici for Respondent are Interstate Natural Gas Association of America and American Petroleum Institute, and American Gas Association.

II. Rulings Under Review

Petitioners challenge the following orders of the Federal Energy Regulatory Commission:

1. *Transcontinental Gas Pipe Line Company, LLC*, Order Issuing Certificate, 192 FERC ¶ 61,184 (Aug. 28, 2025) ("Reissuance Order"), R.10307.
2. *Transcontinental Gas Pipe Line Company, LLC*, Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, 193 FERC ¶ 62,060 (Oct. 30, 2025), R.10321.
3. *Transcontinental Gas Pipe Line Company, LLC*, Order Addressing Arguments Raised on Rehearing, 194 FERC ¶ 61,098 (Feb. 9, 2026) ("Rehearing Order"), R.10344.

III. Related Cases

This case has not previously been before this Court or any other court. Counsel for Petitioners are unaware of any related cases within the meaning of D.C. Circuit Rule 28(a)(1)(C).

/s/ Moneen Nasmith
Moneen Nasmith

Counsel for Petitioners Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, and Sierra Club

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Statutes

Rules & Regulations

Other Authority

GLOSSARY

APA	Administrative Procedure Act
EIS	Environmental impact statement
FERC	Federal Energy Regulatory Commission
NEPA	National Environmental Policy Act
NESE	Northeast Supply Enhancement
NGA	Natural Gas Act

JURISDICTIONAL STATEMENT

This Court has jurisdiction over this petition for review of final orders of the Federal Energy Regulatory Commission ("FERC"). 15 U.S.C. § 717r(b).

On August 28, 2025, FERC issued an order granting Petitioners intervention and issuing a certificate of public convenience and necessity under the Natural Gas Act ("NGA"), 15 U.S.C. § 717f(c), for the Northeast Supply Enhancement ("NESE") project ("Project"). Reissuance Order [JA448–JA507]. Petitioners timely moved for rehearing on September 29, 2025, R.10316 ("Rehearing Request") [JA508–JA549], which was denied by operation of law on October 30, 2025, R.10321 [JA593]. The petition for review was timely filed on October 30, 2025. On February 9, 2026 (before submitting the administrative record on February 20, 2026), FERC issued an order addressing the merits of Petitioners' rehearing request, Rehearing Order [JA661–JA712].

STATEMENT OF ISSUES

1. Whether FERC's "reissuance" of an expired and vacated certificate for the NESE Project, without a new application or new review process, was arbitrary and capricious and in excess of statutory authority in violation of the NGA, 15 U.S.C. § 717f, and Administrative Procedure Act ("APA"), 5 U.S.C. § 706(2)?
2. Whether FERC's failure to complete a new environmental impact statement ("EIS") or supplemental EIS for the reissuance of the certificate for the NESE Project despite changed circumstances was arbitrary and capricious and a violation of the National Environmental Policy Act ("NEPA"), 42 U.S.C. § 4331 *et seq.*, NGA, 15 U.S.C. § 717 *et seq.,* and the APA, 5 U.S.C. § 706(2)?
3. Whether FERC's determination that the NESE Project is required by the public convenience and necessity was based on an analysis of the Project's need and benefits that was arbitrary and capricious and contrary to law, violating the NGA, 15 U.S.C. § 717 *et seq.,* and the APA, 5 U.S.C. § 706(2)?

STATUTES AND REGULATIONS

Relevant statutes and regulations appear in an addendum.

INTRODUCTION

This case challenges FERC's unlawful, wholly unprecedented "reissuance" of a certificate of public convenience and necessity for the NESE Project, a natural gas pipeline FERC previously granted a certificate in 2019. Transco abandoned the Project, the certificate expired in May 2024, and FERC vacated it in June 2024.

In 2025, Transco asked FERC to simply "reissue" its expired, vacated certificate without a new application or new review process under NEPA or the NGA. FERC "reissued" the certificate without requiring an application or completing a NEPA review, procedural failures that left FERC without accurate, current information to inform its substantive decisionmaking. Because FERC's reissuance of the certificate was contrary to the NGA and its assessment of the Project's harms and benefits was unlawful and arbitrary and capricious, FERC's decision must be vacated.

STATEMENT OF THE CASE

I. Legal Framework

A. Natural Gas Act

Section 7 of the NGA requires a company to obtain a certificate of public convenience and necessity before constructing and operating an interstate gas pipeline. 15 U.S.C. § 717f(c). FERC may grant a certificate only "to any qualified applicant" where the project "is or will be required by the present or future public convenience and necessity." *Id.* § 717f(e). FERC may issue a certificate "only if a project's public benefits (such as meeting unserved market demand) outweigh its adverse effects (such as deleterious environmental impact on the surrounding community)." *City of Oberlin, Ohio v. FERC*, 937 F.3d 599, 602 (D.C. Cir. 2019) (citing *Certification of New Interstate Natural Gas Pipeline Facilities,* 90 FERC ¶ 61,128, 61,396 (Feb. 9, 2000)). *See also Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017) ("If FERC finds market need, it will then proceed to balance the benefits and harms of the project, and will grant the certificate if the former outweigh the latter."). The burden is, therefore, on the applicant to demonstrate that a project meets that standard, not on the public to show that it does not.

The NGA provides FERC authority over interstate gas projects to "encourage the orderly development of plentiful supplies of…natural gas at reasonable prices." *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 669–70 (1976). That authority is meant to "protect consumers against exploitation at the hands of natural gas companies," *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 50 (D.C. Cir. 2024) ("*NJCF*") (quoting *Fed. Power Comm'n v. Hope Nat. Gas Co.*, 320 U.S. 591, 610 (1944)), not be used to approve every gas project proposed to FERC.

Section 7 applications must be made in writing, and FERC's regulations detail the required contents. 15 U.S.C. § 717f(d). An applicant must submit "all pertinent data and information necessary for a full and complete understanding of the proposed project," 18 C.F.R. § 157.5(a); *see also id.* § 385.204, and must supply multiple exhibits discussing the project, *id.* § 157.14, including its environmental harms, *id.* § 157.14(a)(7) (requiring resource reports as described in 18 C.F.R. §§ 380.3, 380.12). Following receipt of an application, FERC establishes an intervention and protest window, *id.* § 157.10, and a schedule for environmental review, *id.* § 157.9, and FERC's final decision, *id.* § 157.22.

B. NEPA

The primary goal of a NEPA review is "to inform agency decisionmaking." *Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colorado*, 605 U.S. 168, 173 (2025). FERC's NEPA review must ensure that FERC has "adequately considered and disclosed the environmental impact of its actions." *See Baltimore Gas & Elec. Co. v. NRDC*, 462 U.S. 87, 97–98 (1983). NEPA requires an agency to consider at least "those effects [that] are relevant to the agency's decision-making process." *Seven Cnty.*, 605 U.S. at 187. NEPA requires evaluation of "any adverse environmental effects which cannot be avoided should the proposal be implemented," and discussion of mitigation measures and "the extent to which adverse effects can be avoided." *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 351–52 (1989) (citing 42 U.S.C. § 4332(C)(ii)). Because FERC must consider environmental harms when making its public convenience and necessity determination, *Minisink Residents for Env't Pres. & Safety v. FERC*, 762 F.3d 97, 101–02 (D.C. Cir. 2014), failure to comply with NEPA—and, therefore, failure to accurately assess a project's harms—undermines FERC's NGA conclusions, *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) ("*Vecinos*").

II. Factual Background

A. FERC Reviewed and Approved the Project in 2019.

On March 27, 2017, Transco applied for a certificate of public convenience and necessity under Section 7 of the NGA, 15 U.S.C. § 717f(c), for its proposed NESE Project. Reissuance Order P 49 [JA473–JA474]. The Project would expand Transco's pipeline system, adding a new compressor station in New Jersey and over 23 miles of offshore pipeline across the New York Harbor area. Reissuance Order P 1 [JA448]. The offshore pipeline would extend from New Jersey, passing south of Staten Island, traversing Raritan Bay, Lower New York Bay, and the Atlantic Ocean, including New Jersey and New York State waters, to an existing pipeline off the Rockaway Peninsula. R.6939 ("EIS") at 2-3 [JA110].

Excavating a trench to install the offshore pipeline would resuspend contaminated sediment in the water column. *Id.* at ES-11–ES-12, 2-1, 2-44–2-49 [JA086–JA087, JA108, JA113–JA118]. The contaminated sediment could migrate beyond the trench area, compromising water quality and other parts of the seabed. *Id.* at 4-107, 4-113 [JA133, JA136]. The New Jersey compressor station would emit air pollution and create noise and other harms for nearby residents. *Id.* at 4-310–4-312, 4-323–4-325 [JA152–JA154, JA157–JA159].

FERC issued a final EIS for the Project on January 25, 2019. EIS [JA052–JA172]. On May 3, 2019, FERC granted a certificate for the NESE project. R.6997 [JA174–233]. FERC concluded that the Project was needed based primarily on two long-term contracts for the Project's entire capacity, *id.* PP 5, 16 [JA175, JA178], and relied on Transco's representations that the Project would produce public benefits based on then-current gas market conditions, *id.* P 18 [JA179].

B. Transco Failed to Comply with the 2019 Certificate's Conditions.

FERC conditioned the 2019 certificate on Transco placing the project into service by May 3, 2021, and obtaining "all applicable authorizations required under federal law (or evidence of waiver thereof)" before beginning construction. Reissuance Order P 7 [JA450–JA451]. Required authorizations included water quality certifications from New York and New Jersey under Section 401 of the Clean Water Act, 33 U.S.C. § 1341. Reissuance Order PP 4, 7 [JA449–JA451].

Both New York and New Jersey had denied Transco's Section 401 applications twice before and, in May 2020, both states denied Transco's application again because the Project as proposed would violate water quality standards. R.7173 [JA261–278]; R.7178 [JA279–JA288]. Transco neither appealed those denials nor contemporaneously filed new applications. Instead, on March 19, 2021, Transco requested, under 18 C.F.R. § 385.2008(a), a two-year extension of the certificate's in-service deadline. R.7182. FERC granted an extension to May 3, 2023. R.8753 [JA304–JA312].

On April 27, 2023, having failed to reapply for the Section 401 certifications, Transco requested another two-year extension. R.8773. FERC gave Transco only one more year, to May 3, 2024, noting that it was "concerned" that Transco had not submitted new Section 401 applications. R.8877 at PP 13, 17 [JA319, JA320–JA321].

C. Transco Abandoned the Project and FERC Vacated the Certificate.

Transco informed FERC on April 10, 2024, that it planned to let the certificate expire. R.8880 [JA327]. Based on that representation, on June 10, 2024, FERC vacated the expired certificate and dismissed as moot a pending rehearing request. Reissuance Order P 8 [JA451]; R.8887, PP 3–4 [JA329]. Parties to a lawsuit challenging the certificate (including some of the Petitioners here) therefore sought and obtained a voluntary dismissal. *NY/NJ Baykeeper v. FERC*, No. 20-1211, 2024 WL 3208459 (D.C. Cir. June 27, 2024). In addition, the precedent agreements Transco signed with its two shippers for the pipeline's capacity lapsed. R.8889 ("Petition") at 8 [JA338].

D. Transco Seeks to Resurrect the Project.

In 2025, Transco determined to try again. Instead of submitting a new application, on May 29, 2025, Transco submitted a novel "petition" claiming that because nothing had changed in the more than eight years since its application, FERC could simply "reissue" the expired, vacated approval within a few months. *Id.* at 2, 8–11 [JA332, JA338–JA341].

Transco did not identify any statute or regulation contemplating a petition for reissuance, and FERC had never previously "reissued" an expired, vacated certificate. Nevertheless, FERC issued notice of the Petition, setting a protest and intervention deadline. Reissuance Order P 12 [JA452]. Petitioners intervened and protested, arguing that FERC could not reissue the certificate without a new application and that, given the passage of time and changed circumstances, FERC could not rely on its prior analysis of the need for and environmental impacts of the Project. R.10021 [JA376–JA377]; R.9921 [JA374–JA375]; Reissuance Order P 13–14, 17–21 [JA453–JA454, JA455–JA458].

Despite claiming that no relevant circumstances had changed, Transco submitted—attached to Transco's Answer to protests filed six weeks prior—brand-new market studies purporting to demonstrate the need for the Project on August 5, 2025. R.10301 (Attachment 1 & 2) [JA383–JA423].

Instead of undergoing its standard NEPA process, FERC issued a one-page "Environmental Assessment Report" on July 11, 2025, concluding that FERC could rely on the 2019 EIS to satisfy NEPA requirements for Transco's Petition, R.10285 [JA378], despite indicating elsewhere that multiple factors relating to the Project's environmental harms had changed, *see, e.g.,* R.10302 [JA424–JA446]. FERC did not provide any formal opportunities for public comment on its NEPA conclusion.

Before the time FERC's regulations provide for parties to answer Transco's August 5, 2025, Answer ran, 18 C.F.R. § 385.213(d)(2)(ii), FERC issued its first-ever order "reissuing" an expired and vacated certificate. Reissuance Order [JA448–JA507]. The August 28, 2025, order claimed that FERC could do so because nothing about the Project had changed and "reissuing" a defunct certificate was no different than granting a new certificate. *Id.* PP 14, 21 [JA453–JA454, JA457–JA458].

Petitioners requested rehearing of the Reissuance Order, arguing that because Section 7 does not provide authority to "reissue" expired, vacated certificates, Transco should have been required to submit a new application. Rehearing Request at 8–16 [JA515–JA523]. Petitioners also argued that FERC's finding of Project need was arbitrary and capricious and that FERC should have completed a new, or at least supplemental, EIS. *Id.* at 17–41 [JA524–JA548]. On October 30, 2025, the day this rehearing request was deemed denied by operation of law, R.10321 [JA593], Petitioners sought review of the Reissuance Order from this Court.

On November 7, 2025, New York and New Jersey reversed their prior positions that the Project would violate water quality standards and granted water quality certifications for the Project. R.10325 [JA594–JA660]. Those certifications are being challenged by some of the Petitioners. *Raritan Baykeeper, Inc. v. N.Y. State Dep't of Env'tl Conservation,* No. 25-2938 (2d Cir.); *Natural Res. Def. Council, Inc. v.*

N.J. Dep't of Env'tl Prot., No. 26-1252 (3d Cir.); *NY/NJ Baykeeper v. N.J. Dep't of Env'tl Prot.*, No. 26-1253 (3d Cir.).

On February 9, 2026, FERC issued an order addressing the merits of Petitioners' rehearing request and reaffirming the Reissuance Order's conclusions. Rehearing Order [JA661–JA712]. FERC continued to claim that Section 7 authorizes its novel "reissuance" of an expired, vacated certificate. For the first time, FERC argued, alternatively, that Section 16 of the NGA, 15 U.S.C. § 717o, provides authority for the Reissuance Order. Rehearing Order PP 26–28 [JA676–JA679]. FERC rejected Petitioners' arguments that NEPA required a new or supplemental EIS. *Id.* PP 70–79 [JA704–JA710]. FERC further rejected evidence that undermined the need for and purported benefits of the Project. *Id.* PP 41–65 [JA686–JA702].

SUMMARY OF ARGUMENT

Section 7 of the NGA creates a well-established process for obtaining certificates for interstate gas infrastructure. A written application adhering to a clear set of requirements must be filed. FERC reviews that application under the NGA and NEPA using a standardized process that includes opportunities for public input. If

FERC grants the certificate, it explains its reasoning and sets a deadline to begin operation. The applicant may receive an extension of that deadline if it meets clear regulatory standards. Barring an extension, a certificate ceases to have legal effect upon expiration, which FERC often confirms by vacating the order granting the certificate. The market, landowners, and the public, therefore, have clarity that the project is dead. For decades, FERC has handled applications this way.

FERC's decision to suddenly upend its well-worn process by resurrecting an abandoned project with an expired and vacated certificate is contrary to the NGA and FERC's regulations. No provision of law provides FERC the authority to grant a certificate without a valid application. Resurrecting a legally-defunct certificate is at odds with the goals of the NGA and FERC's rules to regulate the interstate gas system in an orderly and predictable manner. This newly-invented process also sews confusion in the other permitting structures triggered by Section 7, further underscoring the unlawfulness of FERC's action.

FERC's failure to adhere to an NGA-compliant process also resulted in FERC reaching a legally-deficient conclusion that the

Project is required by the public convenience and necessity. FERC claimed it could rely on the 2019 EIS because nothing about the Project had changed, but lacked information demonstrating that was true. Additionally, FERC conducted new analyses of the Project's environmental harms that it never made available for public comment. FERC also failed to address findings released after the 2019 EIS that undermined FERC's prior conclusions about the Project's water quality impacts. While FERC was not required to redo still-valid portions of its 2019 EIS, FERC cannot undertake new environmental analysis without public comment or use invalidated portions of the old analysis to justify a new approval. FERC, therefore, should have completed at least a supplemental EIS. Its failure to do so violated NEPA and undermined its ability to determine whether the Project's benefits outweigh its harms under the NGA.

FERC's truncated process also resulted in a lopsided, arbitrary analysis of the Project's alleged market need and public benefits. Again contradicting its claims that the 2017 application remained valid, FERC cherry-picked information from more recent market studies while ignoring conflicts in that data and contrary evidence. FERC also ignored how the passage of time and changed market dynamics have increased the risk that the Project could harm its shippers' captive ratepayers by forcing them to pay for capacity they do not need. Because the NGA and APA do not permit FERC to credit only evidence favoring a project and dismiss the rest as FERC did here, FERC's conclusion that the Project's benefits outweigh its harms to the public is arbitrary and capricious.

The process FERC undertook to resurrect Transco's defunct project is inconsistent with the NGA and NEPA and resulted in substantial errors. The Court should vacate the Reissuance and Rehearing Orders.

STANDING

Petitioners have standing to bring this case on behalf of their members who would be harmed by the Project's construction and operation and would otherwise have standing in their own right. *Sierra Club v. FERC*, 827 F.3d 59, 65–68 (D.C. Cir. 2016). The issues raised are germane to Petitioners' missions as organizations dedicated to environmental protection and clean energy, Addendum to Petitioners' Opening Br. at 72, 75, 91, 101, 110–13, and a homeowners association for a community affected by the Project, *id.* at 126. Neither the claims asserted, nor the relief requested, require individual members' participation in this lawsuit. Members' harms are caused by the challenged FERC orders and would be redressed if this Court vacates the orders. *Sierra Club*, 827 F.3d at 66–68.

Construction and operation of the New Jersey compressor station will harm Petitioners' members. Noise from construction and operation will disrupt one member's use and enjoyment of her property directly adjacent to the station site. Addendum to Petitioners' Opening Br. at 91–95. The station's construction and operation will expose senior citizen members living within 1 to 1.25 miles of the station to safety risks and increased air pollution. *Id.* at 62–65, 72–73, 84–89, 92–96, 122–24, 126–28. Members are also concerned that a nearby compressor station will negatively affect their property values, and that construction traffic will cause congestion, especially in an emergency. *Id.* at 65, 73–74, 87–90, 97, 123–24, 129–31.

The construction of the offshore pipeline will harm Petitioners' members. Pipeline construction will cause members who enjoy recreating in and near the water, including paddleboarding, kayaking, swimming, sailing, walking on the waterside, and enjoying time on the beach to reduce these activities or be forced to do so in less convenient locations. *Id.* at 68, 70–71, 80–82, 101–03, 106–08, 112–14, 133–35. Members also worry that pollution and disturbance from the offshore pipeline's construction will decrease their recreational and aesthetic enjoyment of the area by harming wildlife, including birds, dolphins, and whales, that they enjoy watching. *Id.* at 69, 80–83, 98–100, 102–05, 108, 112–14, 119–20, 133–35. One member worries construction will drive away customers of his business offering guided canoe and kayak tours in Raritan Bay by making the Bay a less desirable location. *Id.* at 67–70. Offshore pipeline construction will lead members who regularly consume locally-caught seafood to reduce or stop this consumption because of fears the pollution will taint the seafood. *Id.* at 83, 100,108–09, 112–14.

ARGUMENT

I. Standard of Review.

"This Court reviews FERC's NGA decisions and NEPA analyses under the Administrative Procedure Act," *NJCF*, 111 F.4th at 53, which requires courts to set aside agency action that is arbitrary and capricious, contrary to law, in excess of statutory jurisdiction, or without observance of procedure required by law, 5 U.S.C. § 706(2). A decision is arbitrary and capricious if the agency failed to "examine the relevant data" or did not make a "rational connection between the facts found and the choices made." *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983) (citation modified). This Court accepts FERC's factual findings as conclusive only if they are "supported by substantial evidence." 15 U.S.C. § 717r(b). In "determining the meaning of statutory provisions," courts "must exercise independent judgement" rather than deferring to the agency's interpretation. *Loper Bright Enters. v. Raimondo*, 603 U.S. 369, 394 (2024).

II. FERC Lacks Legal Authority to Reissue a Previously Expired and Vacated Certificate.

The Reissuance Order is in excess of FERC's statutory authority and is arbitrary and capricious. 5 U.S.C. § 706(2). Neither Section 7, which requires an application meeting strict requirements, nor Section 16, which authorizes only actions consistent with the remainder of the NGA, allows FERC to reissue an expired and vacated certificate. Because agencies have no authority beyond that provided by statute, *Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022); *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 912 (D.C. Cir. 2024), FERC's repeated observations that no provision of the NGA explicitly *prohibits* reissuing a certificate, Reissuance Order P 21 [JA457–JA458], Rehearing Order P 24 [JA675] are irrelevant.

Failure to require a new application and undertake the standard Section 7 process has real world negative consequences. It undermines the NGA and FERC's regulations' goals to ensure predictability and order. Resurrecting a defunct project also creates confusion in other permitting structures Section 7 projects trigger.

A. Section 7 Does Not Provide Statutory Authority for the Reissuance Order.

Granting a certificate in the absence of a new application is inconsistent with the NGA and FERC's regulations. It also undermines many of the NGA's purposes, including interests in certainty and transparency inherent in FERC's Certificate Policy Statement and interests in finality reflected in FERC's regulations and precedent. FERC, therefore, cannot grant a certificate on the basis of the Petition or the 2017 application. Finally, whatever authority FERC may have to "reissue" a certificate on remand from a court does not give it authority to reissue an expired and vacated certificate.

However one describes it, FERC's Reissuance Order was unlawful. If FERC "reissued" an old certificate, Reissuance Order PP 2, 21–22, [JA448, JA457–JA458], it used an unprecedented process not authorized by the NGA. If, instead, FERC "issued a new certificate," Rehearing Order PP 24, 29 [JA675, JA679], it arbitrarily failed to follow its standard process, including requiring a complete, current application.

1. Section 7 and FERC's Regulations Require an Application.

FERC exceeded its statutory authority by acting on Transco's Petition instead of requiring a new application that complied with the NGA and its own regulations. Section 7 explicitly limits FERC's authority to granting a certificate only "to any qualified applicant therefor . . . ." 15 U.S.C. § 717f(c)–(e). Even in an emergency, Section 7 expressly provides for issuance of temporary certificates only if a full application is pending. *Id.* § 717f(c).

Section 7 and FERC's regulations highlight the importance Congress and FERC have placed on a formal application. Section 7 requires an application to be in writing, verified under oath, served on interested parties, and adhere to FERC's regulations, *Id.* § 717f(d), which impose numerous specific requirements. Applicants must "file all pertinent data and information necessary for a full and complete understanding of the proposed project." 18 C.F.R. § 157.5(a); *see also id.* § 385.204. Applications must include multiple resource reports. *Id.* §§ 157.14(a)(7), 380.12. FERC's regulations "will be strictly applied to all applications as submitted and the burden of adequate presentation in intelligible form as well as justification for omitted data or information rests with the applicant." *Id.* § 157.5(c).

The application forms the basis of the record on which FERC determines whether a project is "required by the present or future public convenience and necessity," what "terms and conditions … the public convenience and necessity may require" to be imposed on a certificate order, 15 U.S.C. § 717f(e), and whether the "project's public benefits… outweigh its adverse effects," *City of Oberlin*, 937 F.3d at 602. The application also serves as a springboard for public comments and provides basic information about the project and its impacts that informs FERC's NEPA review.

FERC appears to concede that an application is a legal necessity and that Transco failed to file an application conforming to statutory and regulatory requirements. *See* Rehearing Order P 25 n.85 [JA675–JA676]. On rehearing, FERC claims that it could recast Transco's Petition as an application by "waiv[ing] the filing requirements in Part 157 of our regulations with which the 2025 Petition does not comply, and fully incorporat[ing] the record for the underlying proceeding." *Id.* (citing 18 C.F.R. § 157.5(b)) [JA676]. FERC's regulations, however, cannot provide the authority to disregard the NGA. The regulation FERC cites also does not provide authority to accept a document falling so far short of the application requirements. That provision provides that "[e]very requirement" of FERC's regulations for applications "shall be considered as a forthright obligation of the applicant which can only be avoided by a definite and positive showing that the information or data called for by the applicable rules is not necessary for the consideration and ultimate determination of the application." 18 C.F.R. § 157.5(b). FERC did not find that Transco made "a definite and positive showing" that all of this missing information "is not necessary," *id.*, nor could it have, given the breadth of the omissions. The Petition did not contain any of the thirteen required resource reports on: water use and quality; fish, wildlife, and vegetation; cultural resources; socioeconomics; geological resources; soils; land use, recreation and aesthetics; air and noise quality; alternatives; reliability and safety; and other topics. *Id.* § 380.12. Nor did it contain the required exhibits A through P, covering topics including other pending applications and filings, location of facilities, gas flow diagrams, market data, and the facilities' estimated cost. *Id.* § 157.14. Because FERC lacked legal authority to act on Transco's Petition, FERC should have dismissed it and required a new application.

2. FERC's Failure to Require a New Application Is Inconsistent with the NGA's Goals and FERC's Regulations.

Requiring a new, complete application to resurrect a defunct project does not elevate form over substance and is not just a matter of labels or semantics. The NGA aims to ensure the orderly development of interstate gas infrastructure. FERC's regulations aim to create certainty and finality. Neither goal is served when an expired, vacated certificate is resurrected via a haphazard, novel process.

i. Reissuing Certificates in Response to Petitions Is Inconsistent with the NGA's Basic Purposes.

The NGA's "principle aim[s]" are "encouraging the orderly development of plentiful supplies … of natural gas at reasonable prices … and protect[ing] consumers against exploitation at the hands of natural gas companies," with "subsidiary purposes" of addressing "conservation, environmental, and antitrust issues." *Minisink*, 762 F.3d at 101 (citation modified). These purposes are subverted when FERC upends its standard process, suddenly inventing the approach of reissuing defunct certificates. Gas development is orderly, and consumers are more likely to be protected, when FERC has a clear record of the current need for and alleged benefits of a pipeline. An application complying with Section 7 and FERC's regulations provides a foundation for that clear record, but the mishmash of outdated data and ad hoc updates FERC used here does not. Conservation and environmental interests cannot be protected when FERC relies on out-of-date information. Landowners and environmental and consumer advocates cannot effectively participate when they lack a clear, up-to-date record on which to provide input and do not understand the process.

FERC's argument that the application requirement was met because the Reissuance Order granted Transco's 2017 application, as supplemented, Rehearing Order PP 24–25 [JA675–JA676], fails because FERC's process here did not provide the order Congress meant the NGA to create. The Reissuance Order relies on updated information not in the 2017 application, effectively acknowledging that an eight-year-old application cannot support a rational Section 7 approval, *see* 5 U.S.C. § 717f(e); *City of Oberlin*, 937 F.3d at 602. The public had no way of knowing what portions of the 2017 application remained accurate and what portions were stale—a problem FERC could have avoided by requiring a new, accurate application.

ii. Reissuing Certificates Is Contrary to the Interests in Certainty and Finality Underlying FERC's Regulations and Policy Statement.

Similarly, reissuing expired certificates based on an old record undermines the interests in certainty underlying FERC's Certificate Policy Statement and is contrary to the interests in finality underlying FERC's practice of imposing in-service deadlines as conditions to certificates.

FERC's Certificate Policy Statement is "intended to provide more certainty as to how the Commission will analyze certificate applications." *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC at ¶ 61,750 (Sept. 15, 1999). It also "provide[s] participants in certificate proceedings with a framework for shaping the record that is needed by the Commission to expedite its decisional process." *Id.* Neither goal is served when FERC does not follow its standard process and bases its decision on an old record FERC claims remains valid but also needs updating.

While FERC is not purporting to treat the Petition as a request to extend Transco's 2019 certificate under FERC's extension regulations, Reissuance Order P 19 [JA456–JA457]; Rehearing Order P 31 [JA680], those regulations demonstrate that FERC recognizes the importance of certificates not having an indefinite or uncertain lifespan. FERC has long and consistently included in-service deadlines in its certificates to ensure that the information supporting FERC's public convenience and necessity decision does not go stale. *Sierra Club v. FERC*, 97 F.4th 16, 20 (D.C. Cir. 2024) (quoting *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138, P16 (Feb. 20, 2020)); *see also* 18 C.F.R. § 157.20(b). FERC also uses deadlines to prevent affected landowners from indefinitely being unable to use their land in ways incompatible with the project. *Sierra Club v. FERC*, 97 F.4th at 20 (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 10 (May 23, 2012)). Deadlines also "prevent developers from holding on to certificates for so long that they 'inhibit a potential competitor from pursuing its own project to serve the same market.'" *Id.* (quoting *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 9 (May 23, 2012)).

FERC has established regulations governing requests for extensions of deadlines that Transco does not, and could not claim to, meet. Deadlines that have not yet passed may be extended only upon a demonstration of "good cause." 18 C.F.R. § 385.2008(a). Already passed deadlines will be extended only "if the movant shows extraordinary circumstances sufficient to justify the failure to act in a timely manner." *Id.* § 385.2008(b). These standards provide clarity about when a certificate is alive or dead and demonstrate that FERC's actions here are at odds with the NGA's statutory scheme, which the regulations were designed to further.

FERC's order granting the second extension of the 2019 certificate's in-service deadline stated that, in order to receive a third extension, Transco must demonstrate it had not "set its authorization on a shelf and let it lie dormant" but "[wa]s actively pursuing and remains committed to the project, such as by pursuing the required water quality certifications … or by resolving that issue by a project modification." R.8877, P 17 [JA321] (internal citation omitted). When Transco failed to make that showing and let its certificate expire, the certificate became defunct.

Labeling the decision a "reissuance" rather than an extension, Rehearing Order P 31 [JA680], neither addresses the fact that the order undermines the interests in finality nor cabins its statutory overreach. FERC provides no rational explanation why that labeling renders irrelevant the interests in finality inherent in the NGA, which the extension regulations were designed to further. FERC argues Petitioners "offered no persuasive evidence to support the idea that the passage of time caused uncertainty in deadlines or resulted in stale information, nor does the record support such an idea," *id.* [JA680], but the staleness of the information in the 2017 application and old docket is evident from FERC's own sporadic supplementation of that record and updated analysis in the Reissuance and Rehearing Orders. Nor does FERC explain why reissuing a certificate that expired more than 15 months prior, using a new process with no limiting principles, ensures certainty, finality, or any of the NGA's other goals. FERC has not provided any guidance on the circumstances under which it would entertain reissuance requests, including how old an underlying record would have to be before FERC would require a new application. Indeed, its novel action opens the door to companies requesting reissuance of certificates that have been expired for much longer.[1]

3. The Authority to Issue a Certificate Does Not Include the Authority to "Reissue" an Expired and Vacated Certificate.

FERC is wrong that its authority to reissue a certificate is "no different" from its authority to issue a certificate granting a new application, Reissuance Order P 21 [JA458], for two additional reasons.

[1] Two applications for reissuance of a certificate issued in 2014 that expired in 2020 have since been filed. *Constitution Pipeline Company, LLC; Notice of Petition and Establishing Intervention Deadline*, 91 Fed. Reg. 1311 (Jan. 13, 2026); *Iroquois Gas Transmission System, L.P.; Notice of Petition and Establishing Intervention Deadline*, 91 Fed. Reg. 9847 (Feb. 27, 2026).

First, FERC does not explain how its authority to "reissue" a certificate can be the same as its authority to issue a certificate without also requiring FERC to use the same review process for both.

Second, it does not follow that FERC's ability to reissue certificates on remand from a court allows it to reissue expired, vacated certificates. *Contra* Reissuance Order P 19 [JA456–JA457]; Rehearing Order PP 29–33 [JA679–JA682]. When a court remands an order to FERC, it will explain which aspects of FERC's order are arbitrary and capricious and "remand to the Commission for further proceedings consistent with this opinion." *City of Port Isabel v. FERC*, 111 F.4th 1198, 1219 (D.C. Cir. 2024), *on reh'g in part*, 130 F.4th 1034 (D.C. Cir. 2025). *See also NJCF*, 111 F.4th at 65 ("remand[ing] to the Commission for appropriate action"). On remand from a court order (either finding FERC's actions unlawful or granting voluntary remand), FERC is continuing the same, ongoing proceeding, by revising its order or completing additional NEPA process as necessary to remedy errors. *Cf. Limnia, Inc. v. U.S. Dep't of Energy*, 857 F.3d 379, 386–88 (D.C. Cir. 2017) (explaining that voluntary remand must encompass "further action with respect to the *original agency decision on review,*" not agency action on a different application submitted by the same applicant) (emphasis original). Here, there is no ongoing proceeding to continue—the proceeding on the 2017 application resulted in the issuance of a certificate the deadline for which was extended twice. When the certificate expired without Transco seeking a further extension and was vacated, that proceeding ended, and FERC dismissed a pending rehearing request as moot. R.8887, PP 3–4 [JA329]. The only way for Transco to get a new certificate is to start a new proceeding with a new application.

A more apt analogy would be a litigant who, after obtaining a second extension of a court deadline subject to conditions, failed to meet those conditions and instead voluntarily dismissed the case as the deadline approached. If dismissed with prejudice, the case would be permanently closed and could not be reopened. Even dismissal without prejudice does not permit such a litigant to reopen a case simply by request, or in the name of efficiency. Instead, the litigant must either file a new action or satisfy the demanding standard of Federal Rule of Civil Procedure 60(b) to reopen the case, such as by showing mistake, fraud, or newly discovered evidence that could not reasonably have been presented earlier. *See Waetzig v. Halliburton Energy Servs.*, 604 U.S. 305 (2025).

While FERC is correct that it is bound by its own procedural rules, not the Federal Rules, Rehearing Order P 34 [JA682], the Federal Rules provide an apt analogy and framework to consider the equities in allowing Transco to reopen an abandoned proceeding. When Transco failed to make the showing that FERC stated would be required to receive a third extension—that Transco was "actively pursuing" the project, rather than letting its certificate "lie dormant," R.8877, P 17 [JA321]—and chose to let its certificate expire, the certificate proceeding terminated. Both the Federal Rules and FERC's extension regulations recognize interests in finality that FERC's actions here undermine.

Additionally, FERC's procedural rules provide no pathway for Transco to reopen a proceeding in which it asked for vacatur of a certificate because of an inability to meet a deadline.[2] A petition can be used when seeking "[a]ny other action which is in the discretion of the

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[2] One rule, inapplicable here, and which FERC never claimed to be acting under, allows for reopening the evidentiary record in proceedings set for hearing. *See* 18 C.F.R. § 385.716.

Commission" for which no specific form of pleading is prescribed. 18 C.F.R. § 385.207(a). Therefore, formatting a request as a petition does not remedy that no rule provides for FERC to take such an action.

B. Section 16 Does Not Provide Statutory Authority for the Reissuance Order.

Section 16 also does not, as the Rehearing Order asserts, grant authority for the Reissuance Order. While Section 16 provides FERC the power to "perform any and all acts, and to prescribe, issue, make, amend, and rescind such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of [the NGA]," 15 U.S.C. § 717o, it does not empower FERC to take actions that, like the Reissuance Order, are inconsistent with the NGA's other statutory provisions or its underly purposes.

Section 16 "can only be implemented consistently with the provisions and purposes of the legislation, and … it authorize[s] an agency to use means of regulation not spelled out in detail, provided the agency's action conforms with the purposes and policies of Congress and does not contravene any terms of the Act." *New England Power Co. v. Fed. Power Comm'n*, 467 F.2d 425, 430–31 (D.C. Cir. 1972), *aff'd,* 415 U.S. 345 (1974) (citation modified). This limitation on the scope of

Section 16 is consistent with the principle that "[a] general grant of authority cannot displace the clear, specific text of" a statute. *Murray Energy Corp. v. EPA*, 936 F.3d 597, 627 (D.C. Cir. 2019). *See also Air All. Hou. v. EPA*, 906 F.3d 1049, 1061 (D.C. Cir. 2018) ("[A]n agency may not circumvent specific statutory limits on its actions by relying on separate, general rulemaking authority.").

Courts have rejected FERC's attempts to rely on Section 16 to take actions inconsistent with the remainder of the NGA. This Court held Section 16 did not provide authority for FERC to issue "tolling orders" granting itself indefinite extensions of the 30-day time frame to respond to rehearing requests in 15 U.S.C. § 717r(a). *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020). This Court rejected FERC's attempt to rely on Section 16 to adjust gas rates without abiding by the procedures in Section 4 and 5 of the NGA. *Pub. Serv. Comm'n of State of N.Y. v. FERC*, 866 F.2d 487, 488 (D.C. Cir. 1989); *see also Murphy Oil Corp. v. Fed. Power Comm'n*, 431 F.2d 805, 810–11 (8th Cir. 1970). This Court's precedent has "continued to require [FERC] to adhere to the basic framework of the [NGA], despite resulting inconvenience" and "refute[d] any notion that [Section 16] might possess some exceptional power to trump" other sections of the NGA. *Pub. Serv. Comm'n of State of N.Y.,* 866 F.2d at 491–92.

Even the case FERC cites as an example of this Court blessing the use of Section 16 to take action not explicitly provided for in Section 7, Rehearing Order P 27 [JA677], makes clear that Section 16 empowers only "actions taken with reasoned discretion … to carry out the policies and purposes of the NGA." *N. Nat. Gas Co., Div. of InterNorth v. FERC*, 785 F.2d 338, 342 (D.C. Cir. 1986). There, FERC argued that because Section 7 explicitly authorizes only prospective abandonments, FERC could not issue retroactive abandonments. *Id.* at 339–42. This Court disagreed holding "that in appropriate circumstances, the Commission's authority under Section 16 extends to the granting of retroactive abandonment authorizations so as to carry out the provisions of the NGA." *Id.* at 340–41. Nothing in this case, however, supports using Section 16 to justify FERC taking an action contrary to the NGA's purposes and overall statutory scheme.

Invoking Section 16 to reissue certificates in response to petitions is inconsistent with Section 7. Just as Courts of Appeals have rejected FERC's invocation of Section 16 to deviate from the procedural routes set out in Section 4 and 5, *Pub. Serv. Comm'n of State of N.Y*, 866 F.2d 487; *Murphy Oil Corp.*, 431 F.2d 805, so too must FERC's effort to avoid FERC's own procedures regarding extensions of time and its own orders in this case that limited Transco's time to build the Project be rejected here. FERC must be "require[d]… to adhere to the basic framework of the Act, despite resulting inconvenience." *Pub. Serv. Comm'n of State of N.Y.*, 866 F.2d at 492. In *Northern Natural* this Court found that because Section 7 did not explicitly preclude retroactive abandonment and Section 16 allows FERC "to consider equitable principles, one of which is to regard as being done that which should have been done," Section 16 provided authority to grant a retroactive abandonment, as requested by a pipeline operator and its customer, to execute the NGA's purposes. 785 F.2d at 341–42. Here, by contrast, it would be contrary to Section 7 and inequitable to the public to allow FERC to conjure alternative processes out of thin air when Section 7's clear process for acquiring a certificate—an application, NEPA review, and NGA review—creates certainty for regulated entities, landowners, and opponents of pipelines. *See Clean Air Council v. Pruitt*, 862 F.3d 1, 9 (D.C. Cir. 2017). "Agencies … cannot render statutory language a nullity and leave entire operative clauses with 'no job to do.'" *Allegheny Def. Project*, 964 F.3d at 15 (quoting *Doe v. Chao*, 540 U.S. 614, 623 (2004)).

As explained above, *supra* Section II.A.2, reissuing certificates on old records is inconsistent with the NGA's purposes, *Minisink*, 762 F.3d at 101, because it undermines orderly gas development, consumer protection, conservation interests, public participation, and interests in finality; therefore, it cannot be done via Section 16.

FERC's action here also is not saved by the fact that courts have given FERC deference in determining whether a specific action is "necessary and appropriate," Rehearing Order P 28 & nn.92, 94 [JA677–JA678] (citing *Appalachian Voices v. FERC*, 139 F.4th 903, 913 (D.C. Cir. 2025)), and determining when to revisit its prior findings on public convenience and necessity and environmental issues, Rehearing Order PP 28 & n.93, 74 & n.270 [JA677, JA707] (citing *Sierra Club*, 97 F.4th 16). FERC must exercise its discretion within the bounds of its Congressionally-granted NGA authority, and a court will not defer to an agency's interpretation of a statute and the limits of its statutory authority. *Loper Bright Enters.*, 603 U.S. at 394. Here, the Court should vacate because FERC's action exceeds its statutory authority.

C. FERC's Unlawful Process Sows Confusion in Other Statutory Schemes.

FERC's unlawful attempt to resurrect a defunct certificate, in addition to causing substantive deficiencies in FERC's NGA and NEPA review of the Project, *see infra* Sections III & IV, creates considerable uncertainty and inefficiencies in the administration of other federal permitting schemes that Section 7 projects often trigger.

Because FERC is the lead agency under NEPA for Section 7 projects, *see, e.g.*, EIS at ES-1 [JA040], other federal agencies such as the U.S. Army Corps of Engineers rely on FERC's environmental review to fulfill their own NEPA obligations, including soliciting public comment, and incorporate FERC's assessment of the project's environmental harms into their substantive decisionmaking. FERC's procedural gymnastics raise questions about how other federal agencies that relied on FERC's NEPA review should proceed when FERC "reissues" a certificate, including whether other agencies' years-old decisions remain valid, whether new applications must be submitted under other permitting regimes, and whether new public comment opportunities are required. These cascading effects further illustrate why FERC's novel practice is at odds with the application process Congress designed for Section 7 projects.

"Reissuance" of a certificate raises numerous questions about the application of Clean Water Act Section 401, which is triggered by an application for a federal approval for a project that may affect a state or tribe's water quality, 33 U.S.C. § 1441. The project proponent must apply to the affected jurisdiction(s) for a certification that its project will comply with water quality standards; a jurisdiction that fails to "act" on the application within one year of receipt waives its authority to review the project. *Id.* Allowing a "petition" to resurrect an expired, vacated NGA certificate has the potential to create tremendous uncertainties around the administration of Section 401, including whether and when a state might waive its authority. These concerns are not academic—in another FERC docket, a Transco corporate affiliate is asking FERC to "reissue" a nearly 12-year-old certificate and determine that the state waived its Section 401 authority in 2015.[3] The chaos FERC's "reissuance" process causes in other federal permitting regimes

[3] 91 Fed. Reg. at 1311.

demonstrates that FERC's new, unlawful process has real-world implications and requiring a new application is not elevating form over substance.

III. FERC's Reissuance of a Certificate Violated NEPA and the Natural Gas Act Because FERC Did Not Adequately Consider the Project's Harms.

NEPA review must always be sufficient "to inform agency decisionmaking," by examining information "relevant to the agency's decision-making process." *Seven Cnty.*, 605 U.S. at 173, 187. FERC may re-use a previous analysis of a project's environmental harms only to the extent that continued reliance on the older information is rational. NEPA requires that FERC supplement its initial EIS and provide for public comment if there are "new circumstances or information that will affect the quality of the human environment in a significant manner or to a significant extent not already considered, …, or that provides a seriously different picture of the environmental landscape." *City of Port Isabel*, 111 F.4th at 1207 (citation modified). An agency must rationally explain the decision whether to undertake a supplemental EIS. *Id.* at 1209. Here, FERC violated NEPA by: (1) justifying the failure to prepare a supplemental EIS on the lack of evidence caused by FERC's refusal to compile an updated record; (2) relying on new analysis of some of the Project's environmental harms without making that analysis available for public comment as part of a supplemental EIS; and (3) failing to update its analysis on other environmental harms and arbitrarily relying anew on dated, suspect findings.

These deficiencies in the NEPA analysis undermined the information about harms that FERC used in its NGA balancing, *City of Oberlin*, 937 F.3d at 602, and to determine which conditions were necessary to attach to the certificate, 15 U.S.C. § 717f(e). The deficient NEPA review rendered FERC's grant of the Reissuance Order arbitrary and capricious. *Vecinos*, 6 F.4th at 1331.

A. FERC Did Not Rationally Explain Why It Did Not Complete a Supplemental EIS.

FERC's justification for failing to complete a supplemental EIS is that it was "appropriate to rely on the Final EIS… to satisfy NEPA requirements for Transco's petition" because all the comments FERC received on the notice of Transco's Petition "reiterate environmental resource concerns identified and addressed in the final EIS." R.10285 [JA378]; *see also* Reissuance Order P 55 [JA476–JA477]; Rehearing Order P 9 [JA665]. FERC, not the commenting public, has the burden of complying with NEPA and collecting the information needed to make a rational determination under the NGA. *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019) ("NEPA also requires the Commission to at least *attempt* to obtain the information necessary to fulfill its statutory responsibilities"). FERC has an independent obligation to fulfill its NEPA duties to the fullest extent possible. *Delaware Riverkeeper Network v. FERC*, 753 F.3d 1304, 1310 (D.C. Cir. 2014). Where FERC never required Transco to provide resource reports documenting current environmental conditions, a lack of information about current environmental harms does not demonstrate that there are no significant new environmental harms. FERC's justification for failing to prepare a supplemental EIS—that commenters had not raised significant new environmental harms—was arbitrary and capricious.

B. NEPA Required FERC to Prepare at Least a Supplemental EIS and to Accept Comment on Its Analysis of New Information.

Despite FERC's claim that there was no evidence of significantly different environmental impacts warranting a supplemental EIS, the Reissuance Order provided analysis and made conclusions that should have been the subject of at least a supplemental EIS and public comment, but were not. The Reissuance Order included FERC's changed assessment of the Project's air quality impacts. The 2019 EIS predicted $PM_{2.5}$ concentrations of 10.0 µg/m^3, but FERC relied on Transco's new modeling purporting to show that Project emissions would not cause exceedances of the new $PM_{2.5}$ National Ambient Air Quality Standard of 9.0 µg/m^3. Reissuance Order PP 82–85 [JA491–JA492]. The Reissuance Order also found that the Project would not violate New Jersey stormwater management and flooding rules adopted after FERC completed the EIS. *Id.* P 73 [JA486–487]. FERC further determined that blasting at a quarry would not cause significant environmental harms despite occurring much closer to the New Jersey compressor station than was anticipated in the 2019 EIS. *Id.* P 103 [JA499]. Additionally, FERC claimed that it updated its cumulative impacts analysis and found only new projects that "were of a similar magnitude and would have similar effects as those addressed in the final EIS." *Id.* P 105 [JA500–JA501]. These types of analysis should have been included in a supplemental EIS, rather than introduced for the first time in an order.

This Court has held that FERC has discretion when determining whether new information is significant enough to require a supplemental EIS, *Sierra Club*, 97 F.4th at 26–27, but FERC must exercise that discretion in a rational way. *City of Port Isabel*, 111 F.4th at 1207–08. For example, this Court held that FERC violated NEPA when it re-evaluated air impacts on communities within a 31-mile radius, rather than a 2-mile radius, using updated environmental and demographic data, without preparing a supplemental EIS. *Id.*

Even under the deferential review standard, FERC's actions here went beyond merely "updat[ing] information about an issue that the agency had already considered adequately and to a similar extent," *id.* at 1208, and therefore required a supplemental EIS. As in *City of Port Isabel*, FERC re-evaluated the Project's air quality impacts using updated modeling and data. *See id.* It also considered the effect of new stormwater rules, new information about the risks of blasting near the compressor station, and updated analysis of the Project's cumulative impacts in combination with new suite of projects.

FERC's failure to provide this analysis in a supplemental EIS subject to public comment violates NEPA. Denying opportunity for public participation is “incongruous with [NEPA’s] approach to environmental protection.” *Marsh v. Or. Nat. Res. Council*, 490 U.S. 360, 371 (1989). The ability to comment on updated information itself is not enough; FERC was required to provide “public comment on its *analysis*.” *City of Port Isabel*, 111 F.4th at 1210–11 (emphasis original).

C. NEPA Required FERC to Prepare at Least a Supplemental EIS to Address Information Undermining Its Prior Analysis.

FERC’s assessment of the Project’s potential water quality impacts was arbitrary and capricious and failed to satisfy its NEPA and the NGA obligations because FERC relied on the 2019 EIS despite significant post-2019 information that undermined the EIS’s conclusions. FERC’s 2019 conclusion that the Project’s significant impacts to water quality could be mitigated, *see* R.6997, P49 [JA192], relied on numerous assumptions about how offshore pipeline construction would impact surrounding water. New York and New Jersey’s 2020 denials of water quality certifications undermined several of these key assumptions, but FERC failed to complete a supplemental EIS addressing this information or rationally justify its failure despite having received public comments that it must consider the states’ intervening findings, *see, e.g.,* R.10021 at 10 [JA377]; R.9921 at 6 [JA375]. Only in the Rehearing Order did FERC attempt to rely on the water quality certifications New York and New Jersey issued months after FERC's Reissuance Order to excuse its failure to issue a supplemental EIS. *See* Rehearing Order PP 76–77 [JA708–JA709].

One undermined assumption in the 2019 EIS was the rate of sediment loss from constructing the in-sea trench. The greater the rate at which digging churns up sediment that then contaminates surrounding water and coats other areas of the sea floor (the "sediment loss rate"), the higher the likelihood that construction will violate water quality standards and contaminate the aquatic and seabed environments. EIS at 2-46, 4-113 [JA115, JA136]. The 2019 EIS assumed a 5% rate of sediment loss from jet trenching—Transco's planned construction technique for 64% of the offshore pipeline, EIS at 3-44 [JA129], but New York found in 2020 that there was no basis for that 5% sediment loss rate. R.7173 at 7 [JA267]. Despite New York's findings, in 2025 FERC did not ask Transco to explain the 5% sediment loss number. FERC also did not explain how it could rely in 2025 on the EIS's conclusion that water quality impacts could be adequately mitigated despite knowing that a key variable underpinning that analysis was, at best, unsubstantiated and, at worst, wrong.

Similarly, FERC's water quality conclusions rested on the 2019 EIS's determination that another construction technique must be conducted at a particular rate to safeguard water quality. EIS at 4-122 [JA__]. FERC's EIS concluded that clamshell dredging at 7,500 cubic feet per hour would cause turbidity and other water quality standard exceedances, but that clamshell dredging at a slower rate could mitigate those impacts. *Id.* In 2020, New York concluded that exceedances were possible even at rates much slower than 7,500 cubic feet per hour. R.7173 at 6–7 [JA266–267]. Again, despite New York's 2020 findings, FERC did nothing in 2025 to update its NEPA analysis or assess what rate would avoid water quality exceedances. FERC also did not evaluate whether a slower rate was even possible given that Transco must avoid construction during certain times of year to protect particular aquatic species. *See, e.g.*, R.10325, Encl. 1 at 7–8 [JA609–JA610]. Nor did FERC analyze how Transco's intention to accelerate its construction timeline, Rehearing Request at 38 [JA545] (citing *Appendix F – Coastal Zone Consistency Assessment New York and New Jersey* in

TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC JOINT APPLICATION TO THE UNITED STATES ARMY CORPS OF ENGINEERS, at 1-3, Tbl.1-2 (May 2025)), might affect the EIS's conclusion that the Project's water quality harms could be adequately mitigated.

The Rehearing Order attempts to excuse FERC's NEPA failings by claiming that the states' 2020 findings were rendered moot by the subsequent issuance of water quality certifications.[4] Rehearing Order PP 76, 79 [JA708, JA710]. The states' later decisions under the Clean Water Act, however, do not absolve FERC of its NEPA obligations.

First, FERC failed to articulate a rational connection between the facts before it and its conclusion that the Project's impacts could be adequately mitigated. *See* Reissuance Order P 58 [JA479–JA480]. That conclusion was based on sediment loss rates that New York's 2020 findings demonstrated had not been substantiated and clamshell dredging speeds that New York's 2020 findings demonstrated might not be adequately protective or even feasible. Without a rational estimate of

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[4] New York and New Jersey's 2025 water quality certifications are being challenged in pending proceedings, *see supra* pp. 13–14, for among other errors, an unjustified and arbitrary change of position under *FCC v. Fox Television Stations, Inc.*, 556 U.S. 502 (2009).

the Project's harms, FERC lacks a rational basis for concluding that those harms could be adequately mitigated. This kind of arbitrary and capricious decision-making does not fulfill FERC's NEPA duties. *NJCF*, 111 F.4th at 54. FERC's NGA analysis is likewise unlawful for basing its assessment of the Project's harms on a deficient NEPA analysis. *Vecinos*, 6 F.4th at 1331.

Second, the states' later issuance of water quality certifications does not cure FERC's NEPA and NGA violations or render those violations harmless. NEPA's goal is to ensure "that relevant information is available to those participating in the agency decision-making." *Nev. v. Dep't of Energy*, 457 F.3d 78, 90 (D.C. Cir. 2006). Whatever conclusions the states reached, none of the analysis the states used to ostensibly justify their reversal of position was available in the FERC docket before FERC issued the Reissuance Order. Participants in that docket never had the benefit of any updated information or analysis on sediment loss rate or the feasible speed of clamshell dredging needed to avoid water quality exceedances. FERC did not ask Transco for updated information. FERC did not wait for the states to complete their updated analysis and incorporate it into its NEPA process. FERC therefore violated NEPA by prejudicing Petitioners' and the public's "ability to comment on the Commission's … analysis." *See City of Port Isabel*, 111 F.4th at 1210. A few sentences in the Rehearing Order do not address this prejudice or provide sufficient opportunity for public input. FERC's analysis of the Project's water quality impacts was therefore arbitrary and capricious both in its substance and because it failed to provide for public comment.

IV. FERC's Analysis of the Need for the Project and Its Benefits Was Arbitrary and Capricious.

In discharging its duty to "encourage the orderly development of plentiful supplies of…natural gas at reasonable prices," while "protect[ing] consumers against exploitation at the hands of natural gas companies," *NJCF*, 111 F.4th at 50, FERC follows a standard process to review Section 7 applications. An application must establish market need to ensure the project will not be subsidized by existing customers. *NJCF,* 111 F.4th at 50 (citing 88 FERC ¶ 61,227; *Myersville Citizens for a Rural Cmty., Inc.*, 783 F.3d 1301, 1309 (D.C. Cir. 2015)). Evidence of market need can include "precedent agreements, demand projections, potential cost savings to consumers, or a comparison of projected demand with the amount of capacity currently serving the market."

NJCF, 111 F.4th at 50 (quoting 88 FERC ¶ 61,747). Courts have upheld FERC's consistent conclusion that precedent agreements are "always…important evidence of demand for a project." *See Minisink*, 762 F.3d at 111 n.10. "However, the mere existence of precedent agreements does not allow FERC to disregard contradictory evidence showing a lack of market need for a project. FERC must consider such contradictory evidence." *NJCF,* 111 F.4th at 60 (citing *Env't Def. Fund v. FERC*, 2 F.4th 953, 972 (D.C. Cir. 2021)).

Establishing market need—through precedent agreements or other evidence—does not end the inquiry. "If FERC finds a market need, it moves on to the second step, where it *must* determine whether adverse impacts are outweighed by public benefits." *NJCF,* 111 F.4th at 50 (emphasis added). "FERC must 'evaluate all factors bearing on the public interest.'" *Id.* (quoting *Atl. Refin. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959)). "A passing reference to relevant factors ... is not sufficient to satisfy the Commission's obligation to carry out reasoned and principled decisionmaking." *Am. Gas. Ass'n v. FERC*, 593 F.3d 14,19 (D.C. Cir. 2010) (citation modified); *see also TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12 (D.C. Cir. 2015) ("It is well established that the Commission must respond meaningfully to the arguments raised before it.") (citation modified). Pointing to record evidence is not enough; "FERC must show its reasoning such that [the court] can conclude that they have sufficiently evaluated the record evidence." *Env't Def. Fund*, 2 F.4th at 966, 975. At every step, "FERC must fully spell out the basis for its decision." *NJCF,* 111 F.4th at 54.

Here, FERC has failed to meet its Section 7 and APA obligations in concluding that the Project is required by the public convenience and necessity. First, FERC arbitrarily and capriciously refused to consider updated modeling showing a far less urgent need for additional gas capacity. Second, FERC arbitrarily and capriciously refused to examine the costs the Project may impose on National Grid customers. Third, FERC arbitrarily and capriciously credited the Project for addressing winter reliability problems that are not caused by gas transmission capacity shortages. FERC failed to articulate a rational basis for rejecting evidence that undermined the Project's need and benefits while accepting evidence that supported it.

A. FERC's Evaluation of the Project's Need and Benefits Was Based on an Arbitrary and Capricious Evaluation of Future Gas Demand.

In evaluating market need and finding that the Project would benefit the downstream gas system, FERC arbitrarily picked and chose between findings in several market studies. FERC arbitrarily adopted 2024 estimates for gas load growth that predicted a regional gas shortfall as soon as 2027 and dismissed updated 2025 growth estimates predicting no shortfall until at least 2041. FERC provided no rational explanation for picking figures that paint a rosier picture of Project need and ignoring figures that do not.

As a threshold matter, although FERC argues that it could have relied entirely on the precedent agreements to establish market need, Rehearing Order P 44 [JA687–JA688], it did not do so. The Reissuance Order relies on multiple market studies submitted by Transco to find that the Project is needed, Reissuance Order PP 27–28 [JA460–JA463], and the Rehearing Order spends multiple paragraphs defending that reliance, Rehearing Order PP 45–53 [JA688–JA694]. In addition, FERC arbitrarily relies on the studies' findings to support its assessment that the Project will benefit downstate gas markets in New York, which it incorporated into its NGA balancing. Reissuance Order PP 27–28, 42 [JA460–JA463, JA470–JA471]; Rehearing Order P 52–53 [JA693–JA694].[5] The existence of precedent agreements, therefore, cannot excuse FERC's arbitrary and capricious treatment of other record evidence.

FERC's handling of the evidence here mirrors FERC's approach in the order overturned in *NJCF*. There, the Court found that FERC adopted findings from market studies supporting the project and rejected contrary findings without rationally justifying its selective treatment of evidence. *See NJCF,* 111 F.4th at 59–60. Here, FERC similarly picked and chose the facts it liked while ignoring facts it did not, without adequate explanation. In particular, FERC's Reissuance Order relied on National Grid's findings based on 2024 forecasting that projected a local gas supply shortfall as early as 2027–2028. *See* Reissuance Order P 27 [JA460–461]. The same findings, however, recognized that updated 2025 forecasting reflected a dramatically

[5] While FERC stated it rejected evidence attached to Petitioners' Rehearing Request, FERC engaged with that same evidence to bolster its conclusions. Rehearing Order PP 44–53 [JA687–JA694]. Once an agency undertakes an inquiry, it must do so in a rational manner. *See Vecinos*, 6 F.4th at 1330.

slower rate of demand growth and projected no shortfall until 2041–42 at the earliest. R.10301, Att. 2 at 13 [JA399].[6] That change of date is significant because 2041 falls at the end of, or after, the Project's expected operational period. The Project's precedent agreements' 15-year terms, Reissuance Order P 5 [JA450], will end between 2040 and 2043, depending on when it begins operating.[7]

Rather than acknowledge the changed picture the 2025 projections provide, FERC refused to abandon the 2024 numbers. FERC instead attacked the 2025 numbers as "preliminary" and claimed it cannot assume that further refinement to the 2025 numbers would

[6] Transco submitted a report containing National Grid's findings based on 2024 forecasting with its August 5, 2025, Answer. That report acknowledged the 2025 forecast, but Transco did not provide FERC the 2025 forecast that was available in National Grid's July 15, 2025 Winter Supply Review. *See* Rehearing Request at 20 [JA527]; Rehearing Request, Ex. A [JA550–JA551]. FERC issued the Reissuance Order before the deadline FERC's rules set for parties to answer Transco's Answer. Petitioners' Rehearing Request attached the 2025 Winter Supply Review and two additional studies that undermine the 2024 forecast, one of which was publicly posted to a New York State Public Service Commission docket related to National Grid's gas needs before FERC issued the Reissuance Order. *See* Rehearing Request, Ex. B at 19 [JA556].

[7] Precedent agreements are not public, but presumably their term begins either upon signature—2025—or when operation begins, which cannot be later than August 2028. *See* Reissuance Order ¶ B(1) [JA505–JA506].

yield numbers inconsistent with the 2024 projections. Rehearing Order P 47 [JA688–690]. But nowhere did FERC explain why it believes that mere "refinement" of the 2025 numbers would move the potential shortfall fourteen years earlier or why the 2025 numbers are not themselves a refinement of the 2024 numbers. FERC also does not engage with evidence that the 2025 forecast's lower growth numbers are not the result of short-term anomalies, but reflect updated macroeconomic inputs and a revised, data-driven forecasting approach accounting for post-COVID consumer and usage trends. Rehearing Request at 21–22 [JA528–JA529]. While FERC claimed elsewhere that it defers to states on questions of gas system planning, FERC here ignores that the New York Public Service Commission found National Grid's 2024 forecasting was "questionable" and instead adopted the 2025 numbers. *See* Rehearing Request at 25 [JA532] (citing *id.*, Ex. D, at 51 [JA563]).

FERC undermined its NGA analysis of the Project's need, its benefits, and how those benefits would outweigh its harms by irrationally relying on 2024 demand estimates predicting a far earlier gas supply shortfall than updated figures support. FERC provided no cogent explanation for ignoring the updated figures. FERC also has not explained how a project serving a need more than a decade from now is required by the public convenience and necessity. Bald assertions that the Project is needed or will produce unspecified "reliability" or other benefit do not suffice to support approval under Section 7 of the NGA or satisfy the APA duty to engage in reasoned decision-making.

B. FERC's Refusal to Consider the Project's Effects on Captive Utility Ratepayers Was Arbitrary and Capricious.

When a Project's shippers are gas utility companies with captive ratepayers, there is a risk that those ratepayers will pay for new gas capacity they will not use. Gas utilities can pass along the cost of new long-term firm gas capacity to their ratepayers in across-the-board rate increases, even when those ratepayers do not need all, or even most, of the new capacity. This Court has recognized the perverse incentive for gas utility shippers to contract for capacity that their customers will pay for and not use, which the company can resell at a profit. *See NJCF*, 111 F.4th at 61. This Court, therefore, has held that FERC must consider this potential when assessing whether a project is required by the public convenience and necessity. *See id.*

Although this case presents the same set of facts that led to the holding in *NJCF*, FERC refused to consider whether the shippers here might be contracting for capacity their ratepayers do not need, and therefore harming those ratepayers. Rehearing Order PP 54–60 [JA694–JA699]. FERC provides arbitrary and capricious reasons for doing so that ignore the holding in *NJCF* and reflect a lopsided evaluation of the Project's harms and benefits.

There are many reasons to be concerned that the dynamic the *NJCF* court noted exists here and is not a "mere possibility" FERC can summarily dismiss, *contra* Rehearing Order P 57 [JA698]. First, according to National Grid's own forecast, the shippers' ratepayers' need for additional capacity will be far lower than previously anticipated. Rehearing Request, Ex. A at 2 [JA551]; Rehearing Request, Ex. B at 19 [JA556]. Any gas supply shortfall these ratepayers might experience in the Project's absence is over a decade in the future, *id.*, meaning that they may be paying for capacity they do not need for years.

Second, the bulk of the benefits modeled in the reports FERC relies on will inure to a different constituency than the one paying for it.

The reports Transco submitted, R.10301 (Attachment 1 & 2) [JA383–JA423], primarily cite benefits to statewide electricity markets, not benefits to the shippers' ratepayers who will pay the increased costs. *See* Rehearing Request at 27 [JA534]. FERC itself emphasized the potential for the Project to benefit gas-generated electricity in the region. Rehearing Order P 53 [JA693–JA694]; Reissuance Order P 31 [JA464].[8] While it is possible that *some* of the Project's benefits to the electric market might trickle down to National Grid's gas ratepayers, there is still the potential for a significant misalignment between the costs these ratepayers shoulder and the benefits they receive.

Third, National Grid has a particular incentive to procure capacity its gas utility customers do not need: its affiliates operate gas-powered electric generation units on Long Island. Rehearing Request at 28 [JA535]. Those units do not currently have access to firm gas capacity and are being increasingly incentivized by their regional independent

[8] FERC states that gas utilities may have many types of customers, including power generators, Reissuance Order P 31 [JA464], but identifies no evidence that any of the two National Grid shippers' customers are power generators. The fact that gas utilities *may* supply electric generators, therefore, has no bearing on whether captive ratepayers here will receive benefits sufficient to offset the harms of increased gas bills.

system operator to procure fuel through more firm arrangements. *Id.* National Grid has all the more reason to claim a need for additional capacity that will actually benefit its electricity generator affiliates.

FERC, nevertheless, refused to examine whether customers who will be forced to pay for the Project need it or will benefit from it enough to offset the costs they will shoulder. FERC's justifications that local gas utilities are excluded from its NGA jurisdiction and that FERC need only consider subsidization by existing pipeline customers, Rehearing Order P 55 [JA695–JA696], badly miss the mark. First, FERC's arguments are inconsistent with binding precedent. This Court has held that the NGA obligates FERC to consider whether this type of arrangement undermines the assumption that precedent agreements demonstrate market need. *NJCF,* 111 F.4th at 60–61. FERC must evaluate the possibility that "a[] [gas utility company's] captive ratepayers might pay for added capacity the [company] does not use to serve those customers." *Id.* at 61. And the Court made clear that FERC must consider this even when unaffiliated entities sign precedent agreements for the majority of the project's capacity. *Compare id. with* Rehearing Order P 57 [JA698–JA699] (arguing that the mere possibility that an event might occur is insufficient to rebut the evidence of need provided by precedent agreements). It also is well-established that the scope of FERC's Section 7 inquiry includes "matters excluded from its direct regulatory jurisdiction." *Sierra Club v. FERC*, 153 F.4th 1295, 1310 (D.C. Cir. 2025).

Second, FERC cannot undertake a lopsided NGA balancing process by considering the Project's benefits to downstream ratepayers but citing FERC's lack of jurisdiction over downstream ratepayers to justify ignoring the Project's harms. FERC extolls the Project's alleged reliability and cost savings benefits for local and state customers, *see, e.g.*, Reissuance Order PP 27–28, 39–40, 42 [JA460–JA463, JA467–JA471]; Rehearing Order PP 48–49, 62–65 [JA690–JA691, JA700–JA702], while steadfastly refusing to consider how the Project may increase local customers' bills. Nowhere did FERC explain why its lack of jurisdiction over local and state gas distribution systems and their customers allows it to consider only factors in favor of the Project. Neither the NGA nor the APA permits an evaluation in which harms are ignored or discounted and benefits credited. *See NJCF*, 111 F.4th at 62–63.

C. FERC's Finding that the Project Will Produce Winter Reliability Benefits Is Arbitrary and Capricious.

FERC relies on the Project's alleged contributions to winter reliability to support its findings that the Project is needed and will benefit the public, Rehearing Order PP 62–65 [JA700–JA702], but ignores how increasing gas capacity cannot solve winter reliability problems caused by gas production failures. No evidence in the record suggests that the Project will address upstream gas production problems. Rehearing Request at 29–30 [JA536–JA537].

FERC attempts to deflect Petitioners' arguments about winter reliability by claiming that the Project's precedent agreements show market need and create a heightened evidentiary burden that Petitioners did not meet. Rehearing Order P 62 [JA700]. However, as discussed above, precedent agreements are persuasive evidence of market need, but they do not save FERC's NGA analysis when FERC evaluates other evidence of market need arbitrarily and capriciously. *NJCF,* 111 F.4th at 60–61. Nor are precedent agreements a get-out-of-jail-free card when FERC's analysis and weighing of the Project's benefits under Section 7 is arbitrary and capricious. *See id.* at 62–63.

FERC failed to rationally establish that the Project will alleviate winter reliability problems because it continues to ignore that the problems are caused by production supplies, not transmission volumes. FERC's own study confirms that gas system failures that occurred during Winter Storm Elliott—a particularly severe winter event in the region—resulted from upstream production problems, *i.e.*, storms knocked out gas well production, causing a lack of supply to fill existing capacity. Reissuance Order P 34 [JA465–JA466]. Increasing the system's gas transmission capacity does not help downstream customers if storms compromise the system's upstream supply sources. In addition, National Grid's reports confirm that it did not, in fact, need more gas during Winter Storm Elliott. Rehearing Request at 30 [JA537]. FERC acknowledges this but points to National Grid's finding that gas service *might* have been compromised if temperatures had been lower "without stabilization of the upstream pipeline network." Rehearing Order P 64 [JA701] (citing R.10301, Att. 2 at 18 [JA404]). FERC continues to lack an explanation for how more transmission capacity will address the lack of stabilization in the upstream pipeline network that occurred during Elliott when FERC knows those failures were due to production problems. In other words, FERC continues to arbitrarily insist that, even when a water well has gone dry, using a bigger hose will somehow help irrigate the garden.

Similarly, FERC continues to claim that the Project will provide winter reliability benefits to the electric sector. Rehearing Order P 65 [JA701–JA702]. This is arbitrary for two reasons. First, as discussed above, if FERC credits the Project for providing reliability benefits to non-jurisdictional facilities, it cannot refuse to consider how the Project imposes costs on non-jurisdictional customers. *See supra* Section IV.B. FERC also cannot credit the Project with creating a statewide benefit for the electric sector without considering how that benefit is being funded by the far smaller constituency of gas ratepayers in National Grid's downstate service territory. *See supra* Section IV.B.

Second, FERC's conclusion ignores evidence undermining the claim that more gas capacity is needed to address electric sector reliability. Studies by the entity responsible for the region's bulk electricity grid and wholesale electricity markets show that there was no electric sector reliability issue in New York during Winter Storm Elliott—the area was actually able to assist neighboring jurisdictions during that time of peak electric demand. Rehearing Request at 30 [JA537]. FERC responds to this fact with the same conclusory statements about pipeline constraints that do not demonstrate that *capacity* limits are to blame for problems caused by *supply* disruptions. *See* Rehearing Order P 65 [JA701–JA702]. FERC also cites a prediction for electric growth in the area by 2040, *id.*, without acknowledging that the Project's operating timeline and associated reliability benefits extend only to approximately 2043, *see supra* p. 56–57. FERC, therefore, does not cogently explain what electric sector reliability benefit the Project would provide and how that benefit weighs against the Project's costs. "[A] passing reference to relevant factors ... is not sufficient to satisfy the Commission's obligation to carry out 'reasoned' and 'principled' decisionmaking." *Am. Gas. Ass'n*, 593 F.3d at 19; *see also TransCanada Power Mktg. Ltd.*, 811 F.3d at 12. FERC's evaluation and weighing of the Project's market need and benefits is arbitrary and capricious and cannot sustain its determination that the Project is required by the public convenience and necessity.

V. This Court Should Vacate the Reissuance Order and Rehearing Order.

Vacatur is the ordinary remedy for arbitrary and capricious agency action. *United Steel v. Mine Safety & Health Admin.*, 925 F.3d 1279, 1287 (D.C. Cir. 2019) (citing 5 U.S.C. § 706(2)). This case presents no reason to depart from that standard practice.

"The decision whether to vacate depends on 'the seriousness of the order's deficiencies (and thus the extent of doubt whether the agency chose correctly) and the disruptive consequences of an interim change that may itself be changed.'" *Allied-Signal, Inc. v. U.S. Nuclear Regul. Comm'n*, 988 F.2d 146, 150–51 (D.C. Cir. 1993) (quoting *Int'l Union, United Mine Workers of Am. v. Fed. Mine Safety & Health Admin.*, 920 F.2d 960, 967 (D.C. Cir. 1990)). The Reissuance Order has serious procedural and substantive deficiencies: it was issued in excess of FERC's statutory authority under the NGA, it was issued without completing a new or supplement EIS as required by NEPA, and FERC's substantive decision that the Project's benefits outweigh its harms is flawed because FERC lacked updated information about the Project's harms and lack substantial evidence demonstrating benefits. *See NJCF*, 111 F.4th at 63–65. Vacatur would not cause substantial disruption because it would preserve the status quo and because FERC has not yet authorized construction of the Project to commence.

CONCLUSION

For the reasons explained above, Petitioners respectfully request that this Court vacate FERC's orders reissuing a certificate for the NESE Project and denying rehearing.

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Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

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CERTIFICATE OF SERVICE

I hereby certify that on this 24th day of July, 2026, I have served the foregoing brief on all registered counsel through the Court's electronic filing system (ECF).

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