

**IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT**

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION,

Petitioner,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Respondent.

Case No. 26 - _____

PETITION FOR REVIEW

Under Section 19(b) of the Natural Gas Act, 15 U.S.C. § 717r(b), Rule 15 of the Federal Rules of Appellate Procedure, and Second Circuit Local Rule 15.1, petitioner New York State Department of Environmental Conservation (the Department) petitions this Court for review of the following orders of the Federal Energy Regulatory Commission (FERC):

- (i) Order on Remand, *Constitution Pipeline Company, LLC and Iroquois Gas Transmission System, L.P.*, 194 FERC ¶ 61,064 (Jan. 23, 2026) (attached as Exhibit A);
- (ii) Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *Constitution Pipeline Company, LLC* and

Iroquois Gas Transmission System, L.P., 194 FERC ¶ 61,064 (Mar. 26, 2026) (attached as Exhibit B); and

- (iii) Order Dismissing Requests for Rehearing, *Constitution Pipeline Company, LLC* and *Iroquois Gas Transmission System, L.P.*, 195 FERC ¶ 61,116 (May 19, 2026) (attached as Exhibit C).

The Department is a party to the underlying administrative proceedings before FERC. On February 20, 2026, the Department timely requested rehearing of the Order on Remand. This petition is timely because it was filed within sixty days of the date on which the Department's rehearing request was denied by operation of law, as well as within sixty days the date on which FERC acted upon the rehearing requests. *See* 15 U.S.C. § 717r (a)-(b).

Respectfully submitted,

LETITIA JAMES
Attorney General
State of New York
Attorney for Petitioner

BARBARA D. UNDERWOOD
Solicitor General
ANDREA OSER
Deputy Solicitor General
BRIAN LUSIGNAN
Assistant Solicitor General
of Counsel

By: /s/ Brian Lusignan
BRIAN LUSIGNAN
Assistant Solicitor General
N.Y.S. Department of Law
The Capitol
Albany, New York 12224
(518) 776-2399
Brian.Lusignan@ag.ny.gov

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25, the undersigned certifies that, on May 21, 2026, a copy of this Petition for Review, with exhibits A to C, was served on Respondents via first-class and electronic mail at the addresses listed below:

Robert Solomon
Solicitor of Federal Energy Regulatory Commission
888 First St. NE, Room 9A-01
Washington, DC 20426
Robert.Solomon@ferc.gov

Federal Energy Regulatory Commission
c/o Debra-Ann A. Reese
Secretary of the
88 First Street, NE
Washington, DC 20426
OPP@ferc.gov

In accordance with Federal Rule of Appellate Procedure 15(c), the undersigned certified that, on May 21, 2026, a copy of this Petition for Review, with exhibits A to C, was served by electronic mail on all parties to the underlying FERC administrative proceedings, listed below.

DATED: May 21, 2026

/s/ Brian Lusignan
Brian Lusignan
Assistant Solicitor General
Appeals & Opinion Bureau
Office of the Attorney General
of New York State
Brian.Lusignan@ag.ny.gov
(518) 776-2399

**List of Parties Admitted to Participate
in Agency Proceedings Served
Pursuant to Federal Rule of Appellate
Procedure 15(c)**

CP13-499

Bob Rosen
metroart@earthlink.net

Carolyn Melszer
maplerig@midtel.net

William Feldman
casey11694@yahoo.com

vincent speranza
vinsperanza@yahoo.com

Jonathan Chasan
jschasan@yahoo.com

Arthur Wagner
awagbx@aol.com

Ella Jolly
ellajolly@earthlink.net

Kerry Lynch
Kerrylynch100@yahoo.com

gary stephens
garstep4562000@yahoo.com

Catherine Kernan
Catherinekernan@comcast.net

Patricia Tyrell
tkty21007@hotmail.com

John Miglietta
john.miglietta@verizon.net

Webster Capps
wdcapps845@gmail.com

Mary McKinney
colleenmckinney@gmail.com

Julia Walsh
juliawalshnyc@gmail.com

Leigh Melander, Ph.D.
lmelander@aol.com

Ann Cleary
pepanita@yahoo.com

Henrietta Statham
henriettastat@gmail.com

Don Statham
DS@donstathamdesign.com

Stuart Anderson
andersonboatworks@gmail.com

Dawn Jordan
whistlesnstrings@gmail.com

Bonita Lindsay
VisualVerse@MidTel.net

Landscape Alternatives
trees.shrubs@gmail.com

Rebecca Casstevens
rebecca.casstevens@gmail.com

David Elder
delderado@aol.com

mary tuthill
northfranklinwoods@yahoo.com

Florence Carnahan
fjarnahan@yahoo.com

Jean Hricik
jlacreevy@aol.com

Bruce Kernan
kernan.bruce@gmail.com

stanley chatis
chatisstan@yahoo.com

Wendy Lynne Lee
wlee@bloomu.edu

Gale Reardon
greardon55@gmail.com

CP13-499

Josephine Graf
josephinegraf1@gmail.com

JOSEPH & MONICA SANZONE
MSANZONE4@AOL.COM

Susan Laidacker
slaidacker@hotmail.com

Michael Suchorsky
impulseand@aol.com

Philip Hulbert
hulbertd@wildblue.net

Joshua Sparkes
jsparkes408@hotmail.com

Dennis Higgins
dennis.higgins@oneonta.edu

Harold Lindsay
wiseowl3@MidTel.net

Leanne Harrison
lannyh@earthlink.net

Carmela Marner
carmelamarner@earthlink.net

Clark and Andre Sanders
andreamenke@me.com

James McDowell
smallstreetcoop@gmail.com

Carolyn Fink
carolynfink@gmail.com

Ann Roberti
aroberti@catskill.net

Meredith Monk
m2@meredithmonk.org

Michael Sodomora
msodomora@midtel.net

Robert Lidsky
boblidsky@yahoo.com

Kathleen Higgins
HickoryHillDanes@yahoo.com

Sara Zimmerman
sarfood@gmail.com

Cheryl Cary
cherylcary1@gmail.com

Nathaniel Posner
blue.bear.pappa@gmail.com

Chris Hammond
chrishh@hughes.net

Wayne Hoffman
allnightfixer@yahoo.com

Sharon Gonsalves
avrilfool@hotmail.com

mary mcdowell
muffymcdowell@yahoo.com

Mark Pezzati
wherethegreatonesrun@gmail.com

steven connors
steb.con@live.com

Shannon Pendleton
sandersondesign@gmail.com

Janet Terchek
janetpost@verizon.net

Julie Wawrzynek
j_wawrzynek@yahoo.com

Jeannette P. Rice
svmyosotis@msn.com

Megan Holleran
megholleran@gmail.com

CP13-499

Kenneth Collins
worldwiderebell@gmail.com

Steven Karagiannis
Sgkaragianni@aol.com

Dr. Jeanne Simonelli
simonejm@wfu.edu

Julia Phillips
joogepipeline@gmail.com

Susan McLellan
delsuedoc@gmail.com

Carol Lavallee
Saisonsbelles@hotmail.com

Kathleen Overton
overkat@aol.com

ROBERT J MINOTTI JR
rmjr70@gmail.com

Dianne Sefcik
zandjr2d@gmail.com

David Hegi
dhegi219@gmail.com

GEORGE MESZAROS
GMESZAROS@NETZERO.COM

Anthony Macaluso
macaluso13820@yahoo.com

Rachelle Mokay
rachellem16@yahoo.com

Kathleen Hoover
khooverpipeline@gmail.com

Annjeanette Wright
annajeannettewright@gmail.com

Sharon Przysiecki
skprzys@midtel.net

John Hviid
Jhviid5@gmail.com

Robert Stack
renobob2@yahoo.com

Patricia Fowler
chicksandducks97@gmail.com

Amanda Przysiecki
aprzysiecki@yahoo.com

Elizabeth Goodrich
ejadegoodrich@gmail.com

Linda Rosch
roschorama@gmail.com

Henry Stahler
fokish@citlink.net

Anne Stack
reanne100@yahoo.com

Anthony Spaziani
aspazi@aol.com

Deborah M. Krol
aikidebbdo@yahoo.com

Bella Mirabella
bella.mirabella@gmail.com

Linda Jaffe
lindajaffe@gmail.com

Xina Sheehan
stellab@citlink.net

Lisa Harrison
harrison333@gmail.com

Marie Sroka
Ravenstolemoon@hotmail.com

Daniel Brignoli
dbrignoli@gmail.com

CP13-499

Nora Dougherty
noramdougherty@gmail.com

Laura G. Malloy, Ph.D.
malloyllaurens@gmail.com

Elyse Harte
elysed2@aol.com

Deanna Singer
lenanddee@gmail.com

LauraJean Oliva
dresperanza@hotmail.com

Allegra Schecter
schecter@oecblue.com

Jo Ann Hurley
jchurley@midtel.net

Ulysses Jackson
ujackson@jjcons.com

Paul Turner
paultrnr@midtel.net

Jennifer Stinson
jstinson@midtel.net

Wayne Stinson
stinsonlock@live.com

Bronwen Tawse
Bstawse@gmail.com

Anne Marie Garti
agarti@law.pace.edu

Joyce Bitran
ajharrison5@aol.com

Caroline Martin
cmartin13@frontiernet.net

Dennis Gonseth
byoodah45@yahoo.com

Nancy Turick
nbturick@dmcom.net

Anthony Martin Martin
tartin@earthlink.net

Barbara Loeffler
Barlef1704@aol.com

Craig Buckbee
easterncaster@gmail.com

Michelle Gardner
michi@stny.rr.com

Pamela Bohsung
pb741b@midtel.net

Rachel Polens
RachelsFraming@gmail.com

Richard Duggan
rwduggan@sdcaustin.com

Mary Ann Sternheimer
sternheimerm@yahoo.com

joseph maloney
jmaloney60@verizon.net

Joan Tubridy
jtt7853@gmail.com

Timothy Camann
timcamann@gmail.com

Nancy Salomon Miranda
salmir632@gmail.com

Isaac Silberman-Gorn
i.silbermangorn@gmail.com

Nancy Lipshitz
fallenwillow@gmail.com

Claudia Rosen
claudiarosen@yahoo.com

CP13-499

Elizabeth VanDeValk
lissavandevalk@gmail.com

Matthew Munisteri
mattmunisteri@gmail.com

Roy Bartoo
bartook@gmail.com

Karen Detert
kkdetert@gmail.com

Leland Snyder
LTSnyder@x3ci.com

Cindy Voorspuy
voorspuy@hotmail.com

Claire Ottman
redantceo@yahoo.com

Barbara Kerr
barkerr@hotmail.com

Irwin Waldman
iwkw@aol.com

Earl Cunningham
earl071513@gmail.com

David Garner
fathersheart@wildblue.net

Valerie Daly
Vrd216@yahoo.com

Stacia Norman
stacia@gatehousebooks.net

Lisa Zaccaglini
artistsatrest@gmail.com

Maureen Culbert
cculbert@stny.rr.com

Karen Anderson
karen@earthling.net

Kathleen Lee
kmleek@frontier.com

Ruth Carr
westonra@yahoo.com

Chris Burgher
cburgher4@hotmail.com

Jolie DeFeis
jolie@energygardeninc.com

Valerie Daly
Vrd216@yahoo.com

Thomas Gorman
tom@gormanstudio.com

Jane Perry
fir13775@yahoo.com

Paul Muratore
pmuratore@muratek.com

MARK D'AMICO
madcpa68@gmail.com

Evan Romer
eromer@echoes.net

Jay Sweeney
jnl@epix.net

Cynthia Beach
CDBeachlog@aol.com

Charlene McLaughlin-Eisenkraf
iMomza@gmail.com

Albert Crudo
acrudo@muratek.com

Lynn Fischer
lynn.fischer2@verizon.net

Donald Pinotti
tonypinotti@hotmail.com

CP13-499

Robert Bryant
karmalodro@me.com

Douglas Vitarius
dandnvtarius@aol.com

William A. Raymond Sr.
baraymond25@aol.com

Judith Rowe
Judyrowe28@gmail.com

Gail and Mike Musante
gailmikemuz@echoes.net

Robin Jorgensen
606doorman@gmail.com

george cernusca
georgex@echoes.net

sharon virgilio
volpes@lightlink.com

Robert Ashley
rtashley@delhitel.net

jill wiener
jillwiener1@gmail.com

dana matthews matthews
danamatthews@earthlink.net

Leslie Albaugh
lesliea44@gmail.com

Christina Countryman
walkaboutwater@ymail.com

Richard Austin
rchristopheraustin@hotmail.com

Karen Glauber
kglauber117@yahoo.com

Don Glauber
glauber51@yahoo.com

George Hovis
hovisgr@oneonta.edu

raymond lewis
218raylewis@gmail.com

Wendy Goetz
wendieswords@yahoo.com

David MacInnes
macinnesd@aol.com

Franklin Local
cp13-499@franklinlocal.org

Jessica Hoffman
jessicarose911@hotmail.com

Deborah Banks
Deborah.Banks@TransCentra.com

Linda Buzzutto
linda.buzzutto@gmail.com

Brianna Speidel
brianna.speidel@yahoo.com

karen o'neill
mrsoatmeal@midtel.net

Jeannette Westcott
jwgotgoats@hotmail.com

John Given
jcgkag@gmail.com

Barbara Harju
joeswoods@aol.com

murray bell
landscapersunlimited@yahoo.com

Ronald Bishop
Ron.Bishop@oneonta.edu

Carina Franck
pfranck@stny.rr.com

CP13-499

Erin Cowles
edonnellycowles@stny.rr.com

Richard Ashworth
rsashworth@gmail.com

Linda Reik
LMReik@msn.com

Cynthia McGahee
mcsaheec@gmail.com

John Hutchings
jhutchings@nyslof.org

charlie whitmore
pksw58@hotmail.com

Kris D. Kohler
kkohlernyc@gmail.com

marley rabstejnek
marleyrab@gmail.com

Joseph Goellner
goellneroneonta@gmail.com

Marena Gonz
marenag@aol.com

Andrea Lodovice
ajlodovice@hotmail.com

Vanessa Aulet
vanessa_aulet@yahoo.com

Epifanio Bevilacqua
lsbpurple@gmail.com

Devereux Kernan
devkernan@hughes.net

Roy Doremus
doroy4@earthlink.net

Peter Twyman
petaht@aol.com

Charlotte and Jonathan Collett
cecollett@mindspring.com

Nicholas Butts
nebutts58@gmail.com

Robin Ballo
deerrun357@gmail.com

Thomas Hohensee
trhohensee@gmail.com

Reid Black
srb5961@gmail.com

Colleen Blacklock
acucolleenb@gmail.com

aissa o'neil
aissa348@gmail.com

Janet Windus
jlwindus@embarqmail.com

Reid Black
srb5961@gmail.com

Steven Ellsworth
steve.ellsworth@gmail.com

Mary Thuma
mat.thuma@wildblue.net

Carl Arnold
carlarnold@mac.com

Alina Miglietta
alinaspeck@verizon.net

Zena Gurbo
zenagurbo@frontiernet.net

Michele Barnes
barnesfive@verizon.net

christopher de ville
devillechris@yahoo.com

CP13-499

Patrick Rider
patrick@greenanefarms.com

Paul Rosenberg
paul@homespun.biz

Frank Patterson
fzpatterson@msn.com

Cathy McNulty
ladyhazel93@aol.com

Judith Canepa
jk.nycag@gmail.com

Barbara Pickel
blpickel@gmail.com

Carol Ransom
ransomcb@hotmail.com

Karl Seeley
seeleyk@hartwick.edu

Lori Baratta
wishgirl2010@gmail.com

Harry Levine
harryxlevine@gmail.com

Scott Wilson
swilson@nycm.com

David Ronovech
drono16@yahoo.com

garrett brignoli
garrettbrignoli@gmail.com

Andrea Lodovice
ajlodovice@hotmail.com

Andra Leimanis
andlei_4@yahoo.com

Brendan O'Connor
brendanjoconnor@yahoo.com

Keith Werkman
werkiek@gmail.com

Christy Jaromack
cjaromack79@yahoo.com

Richard Averett
averettr@frontiernet.net

Katherine O'Donnell
o_donnellk@hartwick.edu

Sherry Lane
sherrylanenyc@gmail.com

Donna Ratigan
ratigandonna@att.net

Cathy McNulty
ladyhazel93@aol.com

Vincent mazza
bamnjman@gmail.com

Teresa Winchester
percyluna465@yahoo.com

Benjamin Harnett
ben.harnett@gmail.com

Shary Skoloff
sskoloff@comcast.net

lynn phillips
lynn_phillips@earthlink.net

Rebeca Byam
Rbyam11740@aol.com

Janet Sutta
thisfineday@gmail.com

Vicki Davis
davisv@citlink.net

Susan R. Jacques
M50271@aol.com

CP13-499

Allison Jones
allison@applegarthfarms.com

Kristina Turechek
turechkw@gmail.com

Barbara Coyle
coyleshawireland@yahoo.com

Tim Sweeney
T6sweeney@gmail.com

Joseph Freiss
joesbackacres@aol.com

Maureen Dill
maureendill@msn.com

Sasha Khashaei
skhashaei@yahoo.com

Lena Perazzo
lenaroseperazzo@gmail.com

Donald Smith
blackandwhite@frontiernet.net

Brian Brown
ic5197@yahoo.com

Kara O'Connor
martee-graw@gmail.com

Nancy Pfau
nancypfau@yahoo.com

Faiga Brussel
faigabrussel@yahoo.com

John McGreen
jdennism@gmail.com

Renee Nied
rniedpipeline@gmail.com

Bret Jennings
brett18821@outlook.com

James Sforza
jsforza8448@aol.com

Kevin O'Neill
kevin.oneill@axitel.net

Stephen Simko
char2harding@aol.com

Philip Warish
warish@yahoo.com

Jackie Cantor
jackiecantor@yahoo.com

Joseph Pfeiffer
galactic_rock@hotmail.com

Kelly Branigan
kkbranigan@gmail.com

Beverly Travis
bobev@catskill.net

Henry Bergmann
plmer3@gmail.com

Scott Handy
Maddux12a@yahoo.com

Diane MacInnes
Bruce MacInnes
bruce@macinnesmotorsports.com

Heather Kelly
Lilfootstepsdc@gmail.com

Peter Hudiburg
hudiburg@frontiernet.net

Kathy Shimberg
gkatmuse@gmail.com

Andrea Cohen
yourcarwashhair@gmail.com

CP13-499

Sarah Harley
pyrefly45@yahoo.com

Patricia Lane
justplane33@gmail.com

Susan Holland
susan-holland@usa.net

Kaima Nelson-Bowne
kaimamerika@frontiernet.net

Lisa Hoffman
allnightfixer@aim.com

William Gonz
wbgonz@aol.com

Jeri Wachter
jeriwachter@me.com

Kathy Shimberg
gkatmuse@gmail.com

William Blelock
wblelock@hvc.rr.com

Alexander Lotorto
alex@energyjustice.net

Sarah Harley
pyrefly45@yahoo.com

Nicole Jasprizza
nicjas@jasprizzagroup.com

Alicia Pagano
stefcz@aol.com

Richard Pfau
rapfau@yahoo.com

Mick Bello
mickey_eats@yahoo.com

Sarah Harley
pyrefly45@yahoo.com

Toshia Hance
toshiahance@hotmail.com

Tracy Briggs
lyn16071@yahoo.com

Lisette Stinson
lisette@midtel.net

Alicia Pagano
stefcz@aol.com

Richard Levine and Sharon Yate
levblues@nyc.rr.com

Bernald Briggs
bernaldbriggs@yahoo.com

Giuseppe Fuduli
pino_fuduli@msn.com

Tammy Henchey
Tamarakiss@yahoo.com

Jennifer Miller
selmacat@yahoo.com

Cynthia Campbell
cindycampbell@juno.com

Paul Marner
pmarner@aol.com

Christina Chrislip
fechrislip@aol.com

Kitty Ballard
kitty47ballard@gmail.com

Inese Leimanis
ineseleimanis@yahoo.com

May Miller
maybmiller@citlink.net

Craig Stevens
clsraigstevens@earthlink.net

CP13-499

Kathleen Brown
katydid@midtel.net

Amelia von Korff
avk123@icloud.com

William Heath
btdoghouse@stny.rr.com

John & Sheri Keating
jskeating1@yahoo.com

Tjalling Heyning
tjallingheyning@gmail.com

Mary Finneran
msfinn123@yahoo.com

Gloria McLean
gloria.mclean@earthlink.net

Daniel Bertolino
dan.bertolino@gmail.com

Vivian Kurutz
vjwkurutz@gmail.com

Patrick Crowe
ghughescrowe@gmail.com

Angela Carradine
angelacarradine@live.com

Jennifer Stinson
jstinson@midtel.net

Janet Terchek
janetpost@verizon.net

Nancy Rourke
TumnusEthic@hotmail.com

Maureen Dill
maureendill@msn.com

Kevin Greene
kevin@roof007.com

Maureen Dill
maureendill@msn.com

Kristina Kamm
Kristinajkamm@gmail.com

Gabriella Leach
jgleach@me.com

Jafar Ali
ottomanjafar@gmail.com

Johanna VanDeusen
mayor@villageoffranklinny.us

Donald Airey
don@descompany.com

Giffen Ott
giffen.ott@gmail.com

Jessica Phillips
jessfederici@gmail.com

Antoinette King
contact@kings375.com

Tania Konwinski
tanjakonwinski@gmail.com

Kendall Finley-Jacob
kendallfinleyjacob@gmail.com

Nayon Kim
kimcommanayon@gmail.com

Elliott Adams
elliottdsadams@gmail.com

Stephen Fissel
steve.fissel@gmail.com

Leslie Eaton
leslieprideeaton@gmail.com

Devin Lilly
dvnlilly@proton.me

CP13-499

Janet Hawkes
jeh34@cornell.edu

gregory cempa
gcempa@gmail.com

Ifrah Geelani
ifrahgeelani@gmail.com

Michael Bender
Dinder10@gmail.com

Rinna Hoffman
palmtree108@gmail.com

Gail Lapointe
gail.lapointe@gmail.com

Harold Wright
wrighd009@hotmail.com

Adam Michaels
adambmichaels@proton.me

Kevin Kelly
kellykj764@gmail.com

Ian Kiraly
ian.kiraly@gmail.com

Douglas Kerr
dougton.eo@yahoo.com

Joseph Hurst
jhb6589@gmail.com

Mary DeBonis
medebonis@gmail.com

Lila Saint-Buzon
lila.saintbuzon@gmail.com

Mary DeBonis
mustangvalleysanctuary@gmail.com

megan avery
megan@maverydesigns.com

Stacy Makarewicz
Stazia1135@gmail.com

gina craparotta
craparottaconstruction@gmail.com

Kelly Cusson
kcus44@gmail.com

Tiffany Taylor
nootter@hotmail.com

Kenneth McDonnell
klmcdonn@gmail.com

Desiree Josephson
desiree.josephson@gmail.com

chris pahidis
cpahidis@aol.com

Kurt Josephson
kurt.josephson@gmail.com

David Lapointe
david.lapointe@gmail.com

Alicia Terry
town.gilboa.supervisor@gilboatown-ny.gov

Margaret Mullins
karumm@bellsouth.net

Carol Malz
camalz12@outlook.com

Daphne Aberle
daphnedevi@gmail.com

Wes Gillingham
weskeeper@gmail.com

Jenna Moser-Cohen
jennamoco@gmail.com

CP13-499

Dara Boyd
daranboyd@gmail.com

Luca Loncar
lucaloncar@gmail.com

Michael Sodomora
phoenix124now@gmail.com

Patricia Patricia Kernan
kernan.pat@gmail.com

Kenneth Stanton
stantonkg@gmail.com

Gerri Wiley
gerriwiley@yahoo.com

Kenneth Stanton
stantonfamilyfarmllc@gmail.com

Wes Ernsberger
wesernsberger@gmail.com

Valerie Doescher
valerie.doescher@gmail.com

Bruce MacInnes
bruce@macinnesmotorsports.com

Lisa Stanton
mylastname71@gmail.com

Steven Weiner
weiner.steven@gmail.com

Kenneth Stanton
stantonrealtyllc@gmail.com

Lisa Stanton
stanton@midtel.net

ROBERT MAIZNER
rmaizner@gmail.com

Zoe Chanin
zdavisc1@binghamton.edu

Dylan Gliganic
dgliganic7@gmail.com

Rebecca Roter
aludra@aol.com

Karen Kantor
karen@kcentral.com

Albany-Schoharie-Schenectady-Saratoga BOCES

Bethany Centrone
bethany.centrone@neric.org

American Gas Association

Matthew Agen
magen@aga.org

Sydney Novoa
snovoa@aga.org

Katherine Herrera
kherrera@aga.org

Berkshire Environmental Action Team, Inc. (BEAT)

Rosemary Wessel
rose@thebeatnews.org

CP13-499

Bluestone Gas Corporation of New York, Inc.

Jane Rueger
jrueger@perkinscoie.com

Bluestone Pipeline Company of Pennsylvania, LLC

Jane Rueger
jrueger@perkinscoie.com

Cabot Oil & Gas Corporation

Matthew Schreck
matt@airmail.net

Catskill Citizens for Safe Energy

Heidi Rogers
heidirogers345@gmail.com

Catskill Mountainkeeper

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

CEEC of Delaware County

Joan Tubridy
ceecdelaawarecounty@gmail.com

Chevron U.S.A. Inc.

Kevin Sweeney
ksweeney@kmsenergyllaw.com

Matthijs Nieuwveld
matthijs.nieuwveld@chevron.com

Jay Dibble
Jay.Dibble@Chevron.com

Clean Air Council

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Conservation Law Foundation

Priya Gandbhir
pgandbhir@clf.org

CP13-499

Constitution Pipeline Company, LLC

Allison Jenkins
allison.jenkins@williams.com

JOHN F. STOVIK, ESQ
jstovik@saul.com

Nicholas Baumann
nick.baumann@williams.com

Elizabeth Witmer
Elizabeth.Witmer@saul.com

Bela Patel
bela.patel@bwpipelines.com

Michael Diamond
mmd@vnf.com

Stephen Hatridge
stephen.a.hatridge@williams.com

Michael R. Pincus
mrp@vnf.com

Christopher Hogan
chris.hogan@dec.ny.gov

Francesca Ciliberti
francesca.ciliberti-ayres@williams.com

Michael Thompson
thompson@wrightlaw.com

Katherine Liberty
katherine.liberty@williams.com

County of Schoharie, State of New York

Anthony Bjelke
abjelke@woh.com

Cross & Company, PLLC

S. Lorraine Cross
cross@co-law.net

Croton Watershed Clean Water Coalition

James Bacon
Baconesq@yahoo.com

Cullen and Dykman LLP

Kenneth Maloney
kmaloney@cullenanddykman.com

Damascus Citizens for Sustainability, Inc.

John Zimmerman
jjzimmerman@comcast.net

CP13-499

Delaware Riverkeeper Network

Kacy Manahan
kacy@delawareriverkeeper.org

Moneen Nasmith
mnasmith@earthjustice.org

Maya van Rossum
keepermaya@delawareriverkeeper.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Delaware-Otsego Audubon Society

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

EARTHJUSTICE

Moneen Nasmith
mnasmith@earthjustice.org

Eastern New York Laborers' District Council

Samuel Fresina
enylcdc@gmail.com

Frank Marchese
rcoia@nysliuna.org

Environmental Defense Fund

Ted Kelly
tekelly@edf.org

Exelon Corporation

Christopher Wilson
FERCe-filings1@Constellation.com

Lisa Michelle Simpkins
lisa.simpkins@exeloncorp.com

Food & Water Watch

Emily Wurth
ewurth@fwwatch.org

Susan Kraham
skraham@earthjustice.org

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Franklin Central School

Eric Haight
haighteric@yahoo.com

Harmony Hill Lodging and Retreat Center

CHRIS ROSENTHAL
chris@chrisrosenthal.com

CP13-499

Henry S. Kernan Land Trust

Patricia Kernan
kernan.pat@gmail.com

HINMAN, HOWARD & KATTELL

Robert Wedlake
rwedlake@hhk.com

Holleran Family

Carolyn Elefant
carolyn@carolynelefant.com

Holleran Landowners

Carolyn Elefant
carolyn@carolynelefant.com

Independent Petroleum Association of America

Mallori Miller
mmiller@ipaa.org

INDIVIDUAL

ROSA CASCARDO
rosa.cascardo@cascardolaw.com

Giulia Prestia
giuliaprestia@gmail.com

Interstate Natural Gas Association of America

Joan Dreskin
JDreskin@ingaa.org

Christopher Smith
csmith@ingaa.org

Iroquois Gas Transmission System, L.P.

Kimberly Pritchard
kimberly_pritchard@iroquois.com

Kendall family Trust

Edward Kendall
kendallpipeline@gmail.com

Massachusetts Office of the Attorney General

Christopher Modlish
chris.modlish@mass.gov

Jacquelyn Bihrlle
jacquelyn.bihrlle@mass.gov

CP13-499

Maya K. van Rossum, the Delaware Riverkeeper

Kacy Manahan
kacy@delawareriverkeeper.org

Moneen Nasmith
mnasmith@earthjustice.org

Maya van Rossum
keepermaya@delawareriverkeeper.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Meredith Landowners Coalition

ferc@meredith-coalition.org

Millennium Pipeline Company, L.L.C.

Georgia Carter
carter@millenniumpipeline.com

National Grid Gas Delivery Companies

Samara Jaffe
samara.jaffe@nationalgrid.com

Amber Thornhill
Amber.Thornhill@nationalgrid.com

David Lodemore
david.lodemore@nationalgrid.com

Jacob Goldblatt
jacob.goldblatt@nationalgrid.com

Kenneth Maloney
kmaloney@cullenanddykman.com

Kate Toriello
kate.toriello@nationalgrid.com

Ahuva Z Battams
abattams@cullenanddykman.com

Maryann Stankovski
maryann.stankovski1@nationalgrid.com

Andrew MacBride
andrew.macbride@nationalgrid.com

Jaryd Weink
jweink@cullenllp.com

Patrick J. Tarmey
patrick.tarmey@nationalgrid.com

Gregory T. Simmons
gsimmons@cullenllp.com

Natural Resources Defense Council

Gillian Giannetti
ggiannetti@nrdc.org

Mark Izeman
mizeman@nrdc.org

CP13-499

New England LDCs

Nicole Allen
nallen@thompsoncoburn.com

Mary E. Grover
mary.grover@eversource.com

Jenna E. Cliatt
jcliatt@thompsoncoburn.com

Thomas O Lemon
thomas.lemon@eversource.com

John P. Rudiak
jrudiak@ctgcorp.com

Deborah Gilbertson
deborah.gilbertson@libertyutilities.com

John E Allocca
jallocca1@verizon.net

Francis X Wells
wells@unitil.com

Jay V Fletcher
jfletcher@ctgcorp.com

Kelsey Colvin
kacolvin@pplweb.com

Eric Soderman
eric.soderman@eversource.com

New Jersey Natural Gas Company

William Scharfenberg
wscharfenberg@njresources.com

Doug Rudd
dcrudd@njresources.com

New York Attorney General

Maureen Leary
maureen.leary@dps.ny.gov

New York Public Service Commission

Cynthia H McCarran
cynthia.mccarran@dps.ny.gov

New York State Council of Trout Unlimited

William H. Wellman
wellman1985@charter.net

Roger D. Olson, ESQ
RDO@RogerOlsonLaw.com

New York State Department of Environmental Conservation

Jeffrey Strassenburg
jlstrass@hotmail.com

Anthony Luisi
anthony.luisi@dec.ny.gov

Jessie Shaw
jessie.shaw@dec.ny.gov

Sita Crounse Esq
sita.crounse@dec.ny.gov

CP13-499

New York State Public Service Commission

David Drexler
david.drexler@dps.ny.gov

Brandon F Goodrich
brandon.goodrich@dps.ny.gov

Cynthia H McCarran
cynthia.mccarran@dps.ny.gov

Chris Stolicky
christopher.stolicky@dps.ny.gov

NJR Energy Services Company

William Scharfenberg
wscharfenberg@njresources.com

Doug Rudd
dcrudd@njresources.com

Ginger Richman
gprichman@njresources.com

No Pipeline Expansion Northeast

Martha Klein
puckyshouse@gmail.com

North Star Farm LLC

Justin Kamm
justin@northstarfarm.com

NRG Business Marketing LLC

Kevin Sweeney
ksweeney@kmsenergyllaw.com

Jennifer S Hsia
Jennifer.Hsia@nrg.com

Kevin Frank
kevin.frank@nrg.com

NYS Laborers' LECET Fund

Frank Marchese
fmarchese@nyslof.org

ONEONTA, CITY OF

Katherine Lipari Shue
kliparishue@oneonta.ny.us

Otsego 2000, Inc.

Ellen Pope
director@otsego2000.org

Otsego County Conservation Association

Shelby MacLeish
coordinator@occainfo.org

CP13-499

PACE ENVIRONMENTAL LITIGATION CLINIC

Anne Marie Garti
agarti@law.pace.edu

Todd D. Ommen
tommen@law.pace.edu

Pipe Line Awareness Network for the Northeast, Inc.

Cathy Kristofferson
cathy.kristofferson@gmail.com

Power the Future

Daniel Turner
DTurner@powerthefuture.com

Process Gas Consumers Group

Jack Semrani
jack.semrani@gmail.com

PSEG Energy Resources & Trade LLC

Uju Okasi
obianuju.okasi@pseg.com

Priya Patel
priya.patel@pseg.com

Stephen Irons
stephen.iron@pseg.com

PUBLIC CITIZEN, INC

Tyson Slocum
tslocum@citizen.org

Riverkeeper, Inc.

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Sane Energy Project

Kim Fraczek
kim@saneenergyproject.org

Sap Bush Hollow Farm

Shannon Hayes
sapbushshannon@gmail.com

CP13-499

Schoharie County Board of Supervisors

Donald Airey
don@descompany.com

Dylan Harris
dharris@woh.com

William Federice
federicebill@gmail.com

SCHOHARIE COUNTY PLANNING & DEVELOPMENT

Shane Nickle
nickle.shane@co.schoharie.ny.us

Sierra Club

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Sigmund Software, LLC

Harry Manesis
hapman2014@gmail.com

Slope Farms LLC

Kenneth Jaffe
slopefarms@delhitel.net

Southwestern Energy Services Company

Brett Snyder
brett.snyder@blankrome.com

Jason Kurtz
Jason_kurtz@swn.com

Stinson Lock Service, Inc.

Jennifer Stinson
waynejen@midtel.net

Susquehanna Gathering Company I, LLC

Jane Rueger
jrueger@perkinscoie.com

Caileen Gamache
caileen.gamache@nortonrosefulbright.com

The Borough of Great Bend

Bret Jennings
brett18821@outlook.com

The Business Council of New York State

Darren Suarez
darren.suarez@bcnys.org

CP13-499

The Hallstead Great Bend Joint Sewer Authority

Bret Jennings
brett18821@outlook.com

The Waterfall Center for Bioregional Learning

Tania Konwinski
tanja@waterfallcenter.org

Town of Davenport, New York

Dennis Valente
denvale@yahoo.com

Town of Franklin, New York

Connie Young
townfranklin@stny.rr.com

Town of Meredith

Michele Lechanteur
michelel@delhitel.net

Keitha Capouya
kcapouya@gmail.com

Town of Summit

Roger Gural
Supervisor@summittown-ny.gov

U.S. Department of the Interior

Office of the Solicitor, Northeast
DOISOLNE-FERC@sol.doi.gov

UNIVERSITY OF ILLINOIS

Lennard Davis
lennard.davis@gmail.com

Upstate Landowners Group LLC

James Worden
jworden@tds.net

Village of Middleburgh

Timothy Knight
mayor.knight@villageofmiddleburgh.gov

Village of Schoharie

Thomas Hitter
thitter54@gmail.com

Waterfall Unity Alliance

Sheena Brown
sheena@mountaintop-capital.com

CP13-499

Waterkeeper Alliance

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Yale New Haven Health System

Jonathan Webster
xrswtjw@proton.me

CP13-502

Janet Terchek
janetpost@verizon.net

Pamela Krauss, Esq.
Pamirus1@gmail.com

Berkshire Environmental Action Team, Inc. (BEAT)

Rosemary Wessel
rose@thebeatnews.org

Cabot Oil & Gas Corporation

Matthew Schreck
matt@airmail.net

Calpine Energy Services, L.P.

Sarah G. Novosel, ESQ
snovosel@calpine.com

Jay Dibble
Jay.Dibble@Calpine.com

Catskill Mountainkeeper

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Clean Air Council

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Consolidated Edison Company of New York, Inc.

Paul Savage
savagep@coned.com

Karen Cornelio
corneliok@coned.com

Sebrina Greene
greenes@coned.com

Gregory Feeney
feeneyg@coned.com

CP13-502

Cullen and Dykman LLP

Kenneth Maloney
kmaloney@cullenanddykman.com

Damascus Citizens for Sustainability, Inc.

John Zimmerman
jjzimmerman@comcast.net

Delaware Riverkeeper Network

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Delaware-Otsego Audubon Society

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Environmental Defense Fund

Ted Kelly
tekelly@edf.org

Adam Kurland
akurland@edf.org

Exelon Corporation

Christopher Wilson
FERCe-filings1@Constellation.com

Lisa Michelle Simpkins
lisa.simpkins@exeloncorp.com

Food & Water Watch

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Iroquois Gas Transmission System, L.P.

Lisanne Crowley, ESQ
lisanne.crowley@troutman.com

Mary-Kate Rigney
mary-kate.rigney@troutman.com

Daniel Archuleta
daniel.archuleta@troutman.com

Russell Kooistra
russell.kooistra@troutman.com

Kimberly Pritchard
kimberly_pritchard@iroquois.com

CP13-502

Iroquois Pipeline Operating Company

Ruth Parkins
ruth_parkins@iroquois.com

Maya K. van Rossum, the Delaware Riverkeeper

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

National Grid Gas Delivery Companies

Samara Jaffe
samara.jaffe@nationalgrid.com

David Lodemore
david.lodemore@nationalgrid.com

Natural Resources Defense Council

Gillian Giannetti
ggiannetti@nrdc.org

Mark Izeman
mizeman@nrdc.org

New Jersey Natural Gas Company

William Scharfenberg
wscharfenberg@njresources.com

Doug Rudd
dcrudd@njresources.com

New York Public Service Commission

Cynthia H McCarran
cynthia.mccarran@dps.ny.gov

New York State Department of Environmental Conservation

Jessie Shaw Esq
jessie.shaw@dec.ny.gov

NJR Energy Services Company

William Scharfenberg
wscharfenberg@njresources.com

Doug Rudd
dcrudd@njresources.com

Ginger Richman
gprichman@njresources.com

Pipe Line Awareness Network for the Northeast, Inc.

Cathy Kristofferson
cathy.kristofferson@gmail.com

CP13-502

Riverkeeper, Inc.

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Sierra Club

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Southwestern Energy Services Company

Brett Snyder
brett.snyder@blankrome.com

Jason Kurtz
Jason_kurtz@swn.com

Stop the Pipeline

Anne Marie Garti
annemarie@garti.net

Todd D. Ommen
tommen@law.pace.edu

Waterkeeper Alliance

Moneen Nasmith
mnasmith@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

CP18-5

Timothy Camann
timcamann@gmail.com

Antoinette King
contact@kings375.com

Cynthia Beach
CDBeachlog@aol.com

Kendall Finley-Jacob
kendallfinleyjacob@gmail.com

Marilyn Shifflett
mmsedit@aol.com

Elliott Adams
elliottdsadams@gmail.com

Catherine Holleran
holleran@nep.net

Leslie Eaton
leslieprideeaton@gmail.com

Johanna VanDeusen
mayor@villageoffranklinny.us

John & Sheri Keating
jskeating1@yahoo.com

Giffen Ott
giffen.ott@gmail.com

Mary Finneran
msfinn123@yahoo.com

CP18-5

Daniel Bertolino
dan.bertolino@gmail.com

Patrick Crowe
ghughescrowe@gmail.com

Jennifer Stinson
jstinson@midtel.net

Nancy Rourke
TumnusEthic@hotmail.com

Kevin Greene
kevin@roof007.com

Kristina Kamm
Kristinajkamm@gmail.com

Jafar Ali
ottomanjafar@gmail.com

Jessica Phillips
jessfederici@gmail.com

Tania Konwinski
tanjakonwinski@gmail.com

Nayon Kim
kimcommanayon@gmail.com

Stephen Fissel
steve.fissel@gmail.com

Devin Lilly
dvnlilly@proton.me

Janet Hawkes
jeh34@cornell.edu

Ifrah Geelani
ifrahgeelani@gmail.com

Rinna Hoffman
palmtree108@gmail.com

Harold Wright
wrighd009@hotmail.com

Kevin Kelly
kellykj764@gmail.com

Douglas Kerr
dougstone.geo@yahoo.com

Kelly Cusson
kcus44@gmail.com

Kenneth McDonnell
klmcdonn@gmail.com

chris pahidis
cpahidis@aol.com

David Lapointe
david.lapointe@gmail.com

Margaret Mullins
karumm@bellsouth.net

Daphne Aberle
daphnedevi@gmail.com

Jenna Moser-Cohen
jennamoco@gmail.com

gregory cempa
gcempa@gmail.com

Wayne Stinson
stinsonlock@live.com

Michael Bender
Dinder10@gmail.com

Gail Lapointe
gail.lapointe@gmail.com

Ian Kiraly
ian.kiraly@gmail.com

CP18-5

Joseph Hurst
jbh6589@gmail.com

Wes Gillingham
weskeeper@gmail.com

Lila Saint-Buzon
lila.saintbuzon@gmail.com

Dara Boyd
daranboyd@gmail.com

gina craparotta
craparottaconstruction@gmail.com

Michael Sodomora
phoenix124now@gmail.com

Desiree Josephson
desiree.josephson@gmail.com

Dylan Gliganic
dgliganic7@gmail.com

Kurt Josephson
kurt.josephson@gmail.com

Karen Kantor
karen@kcentral.com

Alicia Terry
town.gilboa.supervisor@gilboatown-ny.gov

Luca Loncar
lucaloncar@gmail.com

Carol Malz
camalz12@outlook.com

Albany-Schoharie-Schenectady-Saratoga BOCES

Bethany Centrone
bethany.centrone@neric.org

American Gas Association

Matthew Agen
magen@aga.org

Sydney Novoa
snovoa@aga.org

Katherine Herrera
kherrera@aga.org

Berkshire Environmental Action Team, Inc. (BEAT)

Rosemary Wessel
rose@thebeatnews.org

Catskill Mountainkeeper

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

CP18-5

Chevron U.S.A. Inc.

Kevin Sweeney
ksweeney@kmsenergyllaw.com

Matthijs Nieuwveld
matthijs.nieuwveld@chevron.com

Jay Dibble
Jay.Dibble@Chevron.com

Citizens for Clean Water

Vera Scroggins
veraduerga@gmail.com

Clean Air Council

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Conservation Law Foundation

Priya Gandbhir
pgandbhir@clf.org

Constitution Pipeline Company, LLC

Stephen Hatridge
stephen.a.hatridge@williams.com

Michael R. Pincus
mrp@vnf.com

Elizabeth U Witmer
Elizabeth.Witmer@saul.com

Francesca Ciliberti
francesca.ciliberti-ayres@williams.com

Michael Diamond
mmd@vnf.com

Katherine Liberty
katherine.liberty@williams.com

County of Schoharie, State of New York

Anthony Bjelke
abjelke@woh.com

Delaware Riverkeeper Network

Aaron Stemplewicz
astemplewicz@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Kacy Manahan
kacy@delawareriverkeeper.org

Moneen Nasmith
mnasmith@earthjustice.org

Maya van Rossum
keepermaya@delawareriverkeeper.org

Ann Jaworski
ajaworski@earthjustice.org

CP18-5

Delaware-Otsego Audubon Society

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Energy Transfer LP

William Scherman
wscherman@velaw.com

Jason J. Fleischer
jfleischer@velaw.com

Energy Transfer Partners, L.P.

Jason Fleischer
jfleischer@velaw.com

William S. Scherman
wscherman@velaw.com

Environmental Defense Fund

Ted Kelly
tekelly@edf.org

Food & Water Watch

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Holleran Family

Carolyn Elefant
carolyn@carolynelefant.com

Holleran Landowners

Carolyn Elefant
carolyn@carolynelefant.com

Independent Petroleum Association of America

Mallori Miller
mmiller@ipaa.org

INDIVIDUAL

ROSA CASCARDO
rosa.cascardo@cascardolaw.com

Giulia Prestia
giuliaprestia@gmail.com

Interstate Natural Gas Association of America

Joan Dreskin
JDreskin@ingaa.org

Christopher Smith
csmith@ingaa.org

CP18-5**Iroquois Gas Transmission System, L.P.**

Lisanne Crowley
lisanne.crowley@troutman.com

Kimberly Pritchard
kimberly_pritchard@iroquois.com

Massachusetts Office of the Attorney General

Christopher Modlish
chris.modlish@mass.gov

Jacquelyn Bihrlle
jacquelyn.bihrlle@mass.gov

Massachusetts PipeLine Awareness Network

Kathryn Eiseman
katyeiseman@gmail.com

Cathy Kristofferson
cathy.kristofferson@gmail.com

Maya K. van Rossum, the Delaware Riverkeeper

Kacy Manahan
kacy@delawareriverkeeper.org

Moneen Nasmith
mnasmith@earthjustice.org

Maya van Rossum
keepermaya@delawareriverkeeper.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Natural Resources Defense Council

Gillian Giannetti
ggiannetti@nrdc.org

Mark Izeman
mizeman@nrdc.org

New York State Department of Environmental Conservation

Jessie Shaw
jessie.shaw@dec.ny.gov

Sita Crounse Esq
sita.crounse@dec.ny.gov

Anthony Luisi
anthony.luisi@dec.ny.gov

New York State Public Service Commission

David Drexler
david.drexler@dps.ny.gov

Brandon F Goodrich
brandon.goodrich@dps.ny.gov

Cynthia H McCarran
cynthia.mccarran@dps.ny.gov

Chris Stolicky
christopher.stolicky@dps.ny.gov

No Pipeline Expansion Northeast

Martha Klein
puckyshouse@gmail.com

North Star Farm LLC

Justin Kamm
justin@northstarfarm.com

CP18-5

NRG Business Marketing LLC

Kevin Sweeney
ksweeney@kmsenergyllc.com

Jennifer S Hsia
Jennifer.Hsia@nrg.com

Kevin Frank
kevin.frank@nrg.com

Otsego 2000, Inc.

Ellen Pope
director@otsego2000.org

Otsego County Conservation Association

Shelby MacLeish
coordinator@occainfo.org

Pipe Line Awareness Network for the Northeast, Inc.

cathy.kristofferson@gmail.com

Power the Future

Daniel Turner
DTurner@powerthefuture.com

PSEG Energy Resources & Trade LLC

Uju Okasi
obianuju.okasi@pseg.com

Priya Patel
priya.patel@pseg.com

Stephen Irons
stephen.irons@pseg.com

PUBLIC CITIZEN, INC

Tyson Slocum
tslocum@citizen.org

Riverkeeper, Inc.

Moneen Nasmith
mnaasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Rover Pipeline LLC

William Scherman
wscherman@velaw.com

Jason J. Fleischer
jfleischer@velaw.com

CP18-5

Sane Energy Project

Kim Fraczek
kim@saneenergyproject.org

Sap Bush Hollow Farm

Shannon Hayes
sapbushshannon@gmail.com

Schoharie County Board of Supervisors

Dylan Harris
dharris@woh.com

Donald Airey
don@descompany.com

William Federice
federicebill@gmail.com

SCHOHARIE COUNTY PLANNING & DEVELOPMENT

Shane Nickle
nickle.shane@co.schoharie.ny.us

Sierra Club

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Susan Kraham
skraham@earthjustice.org

Sigmund Software, LLC

Harry Manesis
hapman2014@gmail.com

Stop the Pipeline

Anne Marie Garti
agarti@law.pace.edu

Todd D. Ommen
tommen@law.pace.edu

The Waterfall Center for Bioregional Learning

Tania Konwinski
tanja@waterfallcenter.org

Town of Summit

Roger Gural
Supervisor@summittown-ny.gov

CP18-5

Waterkeeper Alliance

Daniel Estrin
destrin@waterkeeper.org

Susan Kraham
skraham@earthjustice.org

Moneen Nasmith
mnasmith@earthjustice.org

Ann Jaworski
ajaworski@earthjustice.org

Yale New Haven Health System

Jonathan Webster
xrswctjw@proton.me

Exhibit A

Order on Remand, *Constitution Pipeline Company, LLC and Iroquois Gas Transmission System, L.P.*, 194 FERC ¶ 61,064 (Jan. 23, 2026)

194 FERC ¶ 61,064
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

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

ORDER ON REMAND

(Issued January 23, 2026)

1. This order responds to a November 18, 2021, order of the United States Court of Appeals for the Second Circuit¹ by documenting our dismissal of the agency proceedings that were the subject of that order, as discussed below.
2. On June 13, 2013, Constitution Pipeline Company, LLC (Constitution) filed an application in Docket No. CP13-499-000 for a certificate of public convenience and necessity to construct and operate approximately 124 miles of 30-inch diameter pipeline and related facilities (Constitution Pipeline Project). On the same date, Iroquois Gas Transmission System, L.P. (Iroquois) filed, in Docket No. CP13-502-000, a concurrent application requesting authorization to construct, install, modify, own, operate, and maintain certain compression facilities, and to lease the incremental capacity associated with these new and modified facilities to Constitution (Wright Interconnection Project). On December 2, 2014, the Commission issued an order granting the requested certificates to Constitution and Iroquois (Certificate Order).²

¹ *N.Y. State Dep't of Env't Conservation v. FERC*, Nos. 19-4338, 20-158, and 20-208, and *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345 and 16-361 (2d Cir. Nov. 18, 2021).

² *Constitution Pipeline Co., LLC*, 149 FERC ¶ 61,199 (2014).

3. On April 22, 2016, the New York State Department of Environmental Conservation (New York DEC) denied Constitution's request for water quality certification for the Constitution Pipeline Project under section 401 of the Clean Water Act.³ On October 11, 2017, Constitution filed with the Commission a petition for a declaratory order, which sought a finding that the New York DEC had waived its authority under section 401 of the Clean Water Act.⁴ On January 11, 2018, the Commission denied the petition (First Waiver Order), and subsequently denied rehearing.⁵ On September 14, 2018, Constitution filed a petition for review of the First Waiver Order in the United States Court of Appeals for the D.C. Circuit.⁶

4. On February 25, 2019, the Commission filed with the D.C. Circuit an unopposed motion for voluntary remand of the First Waiver Order.⁷ The Commission explained that it was seeking the remand so that it could consider the implications of the D.C. Circuit's then-recent decision in *Hoopa Valley Tribe v. FERC (Hoopa Valley)*.⁸ On February 28, 2019, the court granted the Commission's motion.⁹ On August 28, 2019, the Commission issued an order reversing its prior determination and finding that the New York DEC waived its authority under Clean Water Act section 401 to issue or deny a water quality certification for the Constitution Pipeline Project (Second Waiver Order).¹⁰

5. A group of petitioners sought review of the Certificate Order and the Second Waiver Order in the Second Circuit. Those cases were styled *Catskill Mountainkeeper*,

³ See Letter from John Ferguson, New York DEC, to Lynda Schubring, Constitution (Apr. 22, 2016); see also 33 U.S.C. § 1341(a).

⁴ Constitution, Petition for Declaratory Order, Docket No. CP18-5-000 (filed Oct. 11, 2017).

⁵ *Constitution Pipeline Co., LLC*, 162 FERC ¶ 61,014, at P 23, *reh'g denied*, 164 FERC ¶ 61,029 (2018).

⁶ *Constitution Pipeline Co., LLC v. FERC*, Petition for Review, No. 18-1251 (D.C. Cir. Sept. 14, 2018).

⁷ *Constitution Pipeline Co., LLC v. FERC*, Unopposed Motion of Respondent Federal Energy Regulatory Commission for Voluntary Remand, No. 18-1251 (D.C. Cir. Feb. 25, 2019).

⁸ 913 F.3d 1099 (D.C. Cir. 2019).

⁹ *Constitution Pipeline Co., LLC v. FERC*, No. 18-1251 (D.C. Cir. Feb. 28, 2019).

¹⁰ *Constitution Pipeline, Co., LLC*, 168 FERC ¶ 61,129 (2019).

Docket No. CP13-499-000, et al.

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Inc. v. FERC, Nos. 16-345 and 16-361 (consolidated), and *New York State Department of Environmental Conservation, v. FERC*, Nos. 19-4338, 20-158, and 20-208 (consolidated).

6. On February 24, 2020, Constitution announced publicly that it no longer intended to pursue the project. On March 31, 2020, and November 24, 2020, Iroquois and Constitution, respectively, notified the Commission that they would not move forward with their projects.¹¹

7. The Certificate Order, as amended, required Constitution and Iroquois to complete construction of the Constitution Pipeline Project and Wright Interconnection Project and place both projects into service by December 2, 2020. The Commission's authorizations to construct the projects lapsed on that day due to the failure of Constitution and Iroquois to complete construction by the deadline set forth in the Certificate Order.

8. On January 25, 2021, the Commission filed a motion to dismiss the Second Circuit appeals, given that the project had been cancelled and that the authorizations granted by the Certificate Order had lapsed.

9. On November 18, 2021, the Second Circuit vacated the Certificate Order and the Second Waiver Order and remanded to the Commission "with instructions to dismiss the agency proceedings."¹² The Court's mandate issued on January 10, 2022.

10. On December 19, 2025, Constitution filed a petition seeking reissuance of a certificate of public convenience and necessity for the Constitution Pipeline Project and reaffirmation of New York's waiver of authority under Clean Water Act section 401 (2025 Petition). The 2025 Petition was placed in the Commission's public eLibrary system under new subdockets CP13-499-006 and CP18-5-004. On January 8, 2026, the Commission issued a notice of Constitution's 2025 Petition and solicited comments, protests, and interventions. That notice was published in the *Federal Register* on January 13, 2026.¹³ The 2025 Petition is currently pending, and the Commission is not in any way pre-judging the merits of the 2025 Petition in this order.

¹¹ Iroquois March 31, 2020 Notice Regarding Wright Interconnection Project (Docket No. CP13-502-000); Constitution November 24, 2020 Final Project Status Update (Docket No. CP13-499-000).

¹² *N.Y. State Dep't of Env't Conservation v. FERC*, Nos. 19-4338, 20-158, and 20-208, and *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345 and 16-361 (2d Cir. Nov. 18, 2021). See *Stop the Pipeline February 4, 2021 Motion to Dismiss for Lack of Subject-Matter Jurisdiction and for Vacatur of the Orders*.

¹³ 91 Fed. Reg. 1311 (Jan. 13, 2026). The Notice explained that parties that had previously intervened in the certificate and waiver proceedings did not need to file new

11. Several parties have recently submitted letters to the Commission or its staff¹⁴ stating that, in their view, the Second Circuit’s instruction “to dismiss the agency proceedings” required the Commission to take a further “ministerial”¹⁵ step on remand to “close[]”¹⁶ the relevant dockets or otherwise document through a formal order that the proceedings were dismissed.¹⁷ For clarity and avoidance of doubt, we now confirm that the proceedings referenced in the caption of this order are dismissed.

12. The same parties suggest that the Commission should have directed Constitution to submit its 2025 Petition “as a new application in a new docket”¹⁸ rather than “permit[ting] Constitution to submit its petition on dockets that were required to be closed.”¹⁹ Those parties cite no authority suggesting that the Commission was required to follow their preferred procedural path. As explained below, the path selected by the Commission was squarely within our considerable authority to manage our own docket, and our consideration of Constitution’s 2025 petition is unaffected by docket numbering.²⁰

13. As an initial matter, we note that Constitution’s 2025 Petition was not filed on a “defunct” docket,²¹ or even a docket that would have been “defunct” had the Commission’s dismissals been formally documented in 2022. On the contrary, the 2025 Petition was noticed on *new* subdockets. In any case, nothing in our enabling statutes,

motions to intervene.

¹⁴ See New York State Office of the Attorney General January 13, 2026 Filing (NY OAG Letter); Stop the Pipeline January 14, 2026 Filing; Catskill Mountainkeeper, Inc. et al. January 16, 2026 Filing (Catskill Letter).

¹⁵ NY OAG Letter at 2.

¹⁶ *Id.*

¹⁷ See Catskill Letter at 1-2.

¹⁸ *Id.* at 2.

¹⁹ NY OAG Letter at 2.

²⁰ *E.g.*, *Vt. Yankee Nuclear Power Corp. v. Nat. Res. Def. Council, Inc.*, 435 U.S. 519, 524-25 (1978) (recognizing that agencies have broad discretion over the formulation of their procedures); *S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41, 81 (D.C. Cir. 2014) (per curiam) (discussing Commission’s discretion to manage proceedings); *Mich. Pub. Power Agency v. FERC*, 963 F.2d 1574, 1578-79 (D.C. Cir. 1992) (similar).

²¹ *Contra* NY OAG Letter at 2.

Docket No. CP13-499-000, et al.

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our rules, our precedent, or the Second Circuit’s mandate bars parties from making filings on “dismissed,” “terminated,” or “defunct” dockets. Nor is there any authority preventing the Commission from taking action on such filings. Thus, even had we formally documented the dismissal of the proceedings in 2022, nothing would have barred Constitution from filing its 2025 Petition in these dockets, nor would the manner in which we processed and noticed that filing have differed in any way. “[M]inisterial”²² judgments regarding whether a filing should be handled under an existing docket number or a new docket number are archetypical exercises of the Commission’s “broad discretion to manage its docket.”²³

The Commission orders:

We confirm that the proceedings referenced in the caption of this order are dismissed.

By the Commission. Commissioner LaCerte is concurring with a separate statement attached.

(S E A L)

Carlos D. Clay,
Deputy Secretary.

²² *See id.*

²³ *See MISO Transmission Owners v. FERC*, 45 F.4th 248, 262 (D.C. Cir. 2022). Because Constitution is proposing to construct and operate the same project that was authorized in the Certificate Order and related Commission-approved variances, we found that assigning the 2025 Petition a new docket number was not necessary and would disadvantage participants. If the Commission assigned the 2025 Petition a new docket number, the stakeholders following the previous dockets for the Constitution Pipeline Project would risk missing filings that could impact their interests. Moreover, the Commission clarified in its Notice of the 2025 Petition that intervenors in the prior sub-dockets for these proceedings did not need to re-intervene and retained their party status, thus allowing them to seek rehearing of any future Commission orders on the 2025 Petition and to seek subsequent judicial review. *See supra* note 13. The procedural path selected by the Commission therefore provided *more* notice and *more* opportunity to participate than would have been provided had the Commission directed Constitution to file the 2025 Petition on new and separate dockets.

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

(Issued January 23, 2026)

LACERTE, Commissioner, *concurring*:

14. I fully agree with my colleagues on the entirety of today's order confirming that the proceedings referenced in the caption of this order are dismissed. I write separately in light of recent filings casting doubt on the Commission's management of its own dockets and to highlight that regardless of the outcome of a proceeding (e.g., whether it is dismissed, vacated, canceled, withdrawn, terminated, or final), we retain jurisdiction (and discretion) to take action on such filings and in such dockets or subdockets as the Commission may deem appropriate.²⁴

15. Moreover, it would be an inefficient use of agency and stakeholder resources to assign a new docket where all of the work has already been done and is easily accessible, particularly here where the project is the same as the one the Commission previously reviewed and authorized.²⁵

²⁴ See 15 U.S.C. 717o; see also *Mobil Oil Expl. & Prod. Serv. v. United Distrib. Cos.*, 498 U.S. 211, 230-31 (1991) ("An agency enjoys broad discretion in determining how best to handle related, yet discrete, issues in terms of procedures."); *United Power, Inc. v. FERC*, 49 F.4th 554, 560 (D.C. Cir. 2022) ("An agency has broad discretion to determine when and how to hear and decide the matters that come before it.").

²⁵ See also *Constitution Pipeline Co.*, 194 FERC ¶ 61,064, at P 13 n.23 (2026) (explaining that the procedural path selected here provided more notice and more opportunity to participate than would have been provided had the Commission directed

Docket Nos. CP13-499-000, et al.

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For these reasons, I respectfully concur.

David LaCerte
Commissioner

Constitution to file the 2025 Petition in new and separate dockets).

Document Content(s)

CP13-499-000.docx.....1

Exhibit B

Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *Constitution Pipeline Company, LLC* and *Iroquois Gas Transmission System, L.P.*, 194 FERC ¶ 61,064 (Mar. 26, 2026)

194 FERC ¶ 62,146
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket Nos. CP13-499-007
CP13-502-004
CP18-5-005

NOTICE OF DENIAL OF REHEARING BY OPERATION OF LAW AND
PROVIDING FOR FURTHER CONSIDERATION

(March 26, 2026)

Rehearing has been timely requested of the Commission's order issued on January 23, 2026, in this proceeding. *Constitution Pipeline Company, LLC*, 194 FERC ¶ 61,064 (2026). In the absence of Commission action on a request for rehearing within 30 days from the date it is filed, the request for rehearing may be deemed to have been denied. 15 U.S.C. § 717r(a); 18 C.F.R. § 385.713 (2025); *Allegheny Def. Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc).

As provided in 15 U.S.C. § 717r(a), the requests for rehearing of the above-cited order filed in this proceeding will be addressed in a future order to be issued consistent with the requirements of such section. As also provided in 15 U.S.C. § 717r(a), the Commission may modify or set aside its above-cited order, in whole or in part, in such manner as it shall deem proper.

Debbie-Anne A. Reese,
Secretary.

Document Content (s)

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Exhibit C

Order Dismissing Requests for Rehearing, *Constitution Pipeline Company, LLC* and *Iroquois Gas Transmission System, L.P.*,
195 FERC ¶ 61,116 (May 19, 2026)

195 FERC ¶ 61,116
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Laura V. Swett, Chairman;
David Rosner, Lindsay S. See,
Judy W. Chang, and David LaCerte.

Constitution Pipeline Company, LLC

Docket Nos. CP13-499-007

CP18-5-005

Iroquois Gas Transmission System, L.P.

CP13-502-004

ORDER DISMISSING REQUESTS FOR REHEARING

(Issued May 19, 2026)

1. On January 23, 2026, the Commission issued an Order on Remand¹ documenting the dismissal of agency proceedings in response to a November 18, 2021 order by the United States Court of Appeals for the Second Circuit (Second Circuit).² Timely requests for rehearing of the Order on Remand were filed by: (1) 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, Catskill Mountainkeeper); (2) the New York State Department of Environmental Conservation (New York DEC); and (3) Stop the Pipeline (collectively with Catskill Mountainkeeper and New York DEC, Rehearing Parties).

2. Pursuant to *Allegheny Defense Project v. FERC*,³ the rehearing requests filed in this proceeding may be deemed denied by operation of law. However, we are dismissing the requests for rehearing, as discussed below.

¹ *Const. Pipeline Co., LLC*, 194 FERC ¶ 61,064 (2026) (Order on Remand).

² *N.Y. State Dep't of Env't Conservation v. FERC*, No.19-4338 (consolidated with 20-158, 20-208) at 2 (2d Cir. Nov. 18, 2021) (Vacatur Order).

³ 964 F.3d 1 (D.C. Cir. 2020) (en banc).

I. Background

A. Constitution Pipeline Project and Wright Interconnection Project

3. On June 13, 2013, Constitution Pipeline Company, LLC (Constitution) filed an application in Docket No. CP13-499-000 for a certificate of public convenience and necessity to construct and operate approximately 124 miles of 30-inch-diameter pipeline and related facilities in Pennsylvania and New York (Constitution Pipeline Project). On the same date, Iroquois Gas Transmission System, L.P. (Iroquois) filed, in Docket No. CP13-502-000, a concurrent application requesting authorization to construct, install, modify, own, operate, and maintain certain compression facilities in New York, and to lease the incremental capacity associated with these new and modified facilities to Constitution (Wright Interconnection Project). On December 2, 2014, the Commission issued an order granting the requested certificates to Constitution and Iroquois (Certificate Order).⁴

4. On April 22, 2016, the New York DEC denied Constitution's request for a water quality certification for the Constitution Pipeline Project under section 401 of the Clean Water Act.⁵ On October 11, 2017, Constitution filed with the Commission a petition for a declaratory order, seeking a finding that the New York DEC had waived its certification authority under section 401 of the Clean Water Act.⁶ On January 11, 2018, the Commission denied the petition (First Waiver Order), and subsequently denied rehearing.⁷ On September 14, 2018, Constitution filed a petition for review of the First

⁴ *Const. Pipeline Co., LLC*, 149 FERC ¶ 61,199 (2014).

⁵ See Letter from John Ferguson, New York DEC, to Lynda Schubring, Constitution (Apr. 22, 2016). Section 401(a)(1) of the Clean Water Act requires that an applicant for a federal license or permit to conduct activities that may result in a discharge into the navigable waters of the United States, must provide to the licensing or permitting agency a water quality certification from the state in which the discharge originates. 33 U.S.C. § 1341(a)(1). If the state "fails or refuses to act on a request for certification within a reasonable period of time (which shall not exceed one year) after receipt of such request," then certification is waived. *Id.*

⁶ *Const. Pipeline Co., LLC*, Petition for Declaratory Order, Docket No. CP18-5-000 (filed Oct. 11, 2017).

⁷ *Const. Pipeline Co., LLC*, 162 FERC ¶ 61,014, at P 23, *order on reh'g*, 164 FERC ¶ 61,029 (2018).

Waiver Order in the United States Court of Appeals for the District of Columbia Circuit (D.C. Circuit).⁸

5. On February 25, 2019, the Commission filed with the D.C. Circuit an unopposed motion for voluntary remand of the First Waiver Order.⁹ The Commission explained that it was seeking the remand so that it could consider the implications of the D.C. Circuit's then-recent decision in *Hoopa Valley Tribe v. FERC*.¹⁰ On February 28, 2019, the court granted the Commission's motion.¹¹ On August 28, 2019, the Commission issued an order reversing its prior determination and finding that the New York DEC waived its authority under Clean Water Act section 401 to issue or deny a water quality certification for the Constitution Pipeline Project (Second Waiver Order).¹² A group of petitioners sought review of the Second Waiver Order in the Second Circuit, where the matter was consolidated with the pending review of the Certificate Order.¹³

6. On February 24, 2020, Constitution announced publicly that it no longer intended to pursue the Constitution Pipeline Project. On March 31, 2020, and November 24, 2020, Iroquois and Constitution, respectively, notified the Commission that they would not move forward with their projects.¹⁴

7. The Certificate Order, as amended, required Constitution and Iroquois to complete construction of the Constitution Pipeline Project and Wright Interconnection Project

⁸ *Const. Pipeline Co., LLC v. FERC*, Petition for Review, No. 18-1251 (D.C. Cir. Sept. 14, 2018).

⁹ *Const. Pipeline Co., LLC v. FERC*, Unopposed Motion of Respondent Federal Energy Regulatory Commission for Voluntary Remand, No. 18-1251 (D.C. Cir. Feb. 25, 2019).

¹⁰ 913 F.3d 1099 (D.C. Cir. 2019).

¹¹ *Const. Pipeline Co., LLC v. FERC*, No. 18-1251 (D.C. Cir. Feb. 28, 2019).

¹² *Const. Pipeline, Co., LLC*, 168 FERC ¶ 61,129 (2019).

¹³ See *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345 and 16-361 (consolidated), and *N.Y. State Dep't of Env't Conservation, v. FERC*, Nos. 19-4338, 20-158, and 20-208 (consolidated).

¹⁴ *Iroquois Gas Transmission System, L.P.*, Notice Regarding Wright Interconnection Project, Docket No. CP13-502-000 (filed Mar. 31, 2020); *Constitution Pipeline Co., LLC*, Final Project Status Update, Docket No. CP13-499-000 (filed Nov. 24, 2020).

(together, Projects) and place both Projects into service by December 2, 2020. The Commission's authorizations to construct the Projects lapsed on that day due to the failure of Constitution and Iroquois to complete construction by the deadline set forth in the Certificate Order.

8. On January 25, 2021, the Commission filed a motion to dismiss the Second Circuit appeals, given that the Projects had been cancelled and that the authorizations granted by the Certificate Order had lapsed. On November 18, 2021, the Second Circuit vacated the Certificate Order and the Second Waiver Order and remanded the cases to the Commission "with instructions to dismiss the agency proceedings."¹⁵ The Court's mandate issued on January 10, 2022.

B. 2025 Petition

9. On December 19, 2025, Constitution filed a petition with the Commission seeking reissuance of a certificate of public convenience and necessity for the Constitution Pipeline Project and reaffirmation of New York's waiver of authority under Clean Water Act section 401 (2025 Petition). The 2025 Petition was placed in the Commission's public eLibrary system under new subdockets CP13-499-006 and CP18-5-004. On January 8, 2026, Commission staff issued a public notice soliciting comments, protests, and interventions in response to the 2025 Petition, with a deadline of January 29, 2026.¹⁶

10. Separately, several parties submitted letters to the Commission or its staff contending that the Second Circuit's instruction "to dismiss the agency proceedings" required the Commission to take a further "ministerial step" on remand to "close[]"¹⁷ the relevant dockets or otherwise document through a formal order that the proceedings were dismissed.¹⁸ They argued that the Commission should have directed Constitution to submit its 2025 Petition "as a new application in a new docket"¹⁹ rather than

¹⁵ See Vacatur Order, Nos. 19-4338, at 2.

¹⁶ 91 Fed. Reg. 1311 (Jan. 13, 2026). The Notice explained that parties that had previously intervened in the certificate and waiver proceedings did not need to file new motions to intervene.

¹⁷ New York State Office of the Attorney General January 13, 2026 Filing at 2 (NY OAG Letter); see also Stop the Pipeline January 14, 2026 Filing (STP Letter).

¹⁸ See Catskill Mountainkeeper, Inc. et al. January 16, 2026 Filing at 1-2 (Catskill Letter).

¹⁹ *Id.*

“permit[ting] Constitution to submit its petition on dockets that were required to be closed.”²⁰

C. Order on Remand and 2026 Wright Petition

11. On January 23, 2026, the Commission issued the Order on Remand, confirming that the proceedings addressed in the Second Circuit’s Vacatur Order were dismissed.²¹

12. The Commission declined to direct that the 2025 Petition be filed under a new docket number.²² The Commission explained that the 2025 Petition was noticed under new subdockets, and that formally documenting the dismissal of the proceeding would not have barred Constitution from filing the 2025 Petition in these dockets or affected the Commission’s processing and consideration of Constitution’s 2025 Petition.²³ To this end, the Order on Remand noted that the 2025 Petition remains pending, and the Commission did not in any way pre-judge the merits of that petition in the Order on Remand. The Commission found the docketing of the 2025 Petition to be a ministerial matter that was well within the Commission’s discretion to manage its docket.²⁴

13. Subsequently, Iroquois filed a petition on February 13, 2026, seeking reissuance of a certificate of public convenience and necessity for the Wright Interconnection Project (2026 Wright Petition). The 2026 Wright Petition was placed in the Commission’s public eLibrary system under new subdocket CP13-502-003. On February 24, 2026, Commission staff issued a public notice soliciting comments, protests, and interventions in response to the 2026 Wright Petition, with a deadline of March 17, 2026.

14. New York DEC, Stop the Pipeline, and Catskill Mountainkeeper filed timely requests for rehearing of the Order on Remand.

²⁰ NY OAG Letter at 2.

²¹ Order on Remand, 194 FERC ¶ 61,064 at P 11.

²² *Id.* P 13.

²³ *Id.* P 12-13.

²⁴ *Id.* P 13.

II. Requests for Rehearing

15. The rehearing requests argue that the Commission has violated the Second Circuit's mandate by continuing to consider the 2025 Petition rather than dismissing it;²⁵ that "continuing to entertain" the 2025 Petition arbitrarily and capriciously fails to treat the now-vacated Certificate Order as without legal effect;²⁶ and that "continuing to consider" the 2025 Petition violates "procedural and substantive due process."²⁷

III. Discussion

16. We dismiss the requests for rehearing. As an initial matter, the NGA provides that a request for rehearing may be filed only by a party "aggrieved by an order issued by the Commission."²⁸ To be aggrieved, a party must establish a concrete and particularized, actual and imminent injury in fact arising from the challenged Commission action²⁹—in this instance, the Order on Remand. However, Rehearing Parties fail to identify how they are aggrieved by the Order on Remand.

17. The Order on Remand simply confirmed that the prior proceedings referenced in its caption were dismissed.³⁰ Rehearing Parties do not and cannot identify any injury in fact attributable to that action. Indeed, Rehearing Parties themselves urged the Commission to confirm that the proceedings in question were dismissed.³¹ Rehearing

²⁵ New York DEC Rehearing Request at 7; Catskill Mountainkeeper Rehearing Request at 8; Stop the Pipeline Rehearing Request at 8.

²⁶ Catskill Mountainkeeper Rehearing Request at 8.

²⁷ Stop the Pipeline Rehearing Request at 8.

²⁸ 15 U.S.C. § 717r(a); *see, e.g., Venture Glob. Calcasieu Pass, LLC*, 189 FERC ¶ 61,003, at PP 16-17 (2024); *Union Elec. Co.*, 147 FERC ¶ 61,069 (2014) (applying similar requirement under parallel provisions of Federal Power Act).

²⁹ *Venture Glob. Calcasieu Pass*, 189 FERC ¶ 61,003 at P 16; *Tres Palacios Gas Storage LLC*, 162 FERC ¶ 61,255, at P 9 (2018).

³⁰ Order on Remand, 194 FERC ¶ 61,064 at P 1.

³¹ See NY OAG Letter at 2 ("request[ing]" entry of an "Order on Remand"); STP Letter (joining in the New York State Office of the Attorney General's request); *cf.* Catskill Letter at 3. In fact, Stop the Pipeline criticizes the Commission in its rehearing request for not taking such action sooner. *See* Stop the Pipeline Rehearing Request

Parties' implicit claim to "aggrievement" at the hands of an order they invited, and to which they do not even attempt to attribute any harm to their interests, is not credible.³² Accordingly, we dismiss all of the requests for rehearing on this basis.

18. Rehearing Parties' assertions of error and alleged injury all pertain to: (1) the Commission's prior docketing and noticing of the 2025 Petition;³³ (2) the Commission's ongoing consideration (rather than immediate dismissal) of the 2025 Petition;³⁴ or (3) a hypothetical possible future order granting the 2025 Petition.³⁵ But none of those arguments are directed to the action taken in the Order on Remand—which, to reiterate, consisted solely of confirming that the proceedings referenced therein were dismissed. Moreover, neither the Commission's docketing of the 2025 Petition nor its "continuing to entertain" the 2025 Petition constitutes a "final Commission decision or other final order" subject to rehearing under Rule 713, pursuant to which the rehearing requests were filed.³⁶ As for Rehearing Parties' contentions about how the Commission must resolve

at 10-11 (arguing that the Commission should have acted sooner to confirm the dismissal of the proceedings).

³² To the extent Rehearing Parties merely take issue with the rationale of the Order on Remand—as opposed to the only *action* that order took, namely confirming dismissal of the referenced proceedings—that is not itself a source of aggrievement. *See Venture Glob. Calcasieu Pass*, 189 FERC ¶ 61,003 at P 17 & n.40.

³³ Stop the Pipeline Rehearing Request at 20-24 (arguing that the docketing and noticing of the 2025 Petition violated due process); *see also* Catskill Mountainkeeper Rehearing Request at 10-11 (arguing that allowing the 2025 Petition to proceed in a new subdocket was improper and the Commission was required to file a new application in a new docket to comply with the Vacatur Order).

³⁴ Stop the Pipeline Rehearing Request at 10-16 (arguing that the Commission may not consider the 2025 Petition in light of the Vacatur Order); New York DEC Rehearing Request at 8-10 (same); Catskill Mountainkeeper Rehearing Request at 9 (same).

³⁵ Stop the Pipeline Rehearing Request at 16-20 (arguing that the Commission would not be able to reissue or reaffirm the vacated orders in response to the 2025 Petition); New York DEC Rehearing Request at 8-11 (same); Catskill Mountainkeeper Rehearing Request at 9-12 (same).

³⁶ 18 C.F.R. § 385.713 (2025) ("This section applies to any request for rehearing of a final Commission decision or other final order"); *Reliable Automatic Sprinkler Co., Inc. v. Consumer Prod. Safety Comm'n*, 324 F.3d 726, 731 (D.C. Cir. 2003) ("Final agency action 'mark[s] the consummation of the agency's decisionmaking process' and is 'one by which rights or obligations have been determined, or from which legal

the 2025 Petition's merits, such objections are plainly and irremediably premature. The Commission made clear in the Order on Remand that it was not addressing or pre-judging the merits of the 2025 Petition,³⁷ and Rehearing Parties can neither seek rehearing of a hypothetical future merits order, nor seek rehearing of the Order on Remand based on concerns about what such a hypothetical future merits order might contain.³⁸

19. In any case, we are unpersuaded by Rehearing Parties' arguments suggesting that the Order on Remand failed to fully comply with the Vacatur Order, or improperly treats the vacated orders as having continuing legal force or effect. The NGA gives the courts of appeals jurisdiction to "affirm[], modify[], or set[] aside, in whole or in part, any ... order of the Commission" properly brought before it in a petition for review.³⁹ Here, the key consequence of the Second Circuit's vacatur⁴⁰ is that the Certificate Order and the Second Waiver Order are deprived of legal force and "cannot serve as precedent in other proceedings."⁴¹ Rehearing Parties do not point to any aspect of the Order on Remand that relies on the Certificate Order or the Second Waiver Order. To the contrary, the Commission confirmed that the proceedings underlying those orders were dismissed, which is the relief that was requested by the Rehearing Parties in their prior letter

consequences will flow") (quoting *Bennett v. Spear*, 520 U.S. 154, 178 (1997)); cf. *Venture Glob. Calcasieu Pass, LLC*, 189 FERC ¶ 61,003, at P 15; *Pine Creek Mine, LLC*, 156 FERC ¶ 61,181 (2016) (notice rejecting request for rehearing on the basis that "merely accept[ing an] application for filing" is not a final Commission decision).

³⁷ Order on Remand, 194 FERC ¶ 61,064 at P 10.

³⁸ *S. Md. Elec. Coop., Inc.*, 162 FERC ¶ 61,048 (2018) (noting that it "is a common practice for the Commission to dismiss a petition that is not ripe for consideration or is otherwise premature" and providing examples of issues "that may or may not" occur); *La. Pub. Serv. Comm'n v. Entergy Corp.*, 132 FERC ¶ 61,104 (2010) (dismissing complaint as premature and not ripe for Commission consideration).

³⁹ 15 U.S.C. § 717r(b).

⁴⁰ See Vacatur Order, Nos. 19-4338, at 2.

⁴¹ *ISO New England Inc.*, 161 FERC ¶ 61,031, at P 28 (2017); see also *FPL Energy Marcus Hook, L.P.*, 123 FERC ¶ 61,289, at P 22 (2008) (acting following a remand and partial vacatur and explaining that "[w]hen a court of appeals remands a case to an administrative agency, different considerations prevail than when a court of appeals remands a case to a lower court, and an agency is empowered to revisit its earlier decision in whatever respect necessary to fulfill its agency functions" so long as it does not contravene the court of appeal's rulings) (citing *FCC v. Pottsville Broadcasting Co.*, 309 U.S. 134, 141-43 (1940)).

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submissions.⁴² The Remand Order does not rely on the vacated orders as precedent, nor does it anywhere suggest that the vacated orders somehow continue to have legal effect. Finally, nothing in the Second Circuit's Vacatur Order purported to forbid the Commission from giving consideration to a new filing.⁴³

The Commission orders:

The requests for rehearing of the Order on Remand are hereby dismissed, as discussed in the body of this order.

By the Commission.

(S E A L)

Debbie-Anne A. Reese,
Secretary.

⁴² Order on Remand, 194 FERC ¶ 61,064 at P 11 (“For clarity and avoidance of doubt, we now confirm that the proceedings referenced in the caption of this order are dismissed.”).

⁴³ Similarly, we are not persuaded by Stop the Pipeline's argument that “reliance on or deference to” previously-filed “supporting materials, even if under the guise of a new review” would be improper. Stop the Pipeline Rehearing Request at 15. Nothing in the Vacatur Order alters the status of documents in the record, aside from the vacated orders, nor does it indicate that the Second Circuit intended to prevent the Commission from considering the existing record. The Commission regularly considers the existing record when issuing orders on remand after a Commission Order has been vacated and remanded. *See, e.g., Dominion Cove Point LNG, LP*, 125 FERC ¶ 61,018 (2008).

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