

No. _____

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

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

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent.

PETITION FOR REVIEW

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Delaware-Otsego Audubon Society, Delaware Riverkeeper Network and
Maya K. van Rossum, the Delaware Riverkeeper, Riverkeeper, Sierra
Club, and Waterkeeper Alliance*

Pursuant to Section 19(d) of the Natural Gas Act, 15 U.S.C. § 717r(d)(1), and Rule 15(a) of the Federal Rules of Appellate Procedure, 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 (“Petitioners”) hereby petition the United States Court of Appeals for the Second Circuit for review of the following orders of the Federal Energy Regulatory Commission:

1. Order on Remand, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, 194 FERC ¶ 61,064 (Jan. 23, 2026) (attached as Exhibit A).
2. Notice of Denial of Rehearing by Operation of Law and Providing for Further Consideration, *Constitution Pipeline Company, LLC; Iroquois Gas Transmission System, L.P.*, 194 FERC ¶ 62,146 (Mar. 26, 2026) (attached as Exhibit B).

DATED: May 19, 2026

Respectfully submitted,

/s/Moneen Nasmith

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Riverkeeper, Sierra Club, and Waterkeeper
Alliance*

DISCLOSURE STATEMENT

In accordance with Rule 26.1 of the Federal Rules of Appellate Procedure, Petitioners make the following disclosures:

Petitioner Catskill Mountainkeeper, Inc., a corporation organized and existing under the laws of the State of New York, is a nonprofit organization dedicated to being the strongest and most effective possible advocate for the Catskill region and working through a network of concerned citizens to promote sustainable growth and protect the natural resources essential to healthy communities. Catskill Mountainkeeper, Inc. has no parent companies, and there are no publicly held companies that have a ten percent or greater ownership interest in Catskill Mountainkeeper, Inc.

Petitioner Clean Air Council, a corporation organized and existing under the laws of the Commonwealth of Pennsylvania, is a nonprofit organization serving the MidAtlantic Region that is dedicated to protecting and defending everyone's right to breathe clean air. Clean Air Council has no parent companies, and there are no publicly held companies that have a ten percent or greater ownership interest in Clean Air Council.

Petitioner Delaware-Otsego Audubon Society, Inc., a nonprofit corporation organized and existing under the laws of the State of New York, is a chapter of the National Audubon Society, and is dedicated to the natural environment, with activities focused on protection and maintenance of ecological systems, wise use and conservation of natural resources, and environmental quality improvement. Delaware-Otsego Audubon Society, Inc. has no parent companies, and there are no publicly held companies that have a ten percent or greater ownership interest in Delaware-Otsego Audubon Society, Inc.

Petitioner Delaware Riverkeeper Network, a nonprofit 501(c)(3) membership organization organized and existing under the laws of the State of Pennsylvania that advocates for the protection of the Delaware River, its tributaries, and the communities of its watershed. Delaware Riverkeeper Network has no parent companies, and there are no publicly held companies that have a ten percent or greater ownership interest in Delaware Riverkeeper Network.

Petitioner Riverkeeper, Inc., a corporation organized and existing under the laws of the State of New York, is a nonprofit organization dedicated to protecting the environmental, recreational, and commercial

integrity of the Hudson River and its tributaries, and to safeguarding the drinking water of nine million New York City and Hudson Valley residents. Riverkeeper, Inc. has no parent companies, and there are no publicly held companies that have a ten percent or greater ownership interest in Riverkeeper, Inc.

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

Petitioner Waterkeeper Alliance, a corporation organized and existing under the laws of New York State, is a national nonprofit organization dedicated to ensuring that that the world's Waterkeeper groups are as connected to each other as they are to their local waters, organizing the fight for clean water into a coordinated global movement. Waterkeeper Alliance is a non-governmental corporate party with no parent corporation, and there are no publicly held corporations that have a ten percent or greater ownership in Waterkeeper Alliance.

CERTIFICATE OF SERVICE

In accordance with Federal Rule of Appellate Procedure 25, the undersigned certifies that, on May 19, 2026, a copy of this Petition for Review and exhibits was served on the Respondents via first class mail, as listed below.

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In accordance with Federal Rule of Appellate Procedure 15(c)(1) & (2), the undersigned certifies that, on May 19, 2026, a copy of this Petition for Review and exhibits were served by email to the parties on the Federal Energy Regulatory Commission’s official service list of parties admitted to participate in Docket Nos. CP13-499, CP13-502, and CP18-5 before the Commission, listed below.

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DATED: May 19, 2026

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Exhibit A

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.

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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

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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