

**UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION**

**Constitution Pipeline Company, LLC  
Iroquois Gas Transmission System, L.P.**

**Docket Nos. CP13-499-000  
CP13-499-001  
CP13-502-000  
CP13-502-001  
CP18-5-000  
CP18-5-001  
CP18-5-002  
CP18-5-003**

**REQUEST FOR REHEARING OF JANUARY 23, 2026 ORDER ON REMAND**

Pursuant to Section 19(a) of the Natural Gas Act (“NGA”), 15 U.S.C. § 717r(a), and Rule 713 of the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Rules of Practice and Procedure, 18 C.F.R. § 385.713, Catskill Mountainkeeper; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper; Riverkeeper; Sierra Club; and Waterkeeper Alliance (collectively, “Intervenors”) request rehearing and rescission of the Commission’s January 23, 2026 Order on Remand<sup>1</sup> purporting to comply with the mandate issued by the Second Circuit by dismissing certain sub-dockets of docket numbers CP13-499, CP13-502, and CP18-5 in response to orders issued by the U.S. Court of Appeals for the Second Circuit in *Catskill Mountainkeeper, Inc. et al. v. FERC*, Case Nos. 16-345 (L) and 16-361 (Con), and *New York State Department of Environmental Conservation et al. v. FERC*, Case Nos. 19-4338 (L), 20-158 (Con), and 20-208 (Con), on November 18, 2021.<sup>2</sup> These court orders vacated FERC’s December 2, 2014 Order

---

<sup>1</sup> Order on Remand, Constitution Pipeline Co., LLC, 194 FERC ¶ 61,064 at P 2 (Jan. 23, 2026) (“Order on Remand”).

<sup>2</sup> *Catskill Mountainkeeper, Inc. et al. v. FERC*, No. 16-345 (2d Cir. Nov. 18, 2021), Doc. No. 479; Order at 2, *N.Y. State Dep’t of Env’t Conservation, et al. v. FERC*, No. 20-158 (2d. Cir. Nov. 18, 2021), Doc. No. 161.

Issuing Certificates and Approving Abandonment for the Constitution Pipeline Project and Wright Interconnect Project<sup>3</sup> and its declaratory order of August 28, 2019<sup>4</sup> concluding that the State of New York had waived its authority under Section 401 of the Clean Water Act, 33 U.S.C. § 1341.

All Intervenors are parties to this proceeding because they were granted intervention in the relevant dockets and therefore have the right to file this rehearing request. *See* 15 U.S.C. § 717r(a); 18 C.F.R. § 385.713(b). This request is timely filed because 30 days after the Commission's January 23, 2026, Order falls on Sunday, February 22, 2026, meaning that the deadline for rehearing requests extends to Monday, February 23, 2026, the date this rehearing request is being filed. 15 U.S.C. § 717r(a); 18 C.F.R. § 385.2007(a)(2). Intervenors reserve all rights to raise all claims challenging any subsequent order issued by FERC for the Constitution Pipeline Project or Wright Interconnect Project, including any order issued in response to the Petition of Constitution Pipeline Company, LLC for Reissuance of Certificate and Reaffirmation of Waiver Determination ("Petition") under CP13-499 and the Petition of Iroquois Gas Transmission System, L.P. for Expedited Reissuance of Certificate Authority and Approval of Capacity Lease Agreement under CP13-502.

## I. STATEMENT OF RELEVANT FACTS

Constitution first submitted an application for the 125-mile Constitution Pipeline Project almost 13 years ago, in June 2013.<sup>5</sup> The pipeline was designed to "provide 650,000 dekatherms per day (Dth/d) of firm natural gas transportation capacity from two receipt points in

---

<sup>3</sup> *Constitution Pipeline, Co., LLC*, 149 FERC ¶ 61,199, P 33–34 (Dec. 2, 2014) ("Certificate Order"); *see also Constitution Pipeline, Co., LLC*, 154 FERC ¶ 61,046 (Jan. 28, 2016) ("Rehearing Order").

<sup>4</sup> Order on Voluntary Remand, *Constitution Pipeline Co.*, 168 FERC ¶ 61,129, P 14 (Aug. 28, 2019) ("Waiver Order"); *see also Constitution Pipeline Co.*, 169 FERC ¶ 61,199 (2019) (denying rehearing of Waiver Order).

<sup>5</sup> Appl. for Certificate of Public Convenience and Necessity, *Constitution Pipeline Co., LLC*, Docket No. CP13-499, Accession No. 20130613-5078 (June 13, 2013) ("2013 Application").

Susquehanna County, Pennsylvania, to a proposed interconnection with Iroquois Gas Transmission System, L.P. (“Iroquois”) at the new transfer compressor station [“Wright Interconnect Project”] to be located in Wright, New York.”<sup>6</sup>

In 2014, FERC completed its environmental impact statement (“EIS”) for the Project and the Wright Interconnect Project,<sup>7</sup> and later issued an order granting a certificate of public convenience and necessity for both projects.<sup>8</sup> Multiple parties filed requests for rehearing with FERC, challenging the grant of the certificate on numerous grounds, including that the EIS did not satisfy the Commission’s obligations under the National Environmental Policy Act.<sup>9</sup> FERC rejected those requests for rehearing and reaffirmed the findings in the Certificate Order in an order on rehearing issued in 2016.<sup>10</sup> The merits of the Certificate Order and Rehearing Order were challenged in the U.S. Court of Appeals for the Second Circuit.<sup>11</sup>

In addition to FERC approval, the Constitution Pipeline’s construction also required water quality certifications under Section 401 of the Clean Water Act, 33 U.S.C. § 1341 from each state crossed by the pipeline route. Constitution obtained the required certification from Pennsylvania but failed to obtain a certification from New York.<sup>12</sup> New York State’s denial was without prejudice and based on the finding that Constitution had not provided it with sufficient information to certify that the Project would comply with the Clean Water Act.<sup>13</sup>

---

<sup>6</sup> *Id.* at 2.

<sup>7</sup> Final Environmental Impact Statement – Vol. 1, Constitution Pipeline and Wright Interconnect Projects *Constitution Pipeline Co., LLC*, Docket Nos. CP13-499; CP13-502, Accession No. 20141024-4001 (Oct. 2014).

<sup>8</sup> Certificate Order.

<sup>9</sup> *See, e.g.*, Request for Rehearing of Catskill Mountainkeeper, et al., FERC Dockets No. CP13-499 and CP13-502 (Dec. 31, 2014).

<sup>10</sup> Rehearing Order.

<sup>11</sup> *See, e.g.*, *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345, 16-361 (2d Cir. filed Feb. 5, 2016).

<sup>12</sup> Constitution applied to the New York State Department of Environmental Conservation for a water quality certification in August 2013, then withdrew and resubmitted its application on May 9, 2014, and again on April 27, 2015. NYSDEC, Joint Appl.: DEC Permit # 0-9999-00181/0024 Water Quality Certification/Notice of Denial at 6 (Apr. 22, 2016) (appearing at Petition for Declaratory Order, App. 003181–003194, *Constitution Pipeline Co., LLC*, Docket No. CP18-5, Accession No. 20171011-5210 (Oct. 11, 2017)).

<sup>13</sup> *Id.* at 7–14.

Rather than supply New York with the information it requested, Constitution challenged the denial in the U.S. Court of Appeals for the Second Circuit, arguing that New York acted unlawfully and had waived its Section 401 authority by not acting within one year of the application as required by 33 U.S.C. § 1341(a)(1). The court upheld the denial on the merits, finding that Constitution had not provided key information that was entirely within the state's authority to request under Section 401. *Const. Pipeline Co., LLC, v. N.Y. State Dep't of Env't Conservation*, 868 F.3d 87, 100–03 (2d Cir. 2017). The court concluded that it lacked jurisdiction to address the claim that the state waived its Section 401 authority, because Constitution had not first asked FERC to determine whether a waiver had occurred. *Id.* at 99–100. Constitution's subsequent petition for rehearing en banc to the Second Circuit and petition for certiorari to the Supreme Court were both rejected. Order, *Const. Pipeline Co.*, 868 F.3d 87, Doc. No. 257; *Const. Pipeline Co., LLC v. N.Y. State Dep't of Env't Conservation*, 584 U.S. 962 (2018).

Constitution then petitioned FERC for a declaratory order that New York waived its ability to grant or deny the water quality certification for the Project. FERC ultimately agreed with Constitution that New York waived its 401 authority.<sup>14</sup> New York State and others petitioned for review of FERC's Waiver Order in the U.S. Court of Appeals for the Second Circuit.<sup>15</sup>

In November 2020, more than 5 years ago, and while the cases challenging FERC's Certificate and Waiver Orders were still pending before the Second Circuit, Constitution announced that it was abandoning the Project and would let the certificate expire as of the then-

---

<sup>14</sup> Order on Voluntary Remand, *Constitution Pipeline Co.*, 168 FERC ¶ 61,129 (Aug. 28, 2019) ("Waiver Order"); see also *Constitution Pipeline Co.*, 169 FERC ¶ 61,199 (2019) (denying rehearing of Waiver Order).

<sup>15</sup> See *N.Y. State Dep't of Env't Conservation v. FERC*, Nos. 19-4338, *et al.* (2d Cir.).

applicable in-service deadline of December 2, 2020.<sup>16</sup> FERC moved to dismiss the pending litigations as moot, stating that: “The Commission’s deadline for completion of the project passed on December 2, 2020, and no requests for an extension are pending in the agency docket. ... Accordingly, there is no live controversy concerning... the merits of the Commission’s authorization of the Constitution Pipeline.”<sup>17</sup> In its filing in support of its motion to dismiss and in opposition to one petitioner’s motion to the court to vacate the underlying orders, FERC stated that, “[w]ith respect to concerns raised by Catskill Mountainkeeper and Stop the Pipeline regarding the legal effect of the Certificate Order (on review in Nos. 16-345 and 16-361), the Commission agrees that the construction authority granted by the Certificate Order has lapsed.”<sup>18</sup> FERC represented to the court that it would vacate the Certificate Order if the court remanded the proceedings back to FERC but wished to keep the Waiver Order unvacated for precedential purposes.<sup>19</sup>

In a joint order issued in both cases, the court rejected FERC’s request to dismiss and only remand the cases and instead dismissed the pending litigation, vacated both underlying FERC orders, and remanded the proceedings back to FERC.<sup>20</sup> In doing so, the court “ORDERED that Stop the Pipeline’s motions for vacatur are GRANTED, the underlying agency orders are VACATED, and the cases are REMANDED with instructions to dismiss the agency

---

<sup>16</sup> Constitution Pipeline Project Status Update and Final Monitoring Report at 1, *Constitution Pipeline Co., LLC*, Docket Nos. CP13-499, *et al.*, Accession No. 20201124-5181 (Nov. 24, 2020).

<sup>17</sup> Mot. to Dismiss of Resp’t FERC at 5, *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345 & 16-361 (2nd Cir., Jan. 26, 2021), Doc. No. 414; *see also, id.* at 1 (“Because the pipeline developer has cancelled the project, and because the Commission’s authorization for the pipeline lapsed on Dec. 2, 2020, all pending appeals arising from Commission orders addressing the Constitution pipeline project are moot.”).

<sup>18</sup> Resp’t FERC’s Reply in Supp. of Mot. to Dismiss, and Resp. to Pet’r Stop the Pipeline’s Mot. to Dismiss and Vacate at 3, *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345 & 16-36 (2nd Cir., Feb. 11, 2021), Doc. No. 428.

<sup>19</sup> Resp’t FERC Letter Br., Case Nos. 16-345, Doc. No. 440, at 2, 3 (May 17, 2021).

<sup>20</sup> Order, *Catskill Mountainkeeper, Inc.*, Nos. 16-345 & 16-361 (Nov. 18, 2021), Doc. No. 481; Order, *N.Y. State Dep’t of Env’t Conservation*, Nos. 19-4338, *et al.* (Nov. 18, 2021), Doc. No. 161.

proceedings.”<sup>21</sup> The court cited cases holding that “[t]he voluntary cessation of allegedly illegal conduct usually will render a case moot if the defendant can demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation,” *Lamar Advert. of Penn, LLC v. Town of Orchard Park, New York*, 356 F.3d 365, 375 (2d Cir. 2004) (internal quotation marks omitted), and that vacatur is appropriate where an agency order is “moot for a reason that deprives the agency action of all operative effect,” *Radiofone, Inc. v. Fed. Comm’n’s Comm’n*, 759 F.2d 936, 940–41 (D.C. Cir. 1985). Despite the court’s instructions and FERC’s prior representations to the court, FERC failed to take any subsequent action after the vacatur and did not terminate the proceedings.

On May 30, 2025, Constitution submitted a new application under Section 401 of the Clean Water Act to New York State, stating that it was largely identical to the application Constitution had previously submitted in 2015.<sup>22</sup> New York State issued several notices of incomplete application to the company<sup>23</sup> and never declared the application complete or made it available for public comment.<sup>24</sup> Constitution then withdrew its Section 401 application in November 2025.<sup>25</sup>

---

<sup>21</sup> *Id.*

<sup>22</sup> Letter from Lynda Schubring, Manager Permitting, Constitution Pipeline Co., LLC to Karen M. Gaidasz, NYSDEC (May 30, 2025) Attachment B to Petition *In the Matter of Constitution Pipeline Co. LLC*, Docket Nos. CP13-499, CP18-5 (Dec. 19, 2025).

<sup>23</sup> NYSDEC, Notice of Incomplete Appl. (NOIA), Constitution Pipeline, DEC #0-999-00181/00029 (July 2, 2025) [https://dec.ny.gov/sites/default/files/2025-11/constitutionpipeline\\_noia.pdf](https://dec.ny.gov/sites/default/files/2025-11/constitutionpipeline_noia.pdf); NYSDEC, Notice of Incomplete Appl. (NOIA #2), Constitution Pipeline, DEC #0-999-00181/00029 (Aug. 26, 2025), <https://dec.ny.gov/sites/default/files/2025-10/constitutionpipelinenoia2.pdf>; NYSDEC, Notice of Continued Incompleteness, Constitution Pipeline, DEC #0-999-00181/00029 (Sept. 30, 2025), <https://dec.ny.gov/sites/default/files/2025-11/constitutioncontdnoia.pdf>.

<sup>24</sup> See *Constitution Pipeline Project*, NYSDEC, <https://dec.ny.gov/environmental-protection/facilities-in-your-neighborhood/constitution-pipeline-project> (last visited Jan. 13, 2026).

<sup>25</sup> Petition *In the Matter of Constitution Pipeline Co. LLC*, Docket Nos. CP13-499, CP18-5 (Dec. 19, 2025), at 13 & n.48 (citing Letter from Lynda Schubring, PMP, Manager Planning, Williams to Evan Hogan, NYSDEC (Nov. 7, 2025), [https://dec.ny.gov/sites/default/files/2025-11/constitutionpl\\_nysdecwithdrawletter.pdf](https://dec.ny.gov/sites/default/files/2025-11/constitutionpl_nysdecwithdrawletter.pdf)).

Constitution then filed a petition with FERC on December 19, 2025, twelve and a half years after it had first applied to FERC for a certificate, and in the same dockets the Second Circuit had ordered FERC to dismiss. The petition requested that FERC “reissue” the 2014 Certificate Order and “affirm” its 2019 finding in the Waiver Order that New York waived its 401 authority in 2015.<sup>26</sup> The New York Attorney General,<sup>27</sup> Stop the Pipeline,<sup>28</sup> and the undersigned organizations<sup>29</sup> submitted letters to the FERC docket requesting that FERC comply with the Second Circuit’s orders by dismissing the proceedings in dockets CP13-499, CP13-502, and CP18-5, as ordered.

On January 23, 2026, FERC issued an Order on Remand<sup>30</sup> purporting to “document[] [its] dismissal of the agency proceedings that were the subject of that order,”<sup>31</sup> while dismissing only subdockets CP13-499-000, CP13-499-001, CP13-502-000, CP13-502-001; CP18-5-000, CP18-5-001, CP18-5-002, and CP18-5-003.<sup>32</sup> The Commission, however, left in place other subdockets, including CP13-499-006 and CP18-5-004, the subdockets associated with the 2025 Petition.<sup>33</sup> The Commission claimed in its order that, even if it had dismissed proceedings shortly after receiving the Second Circuit’s mandate in 2022, Constitution still could have filed its

---

<sup>26</sup> Petition at 1.

<sup>27</sup> Letter from Letitia James, Att’y General of New York, to Robert Solmon, Solicitor, FERC, Docket Nos. CP13-499, CP13-502, CP18-5, Accession No. 20260114-5019 (Jan. 13, 2026).

<sup>28</sup> Letter from Todd Ommen, Counsel on behalf of Stop the Pipeline, to Robert Solmon, Solicitor, FERC Docket Nos. CP13-499, CP13-502, CP18-5, Accession No. 20260115-5008 (Jan. 14, 2026).

<sup>29</sup> Letter from Moneen Nasmith, Counsel on behalf of Catskill Mountainkeeper, Inc.; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network; Riverkeeper, Inc.; Sierra Club; and Waterkeeper Alliance to Robert Solmon, Solicitor, FERC, Docket Nos. CP13-499, CP13-502, CP18-5, Accession No. 20260116-5126 (Jan. 16, 2026).

<sup>30</sup> Order on Remand, *Constitution Pipeline Co., LLC*, 194 FERC ¶ 61,064 (Jan. 23, 2026).

<sup>31</sup> *Id.* at P 1.

<sup>32</sup> *Id.* at 3.

<sup>33</sup> Iroquois subsequently filed its own petition in new subdocket CP13-502-003. The Order on Remand was issued prior to Iroquois’ filing and in direct response to Constitution’s Petition, but its caption also includes Iroquois docket numbers. The reasons provided herein for granting rehearing also apply with equal force and effect to the petition filed by Iroquois. The Commission must shut down both the Constitution and Iroquois dockets and institute new proceedings for both.

petition in the docket for the dismissed proceedings and the Commission would have still entertained the petition.<sup>34</sup> The Commission emphasized that, despite dismissing select subdockets on which Constitution relies to support its petition, it was “not in any way prejudging the merits of the 2025 Petition in this order.”<sup>35</sup>

## II. STATEMENT OF ISSUES

### A. The Commission’s failure to comply with the Second Circuit’s mandate is unlawful.

The Second Circuit’s mandate vacated the Certificate and Waiver Orders and ordered FERC to dismiss the proceedings in response to concerns that the Orders could be used at a future date to resurrect the Project. *Catskill Mountainkeeper, Inc. et al. v. FERC*, No. 16-345 (2d Cir. Nov. 18, 2021), Doc. No. 479; Order at 2, *N.Y. State Dep’t of Env’t Conservation, et al. v. FERC*, No. 20-158 (2d Cir. Nov. 18, 2021), Doc. No. 161. FERC’s Remand Order violates the court’s mandate by continuing to entertain any petition which seeks to accomplish precisely what the court’s order sought to prevent. Failure to comply with a court’s order is unlawful. *Cleveland v. Fed. Power Comm’n*, 561 F.2d 344, 346 (D.C. Cir. 1977).

### B. The Commission’s failure to treat the Certificate Order as having no legal effect is arbitrary and capricious.

FERC represented to the court that the Certificate Order had no legal effect. By continuing to entertain a petition that seeks to “reissue” the Certificate Order rather than requiring a new application, FERC has reversed its position without any acknowledgement or explanation in violation of the Administrative Procedure Act’s prohibition on arbitrary and capricious agency conduct. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); 5 U.S.C. § 706(2).

---

<sup>34</sup> Order on Remand at P 13.

<sup>35</sup> *Id.* at P 10.

### III. ARGUMENTS IN FAVOR OF REHEARING

#### A. The Commission's failure to comply with the Second Circuit's mandate is unlawful.

FERC's failure to dismiss the proceedings and foreclose any possibility of Constitution or Iroquois attempting to resurrect the prior Orders violates the Second Circuit's mandate.

Responding to concerns that the Project might one day be resurrected using the Commission's prior orders, the court vacated the Orders and ordered FERC to dismiss the proceedings.<sup>36</sup>

Although an agency has "broad discretion to determine when and how to hear and decide the matters that come before it," *United Power, Inc. v. FERC*, 49 F.4th 554, 560 (D.C. Cir. 2022) (quoting *Tennessee Valley Mun. Gas Ass'n. v. FERC*, 140 F.3d 1085, 1088 (D.C. Cir. 1998)), FERC "is without power to do anything which is contrary to either the letter or spirit of the mandate," *Cleveland v. Fed. Power Comm'n*, 561 F.2d 344, 346 (D.C. Cir. 1977) (quoting *Yablonski v. UMW*, 454 F.2d 1036, 1038 (D.C. Cir. 1971)); *see also In re. Ivan F. Boesky Securities Litig*, 957 F.2d 65, 69 (2d Cir. 1992). Keeping open proceedings, however they may be numbered, in which Constitution or Iroquois seeks to do the exact thing the court sought to prevent blatantly violates both the text and intent of the court's mandate and is unlawful.

In order for the court to have found the pending cases moot, the Certificate Order and Waiver Order had to lack "all operative effect," *Radiofone*, 759 F.2d at 940–41, and the violations petitioners alleged lack any reasonable potential to recur, *Lamar Advert. of Penn, LLC*, 356 F.3d at 375. If FERC were complying with the court's mandate, therefore, there would be no question that the Commission could not entertain Constitution's (or Iroquois') Petition, because there would be no Certificate Order to reissue and no Waiver Order to reaffirm. The only option left to Constitution or Iroquois would be to file a new application under the NGA and undertake

---

<sup>36</sup> Order, *Catskill Mountainkeeper, Inc.*, Nos. 16-345 & 16-361 (Nov. 18, 2021), Doc. No. 481; Order, *N.Y. State Dep't of Env't Conservation*, Nos. 19-4338, *et al.* (Nov. 18, 2021), Doc. No. 161.

a new process under the National Environmental Policy Act. There also would be no question that the events or findings surrounding the prior Section 401 Clean Water Act process—triggered by a now legally-defunct federal permit—are irrelevant. The fact that the Order on Remand allows Constitution’s Petition to remain active and provides that FERC is “not in any way pre-judging the merits of the 2025 Petition in this order,”<sup>37</sup> demonstrates that the Order on Remand is not consistent with the court’s mandate.

The Order on Remand’s attempt to show compliance with the court’s mandate by shuttering certain subdockets and allowing the Petition to proceed in a “new” standalone subdocket badly misses the point. Docket numbering choices may be “ministerial,” but a decision to allow a petition to proceed that seeks to revitalize orders a federal court vacated is not ministerial, no matter how it is numbered. The point of the undersigned’s request to require that Constitution file a new application in a new docket is not simply to get a new docket *number*. The point is that, unlike the process contemplated in FERC’s Order on Remand, requiring a new application in a new docket would give effect to the Second Circuit’s mandate by ensuring that the old Orders remain legally defunct and that any attempts to move the project forward are done under new processes. Anything short of a new process would give the Certificate Order lingering legal effect that is at odds with the court’s mandate and inconsistent with the Supreme Court’s view on the effect appellate court mandates to vacate and dismiss the proceedings below are supposed to have. *United States v. Munsingwear*, 340 U.S. 36, 41 (1950) (recognizing the purpose of vacating and dismissing prior proceedings to prevent them “from spawning any legal consequences.”). Neither the fact that Constitution’s Petition is in a “new” subdocket nor that parties can file materials in a “defunct” docket saves the Order on Remand. To comply with the

---

<sup>37</sup> Order on Remand at P 10.

Second Circuit's mandate, the relief requested by Constitution must be unavailable and FERC cannot entertain—as it does in the Order on Remand—acting on the Petition's merits.

To be clear, the undersigned are not making a formalistic argument that FERC must ignore every single document and piece of factual information contained in the existing dockets. Nor do the undersigned contend that merely refileing the Petition and the factual information from the instant subdockets in a new docket would cure the error FERC committed in the Order on Remand. Instead, we are arguing that FERC cannot “reissue” the Certificate Order because it is legally defunct, and so FERC must undertake a *new* NGA and National Environmental Policy Act process. That process may rely on information and analysis contained in the defunct dockets to the extent that FERC can demonstrate that the information and analysis remain valid all these years later. But the Certificate Order may not be given any legal effect without violating the Second Circuit's mandate, including being used as the basis for reissuing the Waiver Order or any similar findings that New York waived its Section 401 authority during the previous process. Because the Certificate Order has no legal effect, the timing of the 401 process, triggered by the 2013 application that resulted in the Certificate Order, is irrelevant. The new NGA application that Constitution and Iroquois must submit triggers a new 401 process. FERC's failure to recognize the above realities in the Order on Remand and its decision to continue to entertain the Petition violates the Second Circuit's mandate.

**B. The Commission's failure to treat the Certificate Order as having no legal effect is arbitrary and capricious in violation of the Administrative Procedure Act.**

Refusing to treat the Certificate Order as legally defunct is inconsistent with FERC's own representations to the Second Circuit and constitutes an unexplained and arbitrary and capricious change in position. *See FCC v. Fox Television Stations, Inc.*, 556 U.S. 502, 515 (2009); 5 U.S.C. § 706(2). If an agency wishes to change position, it must acknowledge the change and

demonstrate that there are good reasons to do so. *See id.* at 515–516. The agency also must provide reasoned analysis for the later inconsistent decision. *See Encino Motorcars v. Navarro*, 579 U.S. 211, 221 (2016); *Huntington Hospital v. Thompson*, 319 F.3d 74, 79 (2d Cir. 2002). Even before the Second Circuit’s vacatur, FERC explained to the court that the authority provided under the Certificate Order to construct the Project had lapsed.<sup>38</sup> This assertion was made to directly rebut the concern raised by other parties as to the “legal effect” of the Certificate Order and the potential for Constitution to do exactly what it is attempting to with the Petition,<sup>39</sup> *i.e.*, one day bring the Project back to life. FERC has not even acknowledged its prior position. Nor has it explained how it could represent to the court that the Certificate Order lacked any legal effect in 2021 but now entertain the merits of a petition that seeks to reissue that same order. There is no basis for FERC to reverse its position, and doing so would flout the Second Circuit’s clear command and be arbitrary and capricious in violation of the Administrative Procedure Act. 5 U.S.C. §706(2)(A).

#### IV. CONCLUSION

For the reasons stated above, Catskill Mountainkeeper; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper; Riverkeeper; Sierra Club; and Waterkeeper Alliance respectfully request that the Commission: (1) grant rehearing; (2) rescind its January 23, 2026 Order on Remand; and (3) issue an order dismissing the entirety of Dockets CP13-499, CP13-502, and CP18-5, including Constitution’s 2025 Petition.

---

<sup>38</sup> Resp’t FERC’s Reply in Supp. of Mot. to Dismiss, and Resp. to Pet’r Stop the Pipeline’s Mot. to Dismiss and Vacate at 3, *N.Y. State Dept. of Env’t Conservation et al. v. FERC*, Nos. 19-4338, 20-158, 20-208 (Con) (2nd Cir., Feb. 11, 2021), Doc. No. 136.

<sup>39</sup> *Id.*; *see also Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345 & 16-361 (2nd Cir., Feb. 11, 2021), Doc. No. 428.

Dated: February 23, 2026

/s/ Moneen Nasmith

Moneen Nasmith

Director, National Climate, Fossil Fuel Infrastructure

Earthjustice

*Counsel for Catskill Mountainkeeper, Inc.; Clean Air Council; Delaware Otsego Audubon Society; Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper; Riverkeeper, Inc.; Sierra Club; and Waterkeeper Alliance*

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day caused the foregoing document to be served upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated at New York, NY this 23rd day of February, 2026.

/s/ Moneen Nasmith

Moneen Nasmith  
Earthjustice  
48 Wall Street, 15<sup>th</sup> Floor  
New York, NY 10005  
mnasmith@earthjustice.org  
212-845-7384

*Counsel for Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network and Maya K. van Rossum, the Delaware Riverkeeper, Riverkeeper, Sierra Club, and Waterkeeper Alliance*

Document Content(s)

Constitution RFR Order on Remand 2.23.2026.pdf .....1