

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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