ORAL ARGUMENT NOT YET SCHEDULED

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 25-1252

CENTRAL JERSEY SAFE ENERGY COALITION, *ET AL.*,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

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

Respondent-Intervenors

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

FINAL BRIEF OF RESPONDENT-INTERVENORS

Dated: June 12, 2026
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CERTIFICATE AS TO PARTIES, RULINGS, AND RELATED CASES

A. Parties and *Amici*

The parties and intervenors appearing before this Court are as stated in the Coalition's opening brief.

B. Rulings Under Review

- Order Issuing Certificate, *Transcontinental Gas Pipe Line Co., LLC*, FERC Docket Nos. CP17-101-007, CP20-49-001, *et al.*, 192 FERC ¶ 61,184 (Aug. 28, 2025) ("2025 Certificate Order") (R.10307; J.A. 448-507);

- Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *Transcontinental Gas Pipe Line Co., LLC*, FERC Docket Nos. CP17-101-008, CP20-49-002, 193 FERC ¶ 62,060 (Oct. 30, 2025) (R.10321; J.A. 593);

- Order Addressing Arguments Raised on Rehearing, *Transcontinental Gas Pipe Line Co., LLC*, FERC Docket Nos. CP17-101-008, CP20-49-002, 194 FERC ¶ 61,098 (Feb. 9, 2026) ("Rehearing Order") (R.10344, J.A. 661-712).[1]

C. Related Cases

Related cases are described in Respondent's brief.

[1] Although Petitioners cite this order as one being challenged, they did not include it with their petition for review.

RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Federal Rule of Appellate Procedure 26.1 and D.C. Circuit Rule 26.1, Keyspan Gas East Corporation, d/b/a National Grid, and The Brooklyn Union Gas Company, d/b/a National Grid NY (collectively, "The National Grid Gas Delivery Companies"), and Transcontinental Gas Pipe Line Company, LLC ("Transco"), make the following disclosures:

The National Grid Gas Delivery Companies

(1) The Brooklyn Union Gas Company d/b/a National Grid NY ("Brooklyn Union") is a corporation duly organized and existing under the laws of the State of New York, with its principal office located at 2 Hanson Place, Brooklyn, New York, 11217.

(2) KeySpan Gas East Corporation d/b/a National Grid ("KeySpan Gas East") is a corporation duly organized and existing under the laws of the State of New York, with its principal office located at 175 East Old Country Road, Hicksville, New York 11801.

(3) All of the outstanding shares of common stock of Brooklyn Union and KeySpan Gas East are directly or indirectly owned by National Grid USA, as follows:

(A) All of the outstanding shares of common stock of Brooklyn Union are owned by KeySpan Energy Corporation. All of the outstanding shares of common stock of KeySpan Energy Corporation are owned by National Grid USA;

(B) All of the outstanding shares of common stock of KeySpan Gas East are owned by National Grid USA;

(4) All of the outstanding shares of common stock of National Grid USA are owned by National Grid North America Inc. All of the outstanding shares of common stock of National Grid North America Inc. are owned by National Grid (US) Partner 1 Limited. All of the outstanding ordinary shares of National Grid (US) Partner 1 Limited are owned by National Grid (US) Investments 4 Limited. All of the outstanding ordinary shares of National Grid (US) Investments 4 Limited are owned by National Grid (US) Holdings Limited. All of the outstanding ordinary shares of National Grid (US) Holdings Limited are owned by National Grid plc. National Grid plc is a public limited company organized under the laws of England and Wales, with ordinary shares listed on the London Stock Exchange, and American Depositary Shares listed on the New York Stock Exchange. No publicly held corporation

owns more than 10 percent of National Grid plc's outstanding ordinary shares or has any other ownership interest in National Grid plc that is 10 percent or greater.

Transcontinental Gas Pipe Line Company, LLC

Transcontinental Gas Pipe Line Company, LLC, is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce, which owns and operates an interstate natural gas transmission system that extends from Texas, Louisiana, and the offshore Gulf of Mexico area to a terminus in the New York City metropolitan area. Its parent company is Williams Partners Operating LLC. The Williams Companies, Inc., owns 10 percent or more of the limited liability company interest of Williams Partners Operating LLC.

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TABLE OF AUTHORITIES*

FEDERAL CASES

* Cases chiefly relied upon are marked with an asterisk.

ADMINISTRATIVE CASES

STATUTES, REGULATIONS, AND ORDERS

GLOSSARY

μg/m³	Micrograms Per Cubic Meter
2019 Certificate Order	*Transcontinental Gas Pipe Line Co., LLC*, FERC Docket No. CP17-101-000, 167 FERC ¶ 61,110 (2019) (R.6997; J.A. 174-232).
2021 Extension Order	*Transcontinental Gas Pipe Line Co.*, 175 FERC ¶ 61,148 (2021) (R.8753; J.A. 304-312).
2024 Extension Order	*Transcontinental Gas Pipe Line Co.*, 186 FERC ¶ 61,038 (2024) (R.8877; J.A. 313-326).
2024 FERC Report	FERC, *2024 State of the Markets* (Mar. 20, 2025), https://www.ferc.gov/news-events/news/SMR-2024, (J.A. 716-719).
2025 Certificate Order	*Transcontinental Gas Pipe Line Co., LLC*, FERC Docket Nos. CP17-101-007, CP20-49-001, *et al.*, Order Issuing Certificate, 192 FERC ¶ 61,184 (2025) (R.10307; J.A. 448-507).
Application	Transcontinental Gas Pipe Line Co., LLC, FERC Docket Nos. CP17-101-000, Application for Certificate of Public Convenience and Necessity (Mar. 27, 2017) (R.1407; J.A. 013-035).
Certificate Policy Statement	*Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 ("Certificate Policy Statement"), *corrected*, 89 FERC ¶ 61,040 (1999), *order on clarification*, 90 FERC ¶ 61,128, *further clarified*, 92 FERC ¶ 61,094 (2000).
Coalition (or Petitioners)	Collectively, Petitioners 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
Draft EIS	NESE Project, Docket No. CP17-101-000, Draft Environmental Impact Statement, (Mar. 23, 2018) (R.4630; J.A. 039-051).
EA	Environmental Assessment (Apr. 2020) (R.7171; J.A. 237-260).
EA Report	Environmental Assessment Report (July 11, 2025) (R.10285; J.A. 378).
EIS	Environmental Impact Statement
EPA	Environmental Protection Agency
FERC or Commission	Respondent Federal Energy Regulatory Commission
FERC Br.	Brief for Respondent, Federal Energy Regulatory Commission, No. 25-1252 (D.C. Cir. June 5, 2026).
Final EIS	Northeast Supply Enhancement Project, Docket No. CP17-101-000, Final Environmental Impact Statement (Jan. 25, 2019) (R.6939; J.A. 052-172).
J.A.	Citations to the Joint Appendix.
Addendum	National Grid, *Final Gas System Long-Term Plan Addendum* (July 2, 2025), submitted as Addendum to Transco Answer to Protests (Aug. 5, 2025) (R.10301; J.A. 387-423), https://www.nationalgrid.com/document/562061/download.
NEPA	National Environmental Policy Act, 42 U.S.C. §§ 4321-4370h
NESE	Northeast Supply Enhancement

New York Commission	New York Public Service Commission's
NGA	Natural Gas Act, 15 U.S.C. §§ 717, *et seq.*
NPCC Study	Northeast Power Coordinating Council, *Northeast Gas/Electric System Study* (Jan. 21, 2025) (J.A. 713-715), https://cdn.prod.website-files.com/67229043316834b1a60feba3/678fee912264907c381a0f68_NPCC%20Northeast%20Gas%20Electric%20System%20Study.pdf.
NYPSC Order	*N.Y. Pub. Serv. Comm'n*, In re Review of the Long-Term Gas System Plan, Case 24-G-0248, Order (Sept. 18, 2025) submitted as Exhibit D to the Coalition's Rehearing Request (Sept. 29, 2025) (R.10316; J.A. 559-592).
OB	Proof Opening Brief of Petitioners, No. 25-1252 (D.C. Cir. Apr. 3, 2026).
Open Season	An "open season" is a formal solicitation process used to determine market interest for new projects or capacity expansions.
P or p.	Citations to paragraphs or pages, respectively, in orders of the Federal Energy Regulatory Commission.
Petitioners	Collectively, 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.
Pipeline Loop	A pipeline loop is a segment of pipe installed adjacent to an existing pipeline and connected to it at both ends, allowing more gas to move through the system.

PM2.5	PM2.5 stands for inhalable particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.
Project	Northeast Supply Enhancement Project
Rehearing Request	Request for Rehearing of Central Jersey Safe Energy Coalition, *et al.*, Docket Nos. CP17-101-007, CP20-49-001 (Sept. 29, 2025) (R.10316; J.A. 508-549).
Rehearing Order	*Transcontinental Gas Pipe Line Co., LLC*, FERC Docket Nos. CP17-101-008, CP20-49-002, Order Addressing Arguments Raised on Rehearing, 194 FERC ¶ 61,098 (2026) (R.10344; J.A. 661-712).
Reissuance Petition	Transcontinental Gas Pipe Line Co., LLC, FERC Docket Nos. CP17-101, CP20-49, Petition for Expedited Reissuance of Certificate Authority (May 29, 2025) (R.8889; J.A. 330-358).
Shippers	Together, KeySpan Gas East Corporation d/b/a/ National Grid, and The Brooklyn Union Gas Company d/b/a National Grid NY, distribution companies serving customers in New York City and on Long Island.
Transco	Respondent-Intervenor Transcontinental Gas Pipe Line Company, LLC and Project Applicant.

INTRODUCTION

The pipeline expansion project at issue in this appeal started with the need for more natural-gas pipeline capacity in New York: for New York's plans to improve air quality by converting fuel-oil heating systems, for the diversification of supply paths to strengthen reliability, and for growing commercial and residential market demand during peak periods. That such need exists is evidenced by binding precedent agreements Transco, the Project applicant, has with two shippers (unaffiliated with Transco) in which the Shippers have twice now over a period of eight years agreed to acquire 100 percent of the Project's created capacity. Project need is further demonstrated by the support of the New York Public Service Commission, credible market studies, and other evidence.

In 2019, following a robust three-year public process and environmental review, FERC granted Transco's application for a certificate of public convenience and necessity which, as is typical, was conditioned on, among other things, obtaining the necessary state water-quality certifications. Despite diligent effort, Transco was unable to obtain the necessary state certifications by FERC's deadline; it therefore allowed the certificate to expire in 2024.

About one year later, based on a heightened energy crisis (including the near-catastrophic impacts of Winter Storm Elliott in New York) and presidential executive orders prioritizing energy projects such as the one at issue here, Transco reinitiated its pursuit of water-quality certifications and petitioned FERC to "reissue" the expired certificate based on the complete application and record already before the agency, along with supplemental evidence and information. After providing public notice, responding to public comments, and considering Transco's supplemental materials, FERC concluded a supplemental EIS was not required, granted Transco's petition, and issued a new certificate.

The Coalition claims FERC lacked authority to reissue an invalid certificate based on a petition, but that is not what FERC did. FERC issued a new certificate based on Transco's *completed Application* as supplemented by additional evidence, information, and public process. Far from shirking its statutory obligations, as the Coalition suggests, FERC appropriately exercised its statutory and regulatory authority to comply with its obligations under the NGA and NEPA.

JURISDICTIONAL STATEMENT

Intervenors agree with FERC's jurisdictional statement.

STATUTES AND REGULATIONS

Except for the executive orders included in the statutory addendum to this brief, the applicable statutes, regulations, and authorities are contained in the briefs of petitioner and respondent.

STATEMENT OF THE ISSUES

Respondent-Intervenors adopt the Statement of the Issues set forth in FERC's Brief.

STATEMENT OF THE CASE

Respondent-Intervenors agree with FERC's Statement of the Case and offer the following supplemental information:

I. Development of the Project and issuance of 2019 Certificate Order.

A. Transco proposes the Project and obtains precedent agreements for 100 percent of the Project's capacity.

By 2016, the Shippers had forecasted significant increased need for natural-gas service in the New York City area. Final EIS at 1-3 (J.A. 094). That need stemmed from New York's plan to convert fuel-oil energy sources to natural gas, increased customer demand during peak periods, and the need to improve reliability of New York City's natural-gas supply path by providing a second pipeline along a key route currently served by a single pipeline. *Id.*

In response, Transco proposed the Project to provide an incremental increase in pipeline capacity of up to 400,000 additional dekatherms per day. 2019 Certificate Order at P 1 (J.A. 174). The various components of the Project are described in FERC's orders and brief, FERC Br. at 10-11. *See* 2025 Certificate Order at PP 4-5 (2025) (J.A. 449-450). Transco entered into two 15-year binding precedent agreements with the Shippers for 100 percent of the Project's capacity. *Id.*

B. Transco obtains public input and applies for a certificate.

Before applying for the certificate, Transco engaged in extensive public and agency outreach. Application at 11-12 (J.A. 025-026). In April 2016, Transco began contacting stakeholders and, on May 9, 2016, formally requested FERC staff initiate a pre-filing review of the Project. *Id.* Transco then met with and received input from FERC staff; federal, state, and local agencies; and the public. *Id.* It held four open-house meetings in June 2016 at four locations near the proposed Project to solicit feedback on route selection and answer questions. *Id.*

Transco also participated in FERC staff's on-site environmental review and held mini-open-house meetings. It established a public Project website, Facebook page, Twitter account, phone number and email support address, and a newsletter. *Id.* at 12-13 (J.A. 026-027). It also sent letters to federal and state agencies inviting them to participate in the process. Based on feedback it received, Transco developed a preferred route designed to minimize impacts on communities and the environment. *Id.* at 13 (J.A. 027). Transco also evaluated 20 potential sites for the Projects' new compressor station. *Id.*

On March 27, 2017, Transco submitted its Application for a certificate of public convenience and necessity under Section 7(c) of the NGA, 15 U.S.C. § 717f(c). The Application included all the information Section 7 requires, including extensive environmental resource reports. Rehearing Order P 24 (J.A. 675); *see generally* Application (J.A. 013-035).

C. FERC staff prepares an EIS for the Project.

FERC staff notified federal and state agencies, affected landowners, public interest groups, and other stakeholders that it was preparing an EIS for the Project. Final EIS at ES-2 (J.A. 077); NESE Project, Notice of Intent to Prepare an EIS (Aug. 24, 2016) (R.276; J.A. 001-012).

The Draft EIS addressed a wide range of environmental considerations, including the Project's potential impacts on geology, soils, groundwater, surface water, wetlands, vegetation, fisheries, wildlife, special status species, land use, cultural resources, air quality, and noise, as well as the Project's reliability and safety, and any cumulative impacts. Draft EIS at 4-1 (J.A. 045). The Draft EIS concluded that if Transco implemented its proposed mitigation measures and FERC's recommendations, "all Project effects would be reduced to less-than-significant levels." *Id.* at ES-13, 5-1 (J.A. 042, 049). In response to the Draft EIS, 1,765 commenters submitted a total of 2,245 letters. Final EIS at ES-2 (J.A. 077).

On January 25, 2019, FERC issued a Final EIS in which it responded to all substantive comments it had received. *See id.* Relevant here, the Final EIS responded to comments on the Project's effects on Raritan Bay, including water quality, fish and wildlife habitat, and recreational and socioeconomic impacts. *Id.* at 4-246, 4-253, 5-18, and 5-19 (J.A. 142, 149, 167, and 168). It also addressed comments on wildlife and vegetation impacts, population and traffic, air quality, noise impacts, public safety, cumulative impacts, climate change, alternatives for the location of the new compressor station (Compressor Station 206), and effects on EPA's groundwater remediation efforts at the Higgins Farm Superfund site. *Id.* at 4-250–4-251, 5-3–5-4, and 5-27 (J.A. 146-147, 163-164, and 171). The Final EIS affirmed the Draft EIS's conclusion that, with the required mitigation, the Project would not have a significant environmental impact. *Id.* at 3-8, 3-12 (J.A. 122, 126).

D. FERC issues the 2019 Certificate Order.

On May 3, 2019, FERC issued the Certificate Order. 2019 Certificate Order (J.A. 174-232). FERC found that the 15-year precedent agreements sufficiently demonstrated market demand. *Id.* at P 16 (J.A. 178). FERC also found the Project would have minimal impacts on Transco's existing customers, other pipelines, and landowners. *Id.* at PP 15, 17 (J.A. 178, 178-179). Finally, FERC concluded that so long as the Project is constructed and operated consistent with FERC's Final EIS, it is an "environmentally acceptable action." *Id.* at P 91 (J.A. 207). On rehearing, FERC reached the same result. Rehearing Order at P 2 (J.A. 661-662).

II. Transco allows the 2019 certificate to expire.

After receiving its certificate, Transco diligently pursued the Project and sought state water-quality certifications under Section 401 of the Clean Water Act, 33 U.S.C. § 1341. Per the 2019 Certificate Order, Transco had to receive 401 certifications from three State environmental protection agencies: New York, New Jersey, and Pennsylvania. *See* 2019 Certificate Order at App. A (J.A. 210-219). Pennsylvania granted water-quality certification, while New York and New Jersey denied certification. Reissuance Petition at 1 n.3, 5-7 (J.A. 331, 335-337); 2025 Certificate Order at P 7 (J.A. 450-451).

Due to these denials and the need for continued discussion, Transco sought and received two Project construction extensions. 2021 Extension Order (J.A. 304-312); 2024 Extension Order (J.A. 313-326). In both orders, FERC noted that the 2019 Certificate Order's public-interest findings and environmental analysis were still valid, as no challenger had identified changes in fact or law that would require FERC to reconsider. 2021 Extension Order at PP 14, 17 (J.A. 310, 311); 2024 Extension Order at PP 19, 23-25 (J.A. 321-322, 323-324).

Under these orders, Transco had until May 3, 2024, to complete construction. FERC warned, however, that Transco would not receive another extension unless it showed progress toward obtaining the missing water-quality certifications. 2024 Extension Order at PP 17, 26

(J.A. 320-321, 324). On April 10, 2024, Transco informed FERC it planned to let the Project's certificate expire. Email from Nick Kirkhorn, Williams, to FERC Staff, Docket No. CP17-101 (Apr. 11, 2024) (R.8880; J.A. 327). Accordingly, on June 10, 2024, FERC issued an order vacating the Project's certificate. *Transcon. Gas Pipe Line Co.*, 187 FERC ¶ 61,145 (2024) (R.8887; J.A. 328-329). Without a current certificate, the precedent agreements automatically terminated.

III. Transco petitions for reissuance.

A. Increasing need and a shift in national policy prompt Transco to seek reissuance based on its Application as supplemented.

In the year following Transco's decision to let its certificate expire, two major developments prompted it to seek reissuance. First, significant pipeline constraints in the New York market caused an increase in natural-gas prices and threatened reliability for the region. *See* NPCC Study (J.A. 713-715); 2024 FERC Report (J.A. 716-719).[2]

Second, on January 20, 2025, the President issued Executive Order 14156, *Declaring a National Energy Emergency*, which recognized the Nation's "insufficient energy production, transportation, refining, and

[2] FERC linked to and cited these documents. 2025 Certificate Order at P 28 (J.A. 462-463); Rehearing Order at P 11 (J.A. 665-667).

generation constitutes an unusual and extraordinary threat to our Nation's economy, national security, and foreign policy." Exec. Order 14156 § 1. The President also issued Executive Order 14154, *Unleashing American Energy*, directing the White House Director of the National Economic Council and the Director of the Office of Legislative Affairs to prepare recommendations to "facilitate the permitting and construction of interstate energy transportation and critical energy infrastructure, including, but not limited to, pipelines, particularly in regions of the Nation that have lacked such development in recent years." Exec. Order 14154 § 5(e)(1).

Given Transco's unique position as a pipeline operator in the Northeast, the location of its existing facilities, the pressing need for pipeline capacity, and that it had developed a substantial record in support of its recently lapsed certificate, Transco determined the Project would be the most economically and environmentally effective way to resolve critical pipeline constraints in the New York region and, given the President's declaration, would be worth once again pursuing. Reissuance Petition at 7-12 (J.A. 337-342).

B. The Shippers agree to negotiate new precedent agreements for 100 percent of the Project's capacity.

Transco contacted the Shippers, who confirmed an ongoing substantial need for natural-gas pipeline capacity and recommitted to negotiating precedent agreements for the Project's entire capacity. In a report provided to FERC, the Shippers explained that the Project is "the only material near term proposal . . . to address Downstate New York's looming energy system resilience crisis." Addendum at 9 (J.A. 395). They further explained that the Project would, among other benefits, "reduce reliance on single points of failure, address a potential near-term supply shortfall, lessen dependence on trucked gas operations, and help address electric system supply deficiencies." *Id.*

C. Transco files its petition.

On May 29, 2025, Transco filed the Reissuance Petition pursuant to Rule 207 of FERC's rules of practice and procedure, 18 C.F.R. § 385.207 (2026), and Section 7(c) of the NGA, 15 U.S.C. § 717f(c). Transco asked FERC to expedite reissuance of the Project's certificate by adopting the existing record, as supplemented by updated information Transco would provide. Reissuance Petition at 2, 20 (J.A. 332, 350).

In addition to the anticipated precedent agreements and the President's executive orders, Transco cited the NPCC Study concluding that "the existing gas infrastructure" in downstate New York "is unable to meet demand for most [natural-gas-fired electric] generators during a cold snap." *Id.* at 8 n.24 (J.A. 338) (citing NPCC Study at 5 (J.A. 715)). Transco also cited the 2024 FERC Report, which found that, since 2023, natural-gas prices in New York had increased by 14 percent while prices at almost every other major natural-gas trading hub had decreased. *Id.* at 9-10 (J.A. 339-340) (citing 2024 FERC Report at 17 (J.A. 719).

Transco's Reissuance Petition was limited to the same Project FERC had previously authorized without any changes to its purpose, scope, or impacts. Reissuance Petition at 4 (J.A. 334).

IV. After providing public process, FERC issues a new certificate based on the Application, as supplemented.

A. FERC provides public notice and considers supplemental evidence and information.

FERC promptly issued a Notice of Petition inviting public comments on Transco's request for reissuance. Notice of Reissuance Petition (June 3, 2025) (R.8892; J.A. 362-367). FERC also asked Transco for supplemental information, including: (i) updated operating conditions and flow diagrams, (ii) updated permit statuses, and

(iii) updated air emission analysis. (R.8891; J.A. 359-361; R.8927; J.A. 368-373). On July 11th, 2025, FERC Staff issued the EA Report, explaining that the comments it had received "reiterate environmental resource concerns identified and addressed in the final EIS, as amended by the EA." EA Report (R.10285; J.A. 378) (citing EA (R.7171; J.A. 237-260)).

B. FERC issues the 2025 Certificate Order.

On August 28th, 2025, FERC granted Transco's Reissuance Petition and issued a certificate of public convenience and necessity based on Transco's Application, as supplemented. 2025 Certificate Order, (J.A. 448-507). FERC found that the renewed precedent agreements provided "significant evidence of market need" for the Project. *Id.* at P 26 (J.A. 459-460). FERC also "continue[d] to find that, consistent with [FERC policy] and NGA [S]ection 7(c), the public convenience and necessity requires approval of the project." *Id.* at P 45 (J.A. 472).

In response to comments that it lacked authority to "reissue" a certificate, FERC reasoned it had analyzed the 2025 Certificate Order using the same criteria it would have used for a new application, provided the same amount of time for comments, and considered comments submitted after that period closed. *See id.* at P 15 (J.A. 454-455).

On Project need, FERC found that the new binding precedent agreements with unaffiliated shippers for 100 percent of the Project's capacity were the best evidence. *Id.* at P 26 (J.A. 459-460). FERC also noted submitted reports showing a critical need for infrastructure to serve New York City, the recent market studies Transco had cited, and that Transco would impose a higher incremental rate for service utilizing the added capacity, thereby ensuring the Project would not be subsidized by existing customers. *Id.* at PP 25, 28 (J.A. 459, 462-463).

On environmental impacts, FERC noted it had completed an EIS in 2019 and that issues commenters had raised in response to the Reissuance Petition were sufficiently addressed through that prior process. *Id.* at PP 49-52 (J.A. 473-475). Regarding the still-outstanding water-quality permits, FERC noted that Environmental Condition 10 requires Transco to file documentation of all authorizations required under federal law, including the water-quality certifications, before starting construction. *Id.* at P 72 (J.A. 486). FERC also imposed a new Environmental Condition 4 requiring Transco to file its water-quality certifications within five days of receipt, and to seek written approval prior to construction for any revisions to the Project's design necessary to comply with those certifications. *Id.*

In response to the Coalition's Rehearing Request, FERC issued an updated order reaching the same result. *See* Rehearing Order at P 74 (J.A. 706-707). FERC declined to accept untimely reports attached to the request and noted why, in any event, that information was insufficient to outweigh the precedent agreements. *Id.* at P 15 (J.A. 668-670). FERC further reasoned that other issues Petitioners raised would be addressed through permitting, and all permitting conditions would become mandatory Project conditions. *Id.* at PP 77-79, 81 (J.A. 708-710, 711).

V. New York and New Jersey grant water-quality certifications

Transco continued working toward obtaining its water-quality certifications and all three states—New Jersey, New York, and Pennsylvania—ultimately provided those certifications. The certifications of New York and New Jersey are being challenged in the U.S. Court of Appeals for the Second Circuit and Third Circuit, respectively. *See Raritan Baykeeper, Inc. v. New York State Dep't of Environmental Conservation*, Case No. 25-2038 (2d Cir.); *Natural*

Resources Defense Council, Inc., et al. v. New Jersey Dep't of Environmental Protection, Case No. 26-1252 (3d Cir.); *NY/NJ Baykeeper, et al. v. New Jersey Dep't of Environmental Protection*, Case No. 26-1253 (3d Cir.).

STANDARD OF REVIEW

Respondent-Intervenors agree with FERC's description of the applicable standards of review.

SUMMARY OF ARGUMENT

The 2025 Certificate Order properly grants Transco's Application, as supplemented by its Reissuance Petition and updated materials. The procedure here was consistent with the NGA, FERC's regulations and policies, and its statutorily mandated obligation to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices" after finding the certificate required by the public convenience and necessity. *NAACP v. FPC*, 425 U.S. 662, 669-70 (1976).

The Coalition's contention that FERC acted arbitrarily when it found public need cannot be reconciled with the fact that, on two separate occasions eight years apart, unaffiliated shippers entered into precedent agreements for 100 percent of the Project's capacity. That is compelling evidence of public need. Public need is further corroborated by the New York Public Service Commission's ("New York Commission") findings and studies the Shippers completed for New York and provided to FERC demonstrating the Project will resolve critical pipeline constraints, enhance the reliability of the electric grid, and help ensure customers receive natural gas during times of peak demand. The Coalition's argument that these studies undercut Project need reflects a gross misreading of the studies.

Finally, FERC complied with NEPA. Most of the arguments the Coalition makes on this point were not raised in the Rehearing Request and are forfeited. Nonetheless, their arguments also fail on the merits. If this Court finds otherwise, it should remand without vacatur.

ARGUMENT

I. FERC's process complied with the NGA.

The Coalition's claim that FERC exceeded its statutory authority by giving legal effect to an expired certificate misrepresents the record. OB 15-16. FERC did not give legal effect to an expired certificate. Instead, in response to Transco's Reissuance Petition, FERC issued a new certificate based on Transco's fully completed Application, as supplemented by updated information and additional public process. In doing so, FERC provided the same time for public notice and comment it typically provides for new applications.

A. There is no legal support for the Coalition's claim that vacating a certificate invalidates the underlying Application or record.

The Coalition's argument on this point necessarily turns on a single false and unsupported premise: that FERC lacks authority to consider or act on an application once a certificate based on that application has been vacated or has otherwise expired. Under the NGA, FERC has "broad authority so as to do equity consistent with the public interest," *Columbia Gas Transmission Corp. v. FERC*, 750 F.2d 105, 109 (D.C. Cir. 1984), and may "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," *Niagara Mohawk Power Corp. v. FERC*, 379 F.2d 153, 158 (D.C. Cir. 1967). The Coalition has not identified—and cannot identify—any terms of the NGA, FERC regulations, or relevant precedent prohibiting FERC from considering a valid and complete application simply because the agency vacated a previously issued certificate based on that application.

As FERC reasonably explained, the Coalition's position is also irreconcilable with FERC's statutory authority to issue new certificates after a court vacates an existing certificate and remands for further proceedings. The Coalition attempts to distinguish court remands from what occurred here on grounds these proceedings were no longer "ongoing." OB 32-33. But the Coalition identifies no language in any statute or regulation that ties FERC's authority to the "ongoing" nature of a proceeding. The crux of the Coalition's argument is that by vacating the initial certificate, FERC implicitly vacated the Application and record on which it was based and could no longer consider them; but there is no such limitation in the NGA or FERC's regulations. Instead, FERC regularly acts on applications after certificates are vacated. *See, e.g.*, *Spire STL Pipeline, LLC*, 181 FERC ¶ 61,232, at P 20 (2022) (reissuing vacated certificate based on existing record, as supplemented); *see also Transcon. Gas Pipe Line Co.*, 190 FERC ¶ 61,048, *order on reh'g*, 192 FERC ¶ 61,134 (2025); *Fla. Se. Connection, LLC*, 162 FERC ¶ 61,233, *order denying reh'g*, 164 FERC ¶ 61,099 (2018).

The Coalition again contends remands are different because when a court issues a remand order it describes issues FERC must revisit.

OB 32. This appears to be an argument about sufficiency of notice, but, in that respect, a court order does not meaningfully differ from FERC's public notice on Transco's Reissuance Petition, which provided the same amount of notice FERC would have given for a new application and in response to which FERC received thousands of comments. Rehearing Order at P 33 (J.A. 681-682).

The Coalition avoids grappling with a lack of legal authority by citing statutory requirements for completed applications and argues that the "Reissuance Petition" did not meet those requirements. OB 24-25. As a preliminary matter, petitions do not have to meet the requirements of an application. Under FERC's Rules of Practice and Procedure, persons "must" file petitions when seeking "action which is in the discretion of the Commission and for which this chapter prescribes no other form of pleading." 18 C.F.R. § 385.207(a)(5). That is precisely what Transco did.

But, more fundamentally, the Coalition's description of what occurred here is contrary to the record. FERC did not treat the Reissuance Petition as an application. Instead, it "acted on Transco's 2017 Application," and based its decision "on the full record then before us, pursuant to our authority under Section 7(c) of the NGA." Rehearing

Order at P 22 (J.A. 674). FERC also noted, and the Coalition does not disagree, that the Application "as amended and supplemented, contained all the information required by our regulations, including all the necessary resource reports." *Id.* at P 24 (J.A. 675). Because FERC acted on a complete application, as supplemented, in accordance with its statutory obligations, the Coalition's arguments necessarily fail.

B. FERC satisfied the NGA's purpose.

The Coalition claims FERC's process was inconsistent with the NGA's basic purpose, but the Coalition failed to raise this argument in its Rehearing Request and is therefore precluded from raising it here. *See* Rehearing Request (J.A. 508-549); *Food & Water Watch v. FERC*, 104 F.4th 336, 348 (D.C. Cir. 2024) ("The Natural Gas Act prohibits us from considering any objection that was not urged before FERC in a petition for rehearing." (citing 15 U.S.C. § 717r(b)).

Nonetheless, the Coalition argues for the first time that FERC conducted a "haphazard, novel process" inconsistent with the purpose of the NGA. OB 25-27. Like the prior argument, this argument rests on a misrepresentation of the record. Contrary to "haphazard" and "novel," as detailed in its brief, Resp. Br. 11-21, FERC provided an orderly and statutorily compliant process over the course of nearly a decade. In total, FERC issued at least eight notices soliciting public involvement and comments on the Project. Nothing about that process was "mishmash" or "ad hoc," as further evidenced by the fact that the Coalition knew about and actively participated in it.

The Coalition's arguments also conflict with FERC's reasoning, which explicitly considered the NGA's purpose. For instance, FERC said "'casting aside' Transco's [Reissuance] Petition 'based on the particular label affixed to it' as [the Coalition] would apparently have us do, would improperly 'elevate form over substance,'" contrary to the NGA's purpose. Rehearing Order at P 25 (J.A. 675-676) (quoting *Liu v. SEC*, 591 U.S. 71, 76 n.1 (2020)) (cleaned up).[3] Indeed, relying on an established robust project record aligns with the NGA's "principal purpose," which is to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices." *NAACP*, 425 U.S. at 669-70.

[3] The Coalition also argues that allowing FERC to rely on the 2017 Application would create chaos, uncertainty, and a slippery slope whereby applicants may bypass public notice and FERC processes by filing a petition in lieu of an application. Petitioners did not raise these arguments before FERC, so they are forfeited. *Food & Water Watch*, 104 F.4th at 348. Regardless, there was no bypass or shortcut here.

C. FERC complied with its Certificate Policy Statement.

The Coalition also contends FERC's process failed to comply with its Certificate Policy Statement, but that is incorrect. OB 27-31. FERC devoted several pages of the 2025 Certificate Order to the Certificate Policy Statement and, in its Rehearing Order, explained why it still agreed with that analysis. 2025 Certificate Order at PP 22-45 (J.A. 458-472); Rehearing Order at PP 11, 29-31, 43, 55 (J.A. 665-667, 679-681, 687, 695-696). In doing so, FERC also explained that it applied the Certificate Policy Statement "using the same criteria that would have been used had Transco filed a new application." 2025 Certificate Order at P 14 (J.A. 453-454).

To meet the threshold, no-subsidy requirement, Transco proposed charging an incremental recourse rate to recover the costs of the Project, which FERC approved and the Coalition does not contest. *See id.* at P 25 (J.A. 459). Transco had also obtained most of the onshore permanent right-of-way needed for construction and operation and was working closely with landowners to obtain property rights required for temporary workspace. *Id.* at P 44 (J.A. 471-472). Under these circumstances, issuing a new certificate to Transco based on the Project's Application, as supplemented, and FERC's record, is entirely consistent with FERC's Certificate Policy Statement. *See id.* at P 45 (J.A. 472); FERC Br 6-7, 34-39.

The Coalition also cites FERC regulations for extending existing certificates to suggest the 2025 Certificate Order functions as an "extension" of the original certificate beyond its expiration deadline in violation of the Certificate Policy Statement, OB 28-29 (citing 18 C.F.R. § 385.2008(a)), but Transco did not request FERC to, and FERC did not, "extend" deadlines for an existing certificate. Instead, FERC took a fresh look at the Application, the record it previously developed, and the Reissuance Petition, as supplemented, and applied the Certificate Policy Statement anew.

II. Substantial evidence supports FERC's finding of public need.

The Coalition claims FERC's finding of public need was arbitrary and capricious, but on two separate occasions eight years apart, shippers unaffiliated with Transco executed binding agreements for 100 percent of the Project's capacity. As a matter of legal precedent, those agreements—absent credible evidence of self-dealing—were powerful evidence of market need for the Project. They also undercut the

Coalition's challenges to the reliability of various market studies presented in support of Transco's Application. FERC also recognized the Project's reliability and system-enhancement benefits, as has the New York Public Service Commission. NYPSC Order at 55-83. (J.A. 564-592). Given the indisputable need, FERC's finding cannot be arbitrary and capricious.

A. The precedent agreements were sufficient.

Courts have consistently held that precedent agreements such as those executed here are the best evidence of need under the NGA. *See e.g., Gas Trans. Nw., L.L.C. v. FERC*, 157 F.4th 674, 705 (5th Cir. 2025); *Township of Bordertown, N.J. v. FERC*, 903 F.3d 234, 262 (3d Cir. 2018) (citing *Myersville Citizens for a Rural Comm. v. FERC*, 183 F.3d 1301, 1311 (D.C. Cir. 2015)). That makes sense because, "[i]f there were no objective market demand for the additional gas, no rational company would spend money to secure the capacity." *Township of Bordertown*, 903 F.3d at 262. Accordingly, FERC policy recognizes precedent agreements as the "best evidence that the service to be provided by the project is needed to connect supply and demand." 2025 Certificate Order at P 26 J.A. 459-460).

FERC generally does not look beyond precedent agreements to assess need by other means unless there is credible, contrary evidence discounting their probative value, such as evidence of self-dealing between corporate affiliates. *Transcon.*, 190 FERC ¶ 61,048 at PP 29, 33 (citing *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 60 (D.C. Cir. 2025) and *Env't Def. Fund v. FERC*, 2 F.4th 953, 975 (D.C. Cir. 2021)). Once precedent agreements are presented, the burden is on the challenger to produce such contrary evidence. Unsupported assumptions, hypotheticals, and bare assertions are "not sufficient." *Transcon.*, 190 FERC ¶ 61,048 at P 30. In this case, the Coalition cannot meet its burden because it failed to produce evidence discounting the probative value of the agreements.

The Coalition points to various market studies it submitted for the first time with its Rehearing Request and claims projections in those studies show the natural-gas market does not require 100 percent of the Project's capacity. OB 55-56.[4] As stated in FERC's brief, this argument is waived. FERC Br. 40-44.

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[4] The Coalition complains it lacked sufficient time to answer Transco's answer to its protest, OB 12 (citing 18 C.F.R. § 385.213(d)(2)(ii)), but FERC regulations prohibit answers to answers. 18 C.F.R. § 385.213(a)(2).

FERC also reasonably explained why the portions of the market studies cherry-picked by the Coalition failed to outweigh the precedent agreements. For example, FERC noted that the Coalition had focused narrowly on a single study addendum's slower rate of regional natural-gas demand growth. Rehearing Order at P 48 (J.A. 690). But even the report the Coalition cited "by its own admission agrees with the premise, attested to in the 2024 and 2025 Long-Term Plan Addendums, that incremental natural gas infrastructure may be necessary to address electric reliability challenges in the region." *Id.* That study was also flawed to the extent it incorporated a minimal reserve margin, "especially given the potential variability of future design-day forecasts." *Id.*

As FERC noted, market studies are simply "[p]rojections regarding future demand" that 'often change and are influenced by a variety of factors, including economic growth, the cost of natural gas, environmental regulations, and legislative and regulatory decisions by the federal government and individual states." *Transcon.*, 190 FERC

Further, answers to motions must be made within 15 days, *id.* § 385.213(d)(1), which the Coalition was afforded. Nonetheless, FERC considered the Coalition's filing and addressed it. Rehearing Order at P 17 (J.A. 670-671).

¶ 61,048 at P 29 n.103. Consistent with court and FERC precedent, FERC reasonably gave the precedent agreements more weight than the Coalition's selective and fallacious reading of the market studies, which, when read fairly, also provide strong evidence of need.

The same is true of other evidence the Coalition cites, including its reckless argument that the Project will not provide winter reliability benefits because shortages experienced during Winter Storm Elliot were unrelated to pipeline capacity. OB 65-66. As FERC explained, its own final report of the *Inquiry into Bulk-Power System Operating During December 2022 Winter Storm Elliot* (Oct. 2023) identified a "large variety of coinciding issues that led to electricity and natural gas reliability challenges" during that storm. 2025 Certificate Order at PP 33-34 (J.A. 464-466). It further noted that "challenges associated with pipeline pressures—which could have been alleviated in part by additional interstate pipeline capacity," were also part of the problem. *Id.* at P 35 (J.A. 466).

The New York Commission's analysis of Winter Storm Elliot was more pointed. The State stressed the near "catastrophic disruption" that New York City narrowly avoided during the storm and determined that the city's reliability concerns "are due to inadequate pipeline capacity." NYPSC Order at 58 (J.A. 567). Contrary to the Coalition's assertion, the New York Commission concluded that "[t]he additional capacity provided by [NESE] would have partially mitigated the adverse operating effects during Winter Storm Elliot." *Id.* at 67 (J.A. 576); *see also* Rehearing Order P 53 (J.A. 693-694) (describing finding in NYPSC Order that additional capacity from the Project will improve reliability and resilience of the downstate gas system).

Although the Coalition cites *New Jersey Conservation*, 111 F.4th 42 to suggest FERC failed to explain its treatment of competing market studies, that is not what occurred here. FERC's finding of public need depends primarily on the precedent agreements, bolstered by Transco's filed market studies, and FERC adequately explained why it found the Coalition's filed studies insufficient to overcome those binding, long-term agreements for the full capacity of the Project.

B. Other record evidence further supports FERC's finding.

In addition to the precedent agreements, FERC relied on other evidence relevant under FERC's Certificate Policy Statement to support its finding on public need. For example, as part of its review process in

New York, the Shippers prepared a "Long-Term Plan," and later, an addendum to the Long-Term Plan, highlighting the risks facing New York's natural-gas system and demonstrating how the Project will resolve those problems. *See* Addendum (J.A. 387-423); FERC Br. 52-54. The Addendum explained that New York's gas network has "no excess capacity reserved for emergencies," leaving New York City and Long Island "at an increased risk of catastrophic gas system outage." Addendum at 8 (J.A. 394). According to the Addendum, the Project will help reduce these risks. *Id.* at 11, 37 (J.A. 394, J.A. 423).

The Addendum relied upon by FERC also found the Project will enhance reliability by serving as a second service feed into Brooklyn. *Id.* at 29-30 (J.A. 415-416); *see also Spire STL Pipeline*, 181 FERC ¶ 61,232 at P 36. According to the Addendum, the Project is the "*only* material, near term proposal" that can effectively address the full scope of "Downstate New York's looming energy system resilience crisis." Addendum at 9 (J.A. 395).

Notably, New York endorsed this analysis. *See* NYPSC Order at 66 (J.A. 575). The New York Public Service Commission said it could not "emphasize enough the importance of maintaining the reliability of gas service," and found that the Project will "address natural gas system supply constraints and reliability concerns facing the Downstate natural gas system." *Id.* The New York Commission also found that "the increase in natural gas supply" the Project creates "will ensure that electric generators have access to a reliable and steady fuel supply," and that its costs will be offset by savings in reduced compressed-natural-gas costs, from avoided peaking services, and that the Project "would reduce electricity prices" for New York consumers in the winter. *Id.* at 74, 79, 82 (J.A. 583, 588, 591).

New York's support for the Project further distinguishes this case from *New Jersey Conservation*. In *New Jersey Conservation,* the state public utilities agency and rate counsel protested the project and commissioned a study finding no need for additional pipeline capacity. *N.J. Conservation,* 111 F.4th at 52. Here, by contrast, the New York Commission explicitly recognized system reliability issues, supply diversity concerns, and the need for more pipeline capacity to meet peak day demand NYPSC Order at 61-71 (J.A. 570-580). When coupled with the precedent agreements and other evidence, New York's support of the Project provides overwhelming and unrebutted evidence of market need.

C. The Coalition's arguments on "captive utility ratepayers" are beyond the scope of FERC's jurisdiction.

The Coalition's claim that FERC arbitrarily failed to consider whether the Shippers might contract for unneeded capacity they could charge for and resell at a profit misunderstands FERC's jurisdiction and policies, and New York law. OB 59-60; FERC Br. 46-50. Oversight of prices paid by end-users to local distributers is "expressly and affirmatively committed to State and local authority by the provisions of Sections 1(b) and Section 1(c) of the" NGA. *Nat. Gas Pipeline Co. of Am.*, 20 FERC ¶ 61,324 at p. 61,674 (1982) (citing cases); *see also Panhandle E. Pipe Line Co. v. Pub. Serv. Comm'n of Ind.*, 332 U.S. 507, 513-14 (1947); 15 U.S.C. § 717(b).

FERC's no-subsidization policy is directed at avoiding subsidies from Transco's existing customers—i.e., current shippers on Transco's jurisdictional interstate pipeline system, not non-jurisdictional downstream local distribution companies or their retail users who are even farther downstream. Rehearing Order at PP 55-56 (J.A. 695-697) (citing Certificate Policy Statement, 88 FERC ¶ 61,227 at p. 61,745 (1990) and *Transcon.*, 190 FERC ¶ 61,048 at P 32 n.119). Nevertheless, FERC adequately considered and responded to the Coalition's concern. It noted that Transco would use an incremental rate for service utilizing the added capacity that is higher than the generally applicable system rate, thereby ensuring the Project "will not be subsidized by existing customers." 2025 Certificate Order at P 25 (J.A. 459). Petitioners do not challenge this conclusion.

Here, the Shippers have no financial incentive to secure unnecessary capacity. In *New Jersey Conservation*, this Court identified a "perverse" incentive for local distribution companies to secure unnecessary capacity to resell it for profit or use it as added insurance because the related costs were passed through to rate payers. *N.J. Conservation*, 111 F.4th at 61. However, this potential risk is neutralized when, as is the case here, state regulators have mechanisms in place to prevent this from occurring. *Transcon.*, 190 FERC ¶ 61,048 at P 35. Specifically, the New York Commission Order directed the Shippers "to provide ways to mitigate bill impacts," including refunding their customers for profits when the Shippers sell excess capacity. NYPSC Order at 83 (J.A. 592).

III. FERC's environmental analysis complies with NEPA.

The Coalition argues that "reissuing the certificate" violated NEPA. OB 42-43. As it did in its Rehearing Request, the Coalition conflate the issue of "reissuance" with the issue of NEPA compliance. Whether FERC complied with NEPA is a separate question from whether it may "reissue" a certificate. Either FERC's environmental review complied with NEPA, or it did not.

As described in more detail below, most of the Coalition's NEPA arguments were neither raised nor developed in its Rehearing Request and are therefore forfeited. Nonetheless, the Coalition's arguments hinge largely on a mischaracterization of the relevant burdens and facts. Contrary to the Coalition's assertions, OB 43-47, FERC obtained updated environmental information where needed and provided opportunity for public comment. Based on the entire record as supplemented, FERC considered whether it needed to supplement the EIS and determined the new information was not "sufficient to show that the remaining action will 'affec[t] the quality of the human environment' in a significant manner or to a significant extent *not already considered*." Rehearing

Order at P 73 (J.A. 705-706) (citation omitted). FERC applied the correct standard and its conclusion was not arbitrary and capricious.

A. The Coalition forfeited NEPA arguments not specifically raised in its request for rehearing.

NGA Section 19(a) requires a party seeking rehearing to "set forth specifically the ground or grounds upon which such [rehearing] application is based." 15 U.S.C. § 717r(a); *see also Food & Water Watch*, 104 F.4th at 348. FERC's regulations include a preservation rule under which a request for reconsideration must include a "'Statement of Issues' listing each issue in a separately enumerated paragraph that includes representative Commission and court precedent on which the party is relying" and "any issue not so listed will be deemed waived." 18 C.F.R. § 385.713(c)(2).

This Court has recognized that because the NGA prohibits it from considering any objections not urged before FERC in a petition for rehearing, it will not reach issues that fail to comply with FERC's preservation rule. *Food & Water Watch*, 104 F.4th at 348.

Here, the Statement of Issues in the Coalition's Rehearing Request included that FERC needed to supplement the EIS based on "new information," but the only "new information" described was the states' subsequent denial of the Project's water-quality permits. Rehearing Request at 7-8 (J.A. 514-515). The Coalition now raises several additional issues, all of which are forfeited.

First, neither the Rehearing Request nor its issue statement makes any mention of New Jersey's stormwater management and flooding rules or blasting at a quarry. *See* OB 45. Similarly, although the Rehearing Request briefly mentioned in a footnote that the agency analyzed cumulative impacts (Rehearing Request at 11 n.39 (J.A. 518), it failed to develop an argument on that point, include it in the Statement of Issues, or mention it as a basis for violating NEPA. Such "passing reference" is "not enough to 'alert the Commission' to the position petitioners now take." *Del. Riverkeeper v. FERC*, 45 F.4th 104, 112 (D.C. Cir. 2022).

The NEPA arguments the Coalition now raises also rely heavily on *City of Port Isabel v. FERC*, 111 F.4th 1198 (D.C. Cir. 2024), but the Rehearing Request does not cite that case, let alone include it in the Statement of Issues. Finally, although the Rehearing Request notes that air-quality standards changed after completion of the Final EIS and Transco had not provided updated resource reports addressing those changed standards, it did not develop an argument based on air-quality standards or identify one in the statement of issues. Rehearing Request at 12-13 (J.A. 519-520).

Because these arguments were not preserved in compliance with FERC's regulations, this Court may not reach them. Nevertheless, the Coalition's arguments fail on the merits, for reasons stated below.

B. FERC reasonably explained why it relied on the Final EIS.

The Coalition suggests FERC applied the wrong burden of proof when deciding whether to supplement the Final EIS based on "new information." Rehearing Request at 4 (J.A. 511). But Petitioners do not challenge the Final EIS and FERC correctly stated the standard that applies when an agency considers whether to rely on a previously issued EIS: "an agency is not required to take a new look every time it takes a step that implements a previously-studied action, so long as the impacts of that step were contemplated and analyzed by the earlier analysis." Rehearing Order at P 73 (J.A. 705-706) (citing *Mayo v. Reynolds*, 875 F.3d 11, 14-15 (D.C. Cir. 2017)).

As FERC explained, under the "rule of reason," an agency is only required to supplement an EIS if "new information shows that the remaining action will affect the quality of the environment . . . in a significant manner or to a significant extent not already considered." *Nat'l Comm. for the New River v. FERC*, 373 F.3d 1323, 1331 (D.C. Cir. 2004) (quoting *Marsh v. Ore. Nat. Res. Council*, 490 U.S. 360, 373 (1989)); 2025 Certificate Order at P 56 (J.A. 477-479). Whether to supplement an EIS is a decision that "implicates substantial agency expertise," and is left to agency discretion. *Marsh*, 490 U.S. at 374-77; *see also Seven Cnty. Infrastructure Coal. v. Eagle Cnty., Colo.*, 605 U.S. 168, 179 (2025) ("the central principle of judicial review in NEPA cases is deference").

The Coalition broadly claims FERC was required to obtain new resource reports demonstrating a lack of significant new environmental harms. OB 43-44. But this flips the standard on its head. Transco submitted resource reports in support of its Application, which FERC relied upon in preparing the Final EIS, and, in its Reissuance Petition, Transco explained the Project's purpose, scope, and impacts had not changed. Reissuance Petition at 4 (J.A. 334). After considering comments, FERC conducted an independent review, solicited additional information, and determined the Final EIS was sufficient. Rehearing Order at P 74 (J.A. 706-707). As FERC explained, its reliance on the Final EIS was reasonable because under NEPA, FERC "may make use of any reliable data source" and "is not required to undertake new scientific or technical research unless [it] is essential to a reasoned choice among alternatives." *Id.* at P 73 (J.A. 705-706) (citing 42 U.S.C. § 4336(b)(3)).

It is the Coalition's burden to show FERC's reliance on the Final EIS, including its analysis of the previously submitted resource reports, was arbitrary and capricious. *See, e.g.*, *Mayo*, 875 F.3d at 21. Neither Transco nor FERC was required to prove the *absence* of harm. The Coalition cites no case upholding such a rule and FERC's explanation cannot be held unreasonable for failing to impose a non-existent legal standard. Instead, it is well-settled that, "once an agency has taken a 'hard look' at 'every significant aspect of the environmental impact' of a proposed major federal action, it is not required to repeat its analysis simply because the agency makes subsequent discretionary choices in implementing the program." *Mayo*, 875 F.3d at 20-21 (upholding National Park Service's reliance on 2007 EIS for annual authorizations issued from 2007 to 2015).

The Coalition argues FERC had an obligation to "at least *attempt*" to obtain whatever information it needed to determine whether a supplemental EIS was required. OB 44 (citing *Birckhead v. FERC*, 925

F.3d 510, 520 (D.C. Cir. 2019)). But this is not a situation, as in *Birckhead*, where FERC said it failed to analyze an issue because it "did not know" enough. *Birckhead*, 925 F.3d at 520. Here, FERC said the exact opposite. It solicited comments on Transco's Reissuance Petition, considered updated information, and explained how the environmental concerns raised in the submitted comments had been anticipated and addressed in the Final EIS. *See* 2025 Certificate Order at PP 57-109 (J.A. 479-503); Rehearing Order at PP 69-81 (J.A. 703-711). FERC met its obligations.[5]

C. The "new information" the Coalition describes does not warrant a supplemental EIS.

The Coalition claims FERC improperly considered certain "new information" that should have triggered a supplemental EIS. OB 44-47. Again, most of the cited "new information" was not included as a basis for reconsideration. Nonetheless, NEPA does not require agencies to "needlessly repeat their environmental impact analyses every time new

5 The Court's instruction in *Birckhead* that FERC had to "at least *attempt* to obtain the information" related to alleged downstream indirect greenhouse gas emissions is also called into question by the Supreme Court in *Seven County*. *Birckhead*, 925 F.3d at 520 (italics in original).

information comes to light[;]" rather, a supplemental EIS must be prepared only where new information "provides a *seriously* different picture of the environmental landscape." *Friends of Cap. Crescent Trail v. Fed. Transit Admin.*, 877 F.3d 1051, 1060 (D.C. Cir. 2017). That is not the case here.

1. Water quality

The Coalition argues FERC needed to revisit its prior EIS conclusions based on New York's initial denial of Transco's water-quality certification due to concerns over sediment loss from jet trenching and clamshell dredging. OB 48-49. FERC conditioned the Project's construction on obtaining state water-quality certifications and added a requirement that any Project modifications needed to meet state certification requirements and be reported to FERC for review and approval. 2025 Certificate Order, App'x, Envtl. Condition 4. (J.A. 507).

FERC's conditions ensure water-quality standards will be met and any resulting modifications incorporated. If New York's subsequent findings on water quality had matched its initial findings, the Project would not have gone forward. But that is not what happened. Instead, New York and New Jersey issued Transco's water-quality certifications, which rendered the Coalition's concerns related to those certifications moot. Rehearing Order at PP 76, 79 (J.A. 708, 710); FERC Br. 67.

2. Air quality (forfeited)

The Coalition argues supplementation was required because the Final EIS predicts PM2.5[6] concentrations of 10.0 micrograms per cubic meter ("$\mu g/m^3$") while updated modeling showed the Project's emissions would not exceed 9.0 $\mu g/m^3$. OB 45. FERC correctly rejected this argument.

The Project did not change between completion of the Final EIS and Transco's Reissuance Petition, and the only change to the Project's estimated emissions was due to updated information on wind speeds. 2025 Certificate Order at P 89 (J.A. 493-494). Data from a new EPA-approved emissions monitor also showed concentrations of annual PM2.5 had lessened over the last ten years, resulting in a lower annual PM2.5 baseline.

To meet a new stricter regulatory emissions standard, Transco proposed purchasing additional Emission Reduction Credits as

[6] PM2.5 stands for inhalable particulate matter with an aerodynamic diameter less than or equal to 2.5 microns.

mitigation and confirmed sufficient credits and reductions were available. Reissuance Petition at 18-19 (J.A. 348-349). Along with its Reissuance Petition, Transco submitted an updated Air Quality Mitigation Plan explaining it had acquired or identified sufficient credits and would track actual construction emissions. *Id.*, Ex. Z-1 at 3 (J.A. 358). It also provided FERC with updated construction emissions, as supplemented in response to requests from FERC staff. 2025 Certificate Order at P 89 (J.A. 493-494).

In considering whether any of these changes resulted in a significant impact requiring a supplemental EIS, FERC considered and responded to public comments, finding they failed to provide a different picture of the environmental landscape. *Id.* at PP 53-56 (J.A. 475-479). FERC also reviewed Transco's new air permit application and determined that an "overly conservative analysis" based on the original compressor station PM2.5 modeling, and not accounting for additional reductions in emissions, resulted in a conservative total of 8.4 $\mu g/m^3$, which was less than the updated regulatory threshold. *Id.* at P 85 (J.A. 492). Because no one had identified new significant impacts based on the changed regulatory standards, FERC found it unnecessary to supplement the EIS.

In its Rehearing Order (at P 81 (J.A. 711)), FERC affirmed its prior conclusion. FERC also explained that the mere fact that air-quality standards had changed since issuance of the Final EIS did "not inherently necessitate supplemental NEPA analysis," and emphasized Transco's obligation to comply with updated federal and state regulations and all applicable permit conditions, including emissions monitoring and reporting. *Id.* at P 79 (J.A. 710). This was reasonable.

3. Compliance with new stormwater rules (forfeited)

The Coalition suggests a supplemental EIS was required because new stormwater rules took effect after the Final EIS, rendering Transco's stormwater management plan noncompliant. OB 45. As FERC correctly noted, however, Transco indicated it would submit updated plans and reports to reflect the updated stormwater rules. 2025 Certificate Order at P 73 (J.A. 486-487). Any concerns related to stormwater management and flooding "would be appropriately addressed during the state permitting process." *Id.* There was no reasonable concern that Transco's stormwater management plan would fail to comply with state stormwater rules.

4. Location of quarry blasting (forfeited)

The Coalition claims a supplemental EIS is required because blasting at a quarry would occur closer to the compressor station than initially anticipated. OB 45. FERC explained, however, that "Commission staff reviewed recent aerial imagery mapping of the Trap Rock Quarry and did not identify conditions that would alter the conclusion in the final EIS." 2025 Certificate Order at P 103 (J.A. 499). Because there was no new significant impact, supplementation was not required.

5. Cumulative impacts analysis (forfeited)

The Coalition claims FERC "updated its cumulative impacts analysis" and should have included that analysis in a supplemental EIS, OB 45, but this misrepresents what FERC did. FERC did not change anything about its prior analysis. Instead, when considering whether it needed to perform supplemental analysis, FERC looked at whether any new project in the Project's cumulative geographic scope varied in magnitude or effect from the types of projects already considered and identified no such projects. 2025 Certificate Order at PP 105, 106 (J.A. 500-501, 502).

FERC further noted that any projects in the area would have to comply with state and federal environmental laws and any cumulative impacts that might have occurred would be taken into account during permitting. FERC's determination was reasonable, consistent with NEPA, and entitled deference.

6. ***City of Port Isabel*** (forfeited)

For the first time, the Coalition cites *City of Port Isabel* to suggest a supplemental EIS was required, but that case cuts the other way. A pre-*Seven County* case, *City of Port Isabel* concerned FERC's authorization of two liquefied natural-gas-export terminals following an earlier remand order that had instructed the agency to revise its decision related to environmental-justice impacts. 111 F.4th at 1205. On remand FERC conducted a "new environmental justice analysis" that expanded the geographic scope, "arrived at different conclusions" than the EIS, significantly expanded its related discussions, and imposed new mitigation measures for previously unknown factors—all without issuing a supplemental EIS. *Id.* at 1208. When explaining why FERC should have supplemented the EIS, this Court emphasized that the circumstances in that case were "meaningfully different from" those in which the "'new' information was only updated information about an issue that the agency had already considered adequately and to a similar extent." *Id.*

Here, FERC did not conduct an entirely new environmental analysis, expand the Project's geographic scope, or reach different conclusions than it had reached in the EIS. Supplementation was not required.

IV. If this Court finds FERC's analysis deficient, it should remand without vacatur.

For the reasons discussed above, this Court should deny the petition for review and uphold FERC's Orders. However, if this Court determines FERC's analysis was deficient, it should remand to FERC, without vacatur, for reasons stated in FERC's brief.

When deciding whether to vacate, this Court considers the seriousness of the deficiencies and the disruptive consequences of vacatur. *Am. Great Lakes Ports Ass'n v. Schultz*, 962 F.3d 510, 518-19 (D.C. Cir. 2020) (quoting *Allied-Signal, Inc. v. NRC*, 988 F.2d 146, 150-51 (D.C. Cir. 1993) (cleaned up). As FERC found, this is a vitally needed project, fully subscribed by two shippers unaffiliated with Transco, that will provide a multitude of reliability benefits, including increased pipeline capacity, supply diversity, and a second pipeline along a critical route, findings with which New York State agrees. Additionally, FERC can address any alleged errors, which are chiefly procedural, on remand. Transco has already started construction activities and long-lead-time procurement of critical Project components. Delaying the Project needlessly risks service disruptions and catastrophic failure in the event of another severe weather incident like Winter Storm Elliot. These considerations weigh against vacatur.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for review. If remand is ordered, the Court should remand without vacatur.

Respectfully submitted,

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Dated: July 27, 2026

STATUTORY ADDENDUM

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Title 3—

The President

Executive Order 14156 of January 20, 2025

Declaring a National Energy Emergency

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Emergencies Act (50 U.S.C. 1601 *et seq.*) (''NEA''), and section 301 of title 3, United States Code, it is hereby ordered:

Section 1. *Purpose.* The energy and critical minerals (''energy'') identification, leasing, development, production, transportation, refining, and generation capacity of the United States are all far too inadequate to meet our Nation's needs. We need a reliable, diversified, and affordable supply of energy to drive our Nation's manufacturing, transportation, agriculture, and defense industries, and to sustain the basics of modern life and military preparedness. Caused by the harmful and shortsighted policies of the previous administration, our Nation's inadequate energy supply and infrastructure causes and makes worse the high energy prices that devastate Americans, particularly those living on low- and fixed-incomes.

This active threat to the American people from high energy prices is exacerbated by our Nation's diminished capacity to insulate itself from hostile foreign actors. Energy security is an increasingly crucial theater of global competition. In an effort to harm the American people, hostile state and non-state foreign actors have targeted our domestic energy infrastructure, weaponized our reliance on foreign energy, and abused their ability to cause dramatic swings within international commodity markets. An affordable and reliable domestic supply of energy is a fundamental requirement for the national and economic security of any nation.

The integrity and expansion of our Nation's energy infrastructure—from coast to coast—is an immediate and pressing priority for the protection of the United States' national and economic security. It is imperative that the Federal government puts the physical and economic wellbeing of the American people first.

Moreover, the United States has the potential to use its unrealized energy resources domestically, and to sell to international allies and partners a reliable, diversified, and affordable supply of energy. This would create jobs and economic prosperity for Americans forgotten in the present economy, improve the United States' trade balance, help our country compete with hostile foreign powers, strengthen relations with allies and partners, and support international peace and security. Accordingly, our Nation's dangerous energy situation inflicts unnecessary and perilous constraints on our foreign policy.

The policies of the previous administration have driven our Nation into a national emergency, where a precariously inadequate and intermittent energy supply, and an increasingly unreliable grid, require swift and decisive action. Without immediate remedy, this situation will dramatically deteriorate in the near future due to a high demand for energy and natural resources to power the next generation of technology. The United States' ability to remain at the forefront of technological innovation depends on a reliable supply of energy and the integrity of our Nation's electrical grid. Our Nation's current inadequate development of domestic energy resources leaves us vulnerable to hostile foreign actors and poses an imminent and growing threat to the United States' prosperity and national security.

These numerous problems are most pronounced in our Nation's Northeast and West Coast, where dangerous State and local policies jeopardize our Nation's core national defense and security needs, and devastate the prosperity of not only local residents but the entire United States population. The United States' insufficient energy production, transportation, refining, and generation constitutes an unusual and extraordinary threat to our Nation's economy, national security, and foreign policy. In light of these findings, I hereby declare a national emergency.

Sec. 2. *Emergency Approvals.* (a) The heads of executive departments and agencies (''agencies'') shall identify and exercise any lawful emergency authorities available to them, as well as all other lawful authorities they may possess, to facilitate the identification, leasing, siting, production, transportation, refining, and generation of domestic energy resources, including, but not limited to, on Federal lands. If an agency assesses that use of either Federal eminent domain authorities or authorities afforded under the Defense Production Act (Public Law 81–774, 50 U.S.C. 4501 *et seq.*) are necessary to achieve this objective, the agency shall submit recommendations for a course of action to the President, through the Assistant to the President for National Security Affairs.

(b) Consistent with 42 U.S.C. 7545(c)(4)(C)(ii)(III), the Administrator of the Environmental Protection Agency, after consultation with, and concurrence by, the Secretary of Energy, shall consider issuing emergency fuel waivers to allow the year-round sale of E15 gasoline to meet any projected temporary shortfalls in the supply of gasoline across the Nation.

Sec. 3. *Expediting the Delivery of Energy Infrastructure.* (a) To facilitate the Nation's energy supply, agencies shall identify and use all relevant lawful emergency and other authorities available to them to expedite the completion of all authorized and appropriated infrastructure, energy, environmental, and natural resources projects that are within the identified authority of each of the Secretaries to perform or to advance.

(b) To protect the collective national and economic security of the United States, agencies shall identify and use all lawful emergency or other authorities available to them to facilitate the supply, refining, and transportation of energy in and through the West Coast of the United States, Northeast of the United States, and Alaska.

(c) The Secretaries shall provide such reports regarding activities under this section as may be requested by the Assistant to the President for Economic Policy.

Sec. 4. *Emergency Regulations and Nationwide Permits Under the Clean Water Act (CWA) and Other Statutes Administered by the Army Corps of Engineers.* (a) Within 30 days from the date of this order, the heads of all agencies, as well as the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works shall:

(i) identify planned or potential actions to facilitate the Nation's energy supply that may be subject to emergency treatment pursuant to the regulations and nationwide permits promulgated by the Corps, or jointly by the Corps and EPA, pursuant to section 404 of the Clean Water Act, 33 U.S.C. 1344, section 10 of the Rivers and Harbors Act of March 3, 1899, 33 U.S.C. 403, and section 103 of the Marine Protection Research and Sanctuaries Act of 1972, 33 U.S.C. 1413 (collectively, the ''emergency Army Corps permitting provisions''); and

(ii) shall provide a summary report, listing such actions, to the Director of the Office of Management and Budget (''OMB''); the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works; the Assistant to the President for Economic Policy; and the Chairman of the Council on Environmental Quality (CEQ). Such report may be combined, as appropriate, with any other reports required by this order.

(b) Agencies are directed to use, to the fullest extent possible and consistent with applicable law, the emergency Army Corps permitting provisions to facilitate the Nation's energy supply.

(c) Within 30 days following the submission of the initial summary report described in subsection (a)(ii) of this section, each department and agency shall provide a status report to the OMB Director; the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works; the Director of the National Economic Council; and the Chairman of the CEQ. Each such report shall list actions taken within subsection (a)(i) of this section, shall list the status of any previously reported planned or potential actions, and shall list any new planned or potential actions that fall within subsection (a)(i). Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order.

(d) The Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, shall be available to consult promptly with agencies and to take other prompt and appropriate action concerning the application of the emergency Army Corps permitting provisions. The Administrator of the EPA shall provide prompt cooperation to the Secretary of the Army and to agencies in connection with the discharge of the responsibilities described in this section.

Sec. 5. *Endangered Species Act (ESA) Emergency Consultation Regulations.* (a) No later than 30 days from the date of this order, the heads of all agencies tasked in this order shall:

(i) identify planned or potential actions to facilitate the Nation's energy supply that may be subject to the regulation on consultations in emergencies, 50 CFR 402.05, promulgated by the Secretary of the Interior and the Secretary of Commerce pursuant to the Endangered Species Act (''ESA''), 16 U.S.C. 1531 *et seq.;* and

(ii) provide a summary report, listing such actions, to the Secretary of the Interior, the Secretary of Commerce, the OMB Director, the Director of the National Economic Council, and the Chairman of CEQ. Such report may be combined, as appropriate, with any other reports required by this order.

(b) Agencies are directed to use, to the maximum extent permissible under applicable law, the ESA regulation on consultations in emergencies, to facilitate the Nation's energy supply.

(c) Within 30 days following the submission of the initial summary report described in subsection (a)(ii) of this section, the head of each agency shall provide a status report to the Secretary of the Interior, the Secretary of Commerce, the OMB Director, the Director of the National Economic Council, and the Chairman of CEQ. Each such report shall list actions taken within the categories described in subsection (a)(i) of this section, the status of any previously reported planned or potential actions, and any new planned or potential actions within these categories. Such status reports shall thereafter be provided to these officials at least every 30 days for the duration of the national emergency and may be combined, as appropriate, with any other reports required by this order. The OMB Director may grant discretionary exemptions from this reporting requirement.

(d) The Secretary of the Interior shall ensure that the Director of the Fish and Wildlife Service, or the Director's authorized representative, is available to consult promptly with agencies and to take other prompt and appropriate action concerning the application of the ESA's emergency regulations. The Secretary of Commerce shall ensure that the Assistant Administrator for Fisheries for the National Marine Fisheries Service, or the Assistant Administrator's authorized representative, is available for such consultation and to take such other action.

Sec. 6. *Convening the Endangered Species Act Committee.* (a) In acting as Chairman of the Endangered Species Act Committee, the Secretary of the Interior shall convene the Endangered Species Act Committee not less than quarterly, unless otherwise required by law, to review and consider any lawful applications submitted by an agency, the Governor of a State, or any applicant for a permit or license who submits for exemption from obligations imposed by Section 7 of the ESA.

(b) To the extent practicable under the law, the Secretary of the Interior shall ensure a prompt and efficient review of all submissions described in subsection (a) of this section, to include identification of any legal deficiencies, in order to ensure an initial determination within 20 days of receipt and the ability to convene the Endangered Species Act Committee to resolve the submission within 140 days of such initial determination of eligibility.

(c) In the event that the committee has no pending applications for review, the committee or its designees shall nonetheless convene to identify obstacles to domestic energy infrastructure specifically deriving from implementation of the ESA or the Marine Mammal Protection Act, to include regulatory reform efforts, species listings, and other related matters with the aim of developing procedural, regulatory, and interagency improvements.

Sec. 7. *Coordinated Infrastructure Assistance.* (a) In collaboration with the Secretaries of Interior and Energy, the Secretary of Defense shall conduct an assessment of the Department of Defense's ability to acquire and transport the energy, electricity, or fuels needed to protect the homeland and to conduct operations abroad, and, within 60 days, shall submit this assessment to the Assistant to the President for National Security Affairs. This assessment shall identify specific vulnerabilities, including, but not limited to, potentially insufficient transportation and refining infrastructure across the Nation, with a focus on such vulnerabilities within the Northeast and West Coast regions of the United States. The assessment shall also identify and recommend the requisite authorities and resources to remedy such vulnerabilities, consistent with applicable law.

(b) In accordance with section 301 of the National Emergencies Act (50 U.S.C. 1631), the construction authority provided in section 2808 of title 10, United States Code, is invoked and made available, according to its terms, to the Secretary of the Army, acting through the Assistant Secretary of the Army for Civil Works, to address any vulnerabilities identified in the assessment mandated by subsection (a). Any such recommended actions shall be submitted to the President for review, through the Assistant to the President for National Security Affairs and the Assistant to the President for Economic Policy.

Sec. 8. *Definitions.* For purposes of this order, the following definitions shall apply:

(a) The term ''energy'' or ''energy resources'' means crude oil, natural gas, lease condensates, natural gas liquids, refined petroleum products, uranium, coal, biofuels, geothermal heat, the kinetic movement of flowing water, and critical minerals, as defined by 30 U.S.C. 1606 (a)(3).

(b) The term ''production'' means the extraction or creation of energy.

(c) The term ''transportation'' means the physical movement of energy, including through, but not limited to, pipelines.

(d) The term ''refining'' means the physical or chemical change of energy into a form that can be used by consumers or users, including, but not limited to, the creation of gasoline, diesel, ethanol, aviation fuel, or the beneficiation, enrichment, or purification of minerals.

(e) The term ''generation'' means the use of energy to produce electricity or thermal power and the transmission of electricity from its site of generation.

(f) The term ''energy supply'' means the production, transportation, refining, and generation of energy.

Sec. 9. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

THE WHITE HOUSE,
January 20, 2025.

[FR Doc. 2025–02003
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Billing code 3395–F4–P

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Presidential Documents

Executive Order 14154 of January 20, 2025

Unleashing American Energy

By the authority vested in me as President by the Constitution and the laws of the United States of America, it is hereby ordered:

Section 1. *Background.* America is blessed with an abundance of energy and natural resources that have historically powered our Nation's economic prosperity. In recent years, burdensome and ideologically motivated regulations have impeded the development of these resources, limited the generation of reliable and affordable electricity, reduced job creation, and inflicted high energy costs upon our citizens. These high energy costs devastate American consumers by driving up the cost of transportation, heating, utilities, farming, and manufacturing, while weakening our national security.

It is thus in the national interest to unleash America's affordable and reliable energy and natural resources. This will restore American prosperity—including for those men and women who have been forgotten by our economy in recent years. It will also rebuild our Nation's economic and military security, which will deliver peace through strength.

Sec. 2. *Policy.* It is the policy of the United States:

(a) to encourage energy exploration and production on Federal lands and waters, including on the Outer Continental Shelf, in order to meet the needs of our citizens and solidify the United States as a global energy leader long into the future;

(b) to establish our position as the leading producer and processor of non-fuel minerals, including rare earth minerals, which will create jobs and prosperity at home, strengthen supply chains for the United States and its allies, and reduce the global influence of malign and adversarial states;

(c) to protect the United States's economic and national security and military preparedness by ensuring that an abundant supply of reliable energy is readily accessible in every State and territory of the Nation;

(d) to ensure that all regulatory requirements related to energy are grounded in clearly applicable law;

(e) to eliminate the ''electric vehicle (EV) mandate'' and promote true consumer choice, which is essential for economic growth and innovation, by removing regulatory barriers to motor vehicle access; by ensuring a level regulatory playing field for consumer choice in vehicles; by terminating, where appropriate, state emissions waivers that function to limit sales of gasoline-powered automobiles; and by considering the elimination of unfair subsidies and other ill-conceived government-imposed market distortions that favor EVs over other technologies and effectively mandate their purchase by individuals, private businesses, and government entities alike by rendering other types of vehicles unaffordable;

(f) to safeguard the American people's freedom to choose from a variety of goods and appliances, including but not limited to lightbulbs, dishwashers, washing machines, gas stoves, water heaters, toilets, and shower heads, and to promote market competition and innovation within the manufacturing and appliance industries;

(g) to ensure that the global effects of a rule, regulation, or action shall, whenever evaluated, be reported separately from its domestic costs and benefits, in order to promote sound regulatory decision making and prioritize the interests of the American people;

(h) to guarantee that all executive departments and agencies (agencies) provide opportunity for public comment and rigorous, peer-reviewed scientific analysis; and

(i) to ensure that no Federal funding be employed in a manner contrary to the principles outlined in this section, unless required by law.

Sec. 3. *Immediate Review of All Agency Actions that Potentially Burden the Development of Domestic Energy Resources.* (a) The heads of all agencies shall review all existing regulations, orders, guidance documents, policies, settlements, consent orders, and any other agency actions (collectively, agency actions) to identify those agency actions that impose an undue burden on the identification, development, or use of domestic energy resources—with particular attention to oil, natural gas, coal, hydropower, biofuels, critical mineral, and nuclear energy resources—or that are otherwise inconsistent with the policy set forth in section 2 of this order, including restrictions on consumer choice of vehicles and appliances.

(b) Within 30 days of the date of this order, the head of each agency shall, in consultation with the director of the Office of Management and Budget (OMB) and the National Economic Council (NEC), develop and begin implementing action plans to suspend, revise, or rescind all agency actions identified as unduly burdensome under subsection (a) of this section, as expeditiously as possible and consistent with applicable law. The head of any agency who determines that such agency does not have agency actions described in subsection (a) of this section shall submit to the Director of OMB a written statement to that effect and, absent a determination by the Director of OMB that such agency does have agency actions described in this subsection, shall have no further responsibilities under this section.

(c) Agencies shall promptly notify the Attorney General of any steps taken pursuant to subsection (a) of this section so that the Attorney General may, as appropriate:

(i) provide notice of this Executive Order and any such actions to any court with jurisdiction over pending litigation in which such actions may be relevant; and

(ii) request that such court stay or otherwise delay further litigation, or seek other appropriate relief consistent with this order, pending the completion of the administrative actions described in this order.

(d) Pursuant to the policy outlined in section 2 of this order, the Attorney General shall consider whether pending litigation against illegal, dangerous, or harmful policies should be resolved through stays or other relief.

Sec. 4. *Revocation of and Revisions to Certain Presidential and Regulatory Actions.* (a) The following are revoked and any offices established therein are abolished:

(i) Executive Order 13990 of January 20, 2021 (Protecting Public Health and the Environment and Restoring Science to Tackle the Climate Crisis);

(ii) Executive Order 13992 of January 20, 2021 (Revocation of Certain Executive Orders Concerning Federal Regulation);

(iii) Executive Order 14008 of January 27, 2021 (Tackling the Climate Crisis at Home and Abroad);

(iv) Executive Order 14007 of January 27, 2021 (President's Council of Advisors on Science and Technology);

(v) Executive Order 14013 of February 4, 2021 (Rebuilding and Enhancing Programs to Resettle Refugees and Planning for the Impact of Climate Change on Migration);

(vi) Executive Order 14027 of May 7, 2021 (Establishment of the Climate Change Support Office);

(vii) Executive Order 14030 of May 20, 2021 (Climate-Related Financial Risk);

(viii) Executive Order 14037 of August 5, 2021 (Strengthening American Leadership in Clean Cars and Trucks);

(ix) Executive Order 14057 of December 8, 2021 (Catalyzing Clean Energy Industries and Jobs Through Federal Sustainability);

(x) Executive Order 14072 of April 22, 2022 (Strengthening the Nation's Forests, Communities, and Local Economies);

(xi) Executive Order 14082 of September 12, 2022 (Implementation of the Energy and Infrastructure Provisions of the Inflation Reduction Act of 2022); and

(xii) Executive Order 14096 of April 21, 2023 (Revitalizing Our Nation's Commitment to Environmental Justice for All).

(b) All activities, programs, and operations associated with the American Climate Corps, including actions taken by any agency shall be terminated immediately. Within one day of the date of this order, the Secretary of the Interior shall submit a letter to all parties to the ''American Climate Corps Memorandum of Understanding'' dated December 2023 to terminate the memorandum, and the head of each party to the memorandum shall agree to the termination in writing.

(c) Any assets, funds, or resources allocated to an entity or program abolished by subsection (a) of this section shall be redirected or disposed of in accordance with applicable law.

(d) The head of any agency that has taken action respecting offices and programs in subsection (a) shall take all necessary steps to ensure that all such actions are terminated or, if necessary, appropriate, or required by law, that such activities are transitioned to other agencies or entities.

(e) Any contract or agreement between the United States and any third party on behalf of the entities or programs abolished in subsection (a) of this section, or in furtherance of them, shall be terminated for convenience, or otherwise, as quickly as permissible under the law.

Sec. 5. *Unleashing Energy Dominance through Efficient Permitting.* (a) Executive Order 11991 of May 24, 1977 (Relating to protection and enhancement of environmental quality) is hereby revoked.

(b) To expedite and simplify the permitting process, within 30 days of the date of this order, the Chairman of the Council on Environmental Quality (CEQ) shall provide guidance on implementing the National Environmental Policy Act (NEPA), 42 U.S.C. 4321 *et seq.,* and propose rescinding CEQ's NEPA regulations found at 40 CFR 1500 *et seq.*

(c) Following the provision of the guidance, the Chairman of CEQ shall convene a working group to coordinate the revision of agency-level implementing regulations for consistency. The guidance in subsection (b) and any resulting implementing regulations must expedite permitting approvals and meet deadlines established in the Fiscal Responsibility Act of 2023 (Public Law 118–5). Consistent with applicable law, all agencies must prioritize efficiency and certainty over any other objectives, including those of activist groups, that do not align with the policy goals set forth in section 2 of this order or that could otherwise add delays and ambiguity to the permitting process.

(d) The Secretaries of Defense, Interior, Agriculture, Commerce, Housing and Urban Development, Transportation, Energy, Homeland Security, the Administrator of the Environmental Protection Agency (EPA), the Chairman of CEQ, and the heads of any other relevant agencies shall undertake all available efforts to eliminate all delays within their respective permitting processes, including through, but not limited to, the use of general permitting and permit by rule. For any project an agency head deems essential for the Nation's economy or national security, agencies shall use all possible authorities, including emergency authorities, to expedite the adjudication of Federal permits. Agencies shall work closely with project sponsors to realize the ultimate construction or development of permitted projects.

(e) The Director of the NEC and the Director of the Office of Legislative Affairs shall jointly prepare recommendations to Congress, which shall:

(i) facilitate the permitting and construction of interstate energy transportation and other critical energy infrastructure, including, but not limited to, pipelines, particularly in regions of the Nation that have lacked such development in recent years; and

(ii) provide greater certainty in the Federal permitting process, including, but not limited to, streamlining the judicial review of the application of NEPA.

Sec. 6. *Prioritizing Accuracy in Environmental Analyses.* (a) In all Federal permitting adjudications or regulatory processes, all agencies shall adhere to only the relevant legislated requirements for environmental considerations and any considerations beyond these requirements are eliminated. In fulfilling all such requirements, agencies shall strictly use the most robust methodologies of assessment at their disposal and shall not use methodologies that are arbitrary or ideologically motivated.

(b) The Interagency Working Group on the Social Cost of Greenhouse Gases (IWG), which was established pursuant to Executive Order 13990, is hereby disbanded, and any guidance, instruction, recommendation, or document issued by the IWG is withdrawn as no longer representative of governmental policy including:

(i) the Presidential Memorandum of January 27, 2021 (Restoring Trust in Government Through Scientific Integrity and Evidence-Based Policymaking);

(ii) the Report of the Greenhouse Gas Monitoring and Measurement Interagency Working Group of November 2023 (National Strategy to Advance an Integrated U.S. Greenhouse Gas Measurement, Monitoring, and Information System);

(iii) the Technical Support Document of February 2021 (Social Cost of Carbon, Methane, and Nitrous Oxide Interim Estimates under Executive Order 13990); and

(iv) estimates of the social cost of greenhouse gases, including the estimates for the social cost of carbon, the social cost of methane, or the social cost of nitrous oxide based, in whole or in part, on the IWG's work or guidance.

(c) The calculation of the ''social cost of carbon'' is marked by logical deficiencies, a poor basis in empirical science, politicization, and the absence of a foundation in legislation. Its abuse arbitrarily slows regulatory decisions and, by rendering the United States economy internationally uncompetitive, encourages a greater human impact on the environment by affording less efficient foreign energy producers a greater share of the global energy and natural resource market. Consequently, within 60 days of the date of this order, the Administrator of the EPA shall issue guidance to address these harmful and detrimental inadequacies, including consideration of eliminating the ''social cost of carbon'' calculation from any Federal permitting or regulatory decision.

(d) Prior to the guidance issued pursuant to subsection (c) of this section, agencies shall ensure estimates to assess the value of changes in greenhouse gas emissions resulting from agency actions, including with respect to the consideration of domestic versus international effects and evaluating appropriate discount rates, are, to the extent permitted by law, consistent with the guidance contained in OMB Circular A–4 of September 17, 2003 (Regulatory Analysis).

(e) Furthermore, the head of each agency shall, as appropriate and consistent with applicable law, initiate a process to make such changes to any rule, regulation, policy or action as may be necessary to ensure consistency with the Regulatory Analysis.

(f) Within 30 days of the date of this order, the Administrator of the EPA, in collaboration with the heads of any other relevant agencies, shall submit joint recommendations to the Director of OMB on the legality and continuing applicability of the Administrator's findings, ''Endangerment and Cause or Contribute Findings for Greenhouse Gases Under Section 202(a) of the Clean Air Act,'' Final Rule, 74 FR 66496 (December 15, 2009).

Sec. 7. *Terminating the Green New Deal.* (a) All agencies shall immediately pause the disbursement of funds appropriated through the Inflation Reduction Act of 2022 (Public Law 117–169) or the Infrastructure Investment and Jobs Act (Public Law 117–58), including but not limited to funds for electric vehicle charging stations made available through the National Electric Vehicle Infrastructure Formula Program and the Charging and Fueling Infrastructure Discretionary Grant Program, and shall review their processes, policies, and programs for issuing grants, loans, contracts, or any other financial disbursements of such appropriated funds for consistency with the law and the policy outlined in section 2 of this order. Within 90 days of the date of this order, all agency heads shall submit a report to the Director of the NEC and Director of OMB that details the findings of this review, including recommendations to enhance their alignment with the policy set forth in section 2. No funds identified in this subsection (a) shall be disbursed by a given agency until the Director of OMB and Assistant to the President for Economic Policy have determined that such disbursements are consistent with any review recommendations they have chosen to adopt.

(b) When procuring goods and services, making decisions about leases, and making other arrangements that result in disbursements of Federal funds, agencies shall prioritize cost-effectiveness, American workers and businesses, and the sensible use of taxpayer money, to the greatest extent. The Director of OMB shall finalize and circulate guidelines to further implement this subsection.

(c) All agencies shall assess whether enforcement discretion of authorities and regulations can be utilized to advance the policy outlined in section 2 of this order. Within 30 days of the date of this order, each agency shall submit a report to the Director of OMB identifying any such instances.

Sec. 8. *Protecting America's National Security.* (a) The Secretary of Energy is directed restart reviews of applications for approvals of liquified natural gas export projects as expeditiously as possible, consistent with applicable law. In assessing the ''Public Interest'' to be advanced by any particular application, the Secretary of Energy shall consider the economic and employment impacts to the United States and the impact to the security of allies and partners that would result from granting the application.

(b) With respect to any proposed deepwater port for the export of liquefied natural gas (project) for which a favorable record of decision (ROD) has previously been issued pursuant to the Deepwater Port Act of 1974 (DWPA), 33 U.S.C. 1501 *et seq.,* the Administrator of the Maritime Administration (MARAD) shall, within 30 days of the date of this order and consistent with applicable law, determine whether any refinements to the project proposed subsequent to the ROD are likely to result in adverse environmental consequences that substantially differ from those associated with the originally-evaluated project so as to present a seriously different picture of the foreseeable adverse environmental consequences (seriously different consequences). In making this determination, MARAD shall qualitatively assess any difference in adverse environmental consequences between the project with and without the proposed refinements, including any potential consequences not addressed in the final Environmental Impact Statement (EIS), which shall be considered adequate under NEPA notwithstanding any revisions to NEPA that may have been enacted following the final EIS. MARAD shall submit this determination, together with a detailed justification, to the Secretary of Transportation and to the President.

(c) Pursuant to subsection (b) of this section, if MARAD determines that such refinements are not likely to result in seriously different consequences, it shall include in that determination a description of the refinements to supplement and update the ROD, if necessary and then no later than 30 additional days, he shall issue a DWPA license.

(d) If MARAD determines, with concurrence from the Secretary of Transportation, that such proposed refinements are likely to result in seriously different consequences, it shall, within 60 days after submitting such determination, issue an Environmental Assessment (EA) examining such consequences and, with respect to all other environmental consequences not changed due to project refinements, shall reaffirm the conclusions of the final EIS. Within 30 days after issuing the EA, MARAD shall issue an addendum to the ROD, if necessary, and shall, within 30 additional days, issue a DWPA license consistent with the ROD.

Sec. 9. *Restoring America's Mineral Dominance.* (a) The Secretary of the Interior, Secretary of Agriculture, Administrator of the EPA, Chairman of CEQ, and the heads of any other relevant agencies, as appropriate, shall identify all agency actions that impose undue burdens on the domestic mining and processing of non-fuel minerals and undertake steps to revise or rescind such actions.

(b) The Secretaries of the Interior and Agriculture shall reassess any public lands withdrawals for potential revision.

(c) The Secretary of the Interior shall instruct the Director of the U.S. Geological Survey to consider updating the Survey's list of critical minerals, including for the potential of including uranium.

(d) The Secretary of the Interior shall prioritize efforts to accelerate the ongoing, detailed geologic mapping of the United States, with a focus on locating previously unknown deposits of critical minerals.

(e) The Secretary of Energy shall ensure that critical mineral projects, including the processing of critical minerals, receive consideration for Federal support, contingent on the availability of appropriated funds.

(f) The United States Trade Representative shall assess whether exploitative practices and state-assisted mineral projects abroad are unlawful or unduly burden or restrict United States commerce.

(g) The Secretary of Commerce shall assess the national security implications of the Nation's mineral reliance and the potential for trade action.

(h) The Secretary of Homeland Security shall assess the quantity and inflow of minerals that are likely the product of forced labor into the United States and whether such inflows pose a threat to national security and, within 90 days of the date of this order, shall provide this assessment to the Director of the NEC.

(i) The Secretary of Defense shall consider the needs of the United States in supplying and maintaining the National Defense Stockpile, review the legal authorities and obligations in managing the National Defense Stockpile, and take all appropriate steps to ensure that the National Defense Stockpile will provide a robust supply of critical minerals in event of future shortfall.

(j) Within 60 days of the date of this order, the Secretary of State, Secretary of Commerce, Secretary of Labor, the United States Trade Representative, and the heads of any other relevant agencies, shall submit a report to the Assistant to the President for Economic Policy that includes policy recommendations to enhance the competitiveness of American mining and refining companies in other mineral-wealthy nations.

(k) The Secretary of State shall consider opportunities to advance the mining and processing of minerals within the United States through the Quadrilateral Security Dialogue.

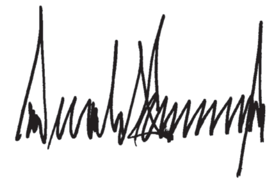
Sec. 10. *General Provisions.* (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of OMB relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.



THE WHITE HOUSE,
January 20, 2025.

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CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMIT

1. This document complies with the type-volume limits of Circuit Rule 32(e)(2)(B) because, excluding the parts of the document exempted by Fed. R. App. P. 32(f), this document contains 8,984 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 365 in 14-point Century.

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Dated: July 27, 2026

CERTIFICATE OF SERVICE

Pursuant to Rules 15(c)(2) and 25(d) of the Federal Rules of Appellate Procedure and Circuit Rule 15, I hereby certify that the foregoing document was electronically filed through this Court's CM/ECF system, which will send a notice of filing to the counsel registered to receive service through the Court's CM/ECF system via electronic filing.

Respectfully submitted,

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