

UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

Thurgood Marshall U.S. Courthouse 40 Foley Square, New York, NY 10007 Telephone: 212-857-8500

MOTION INFORMATION STATEMENT

Docket Number(s): 26-1437

Caption [use short title]

Motion for: Dismissal

Stop the Pipeline v. FERC

Set forth below precise, complete statement of relief sought:

Motion to dismiss for lack of jurisdiction

MOVING PARTY: FERC

OPPOSING PARTY: Stop the Pipeline

☐ Plaintiff☐ Defendant☐ Appellant/Petitioner☒ Appellee/Respondent

MOVING ATTORNEY: Scott Ray Ediger

OPPOSING ATTORNEY: Todd D. Ommen

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Court- Judge/ Agency appealed from: FERC

Please check appropriate boxes:

Has movant notified opposing counsel (required by Local Rule 27.1):

☒ Yes☐ No (explain):

FOR EMERGENCY MOTIONS, MOTIONS FOR STAYS AND INJUNCTIONS PENDING APPEAL:

Has this request for relief been made below?

☐ Yes☐ No

Has this relief been previously sought in this court?

☐ Yes☐ No

Requested return date and explanation of emergency:

Opposing counsel's position on motion:

☐ Unopposed☒ Opposed☐ Don't Know

Does opposing counsel intend to file a response:

☒ Yes☐ No☐ Don't Know

Is the oral argument on motion requested?

☐ Yes☒ No (requests for oral argument will not necessarily be granted)

Has the appeal argument date been set?

☐ Yes☒ No If yes, enter date:

Signature of Moving Attorney:

SCOTT EDIGER

Digitally signed by SCOTT EDIGER
Date: 2026.06.15 10:10:54 -04'00'

Date: 06/15/26

Service : ☒ Electronic ☐ Other [Attach proof of service]

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

Catskill Mountainkeeper, Inc., <i>et al.</i> ,	)	
	)	
Petitioners,	)	
	)	
v.	)	No. 26-1387
	)	
Federal Energy Regulatory	)	
Commission,	)	
	)	
Respondent.	)	

New York State Department of	)	
Environmental Conservation,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26-1422
	)	
Federal Energy Regulatory	)	
Commission,	)	
	)	
Respondent.	)	

Stop the Pipeline,	)	
	)	
Petitioner,	)	
	)	
v.	)	No. 26-1437
	)	
Federal Energy Regulatory	)	
Commission,	)	
	)	
Respondent.	)	

MOTION OF RESPONDENT FEDERAL ENERGY REGULATORY COMMISSION TO DISMISS PETITIONS

This Court lacks jurisdiction to consider these petitions.

Petitioners¹ seek review of orders that are plainly and irredeemably premature. The Challenged Orders² make no merits determinations whatsoever, are entirely procedural, and do not injure Petitioners in any way. Petitioners do not object to any final agency action, but instead take issue solely with preliminary, interlocutory steps dealing with the docketing and initial processing of agency filings.

Accordingly, Respondent Federal Energy Regulatory Commission (Commission or FERC) moves to dismiss these petitions, for multiple independent reasons. First, Petitioners are not “aggrieved” by the

¹ Petitioners include parties petitioning in No. 26-1387 (Catskill Mountainkeeper, Inc., Clean Air Council, Delaware-Otsego Audubon Society, Inc., Delaware Riverkeeper Network, Maya K. Van Rossum, Riverkeeper, Inc., Sierra Club, and Waterkeeper Alliance), No. 26-1422 (New York State Department of Environmental Conservation), and No. 26-1437 (Stop the Pipeline).

² Petitioners challenge *Const. Pipeline Co.*, Order On Remand, 194 FERC ¶ 61,064 (Jan. 23, 2026) (Remand Order) (Attachment A); Notice Of Denial Of Rehearing By Operation Of Law And Providing For Further Consideration, 194 FERC ¶ 62,146 (Mar. 26, 2026) (Attachment B); and Order Dismissing Requests For Rehearing, 195 FERC ¶ 61,116 (May 19, 2026) (Dismissal Order) (Attachment C) (collectively, Challenged Orders).

Challenged Orders in the manner required by the Natural Gas Act, and accordingly cannot seek judicial review. Second, Petitioners lack Article III standing, for much the same reasons. Third, Petitioners do not identify any final agency action in the Challenged Orders to which they object, and their assertions of error are accordingly premature and unreviewable at this time. For any or all of these reasons, this Court must dismiss the petitions.

Dismissal now merely reflects the limits of the Court's authority; it in no way impairs Petitioners' ability to raise arguments if a future final Commission order actually aggrieves them.

Background

The Commission's Remand Order responded to this Court's November 2021 Vacatur Order (Attachment D) addressing previous petitions for review. *See* Order, No. 16-345, Doc. No. 479; No. 19-4338, Doc. No. 161 (Nov. 18, 2021) (addressing two separate proceedings before this Court, *Catskill Mountainkeeper, Inc. v. FERC*, Nos. 16-345, *et al.*; and *N.Y. State Dep't of Env't Conservation v. FERC*, Nos. 19-4338, *et al.*)

No. 16-345 involved judicial review of Commission orders granting Natural Gas Act (15 U.S.C. § 717f) authorization to (1) Constitution Pipeline Company, LLC to construct and operate an approximately 124-mile pipeline in Pennsylvania and New York; and (2) Iroquois Gas Transmission System, L.P. (Iroquois) to construct and operate compression facilities in New York and to lease the incremental capacity to Constitution. *See Const. Pipeline Co., Order Issuing Certificates And Approving Abandonment*, 149 FERC ¶ 61,199 (2014) (Certificate Order); *Order Denying Rehearing And Approving Variance*, 154 FERC ¶ 61,046 (2016).

No. 19-4338 involved judicial review of Commission orders concluding that, in light of then-recent precedent from the D.C. Circuit, the New York Department waived Clean Water Act authority to issue or deny a water quality certification for the Project. *See Const. Pipeline Co., Order on Voluntary Remand*, 168 FERC ¶ 61,129 (2019) (Declaratory Order) (applying *Hoopa Valley Tribe v. FERC*, 913 F.3d 1099 (D.C. Cir. 2019)); *Order Denying Rehearing and Stay*, 169 FERC ¶ 61,199 (2019); *see also* Remand Order PP 1-6 (describing procedural background); Dismissal Order PP 3-5 (same).

While Nos. 16-345 and 19-4338 were pending before this Court, the project sponsors announced that the project would not move forward. *See* Remand Order P 6; Dismissal Order P 6. And when the Commission-ordered deadline for completion of construction lapsed, the Commission requested that this Court dismiss Nos. 16-345 and 19-4338. *See Catskill Mountainkeeper, Inc. v. FERC*, No. 16-345, Commission Motion to Dismiss, Doc. No. 414 (Jan. 26, 2021); *N.Y. State Dep’t of Env’t Conservation v. FERC*, No. 19-4338, Commission Motion to Dismiss, Doc. No. 111 (Jan. 25, 2021); *see also* Remand Order P 8 (describing Commission’s motion); Dismissal Order P 8 (same).

Addressing both Nos. 16-345 and 19-4338, this Court (1) granted the Commission’s motions to dismiss; (2) denied Stop the Pipeline’s motions to dismiss for lack of jurisdiction as moot; and (3) granted Stop the Pipeline’s motions for vacatur. *See* Vacatur Order at 2. Accordingly, this Court ordered that the “underlying agency orders” be vacated and that the cases be remanded “with instructions to dismiss the agency proceedings.” *Id.*

In December 2025, Constitution petitioned the Commission for (1) reissuance of 15 U.S.C. § 717f authorization for its project; and (2)

reaffirmation that the New York Department had waived its Clean Water Act Authority. *See* FERC Nos. CP18-5-004 and CP13-499-006, Accession No. 20251219-5626³ (Dec. 19, 2025) (Constitution Petition); *see also* Remand Order P 10 (describing filing). The Commission assigned new subdockets to the Constitution Petition (none of which match the subdockets of agency orders involved in Nos. 16-345 and 19-4338) and issued public notice, soliciting comments, protests, and interventions. *See* Remand Order P 10.

After the filing of the Constitution Petition, several parties filed papers stating their view that this Court’s Vacatur Order required the Commission to take a further ministerial step to close the relevant dockets or otherwise document that the proceedings addressed by the Vacatur Order were dismissed. *See* Remand Order P 11. “For clarity and avoidance of doubt,” the Commission “confirm[ed] in the Remand Order that the [Certificate Order and Declaratory Order] proceedings referenced in the caption of [the Remand Order] are dismissed.” *Id.*

³ Documents referenced by FERC accession number can be retrieved at <https://elibrary.ferc.gov/eLibrary/search>.

Following issuance of the Remand Order, Iroquois filed a petition seeking reissuance (like Constitution) of authorization for its project. *See* FERC No. CP13-502-003, Accession No. 20260213-5321 (Feb. 13, 2026) (Iroquois Petition). Again, the Commission assigned the Iroquois Petition a subdocket number separate from any order challenged in Nos. 16-345 and 19-4338. The Commission issued public notice of the Iroquois Petition, soliciting comments, protests, and interventions. *See* Dismissal Order P 13.

Although Petitioners timely requested rehearing of the Remand Order, the Commission dismissed those requests. *See* Dismissal Order PP 16-19. First, the Commission found that Petitioners failed to demonstrate, as the governing statute requires, that they were “aggrieved” by the Remand Order—especially when Petitioners had urged the issuance of that order in the first instance. *See id.* P 16-17 (citing 15 U.S.C. § 717r). Second, the Commission found that Petitioners’ arguments on rehearing regarding the Constitution Petition were not directed to the Remand Order, which only confirmed that the proceedings referenced therein (the ones subject to Nos. 16-345 and 19-4338) were dismissed. *See id.* P 18. As to the docketing and processing

of the Constitution Petition, the Commission found that these actions do not constitute a “final Commission decision or other final order” (18 C.F.R. § 385.713) that would be subject to a request for rehearing. *See id.* And as to any substantive, merits-related assertions pertaining to the Constitution Petition, the Commission found that these are “plainly and irremediably premature.” *Id.*

Argument

I. The Natural Gas Act does not provide for judicial review of Commission action that, like here, does not aggrieve any party.

The Natural Gas Act, 15 U.S.C. § 717r(a)-(b), restricts rehearing and judicial review to a party “aggrieved by an order issued by the Commission.” 15 U.S.C. §§ 717r(a)–(b). This Court has explained that, under 15 U.S.C. § 717r, a “party aggrieved” by a Commission order must seek agency rehearing and then the “aggrieved party” may seek judicial review. *New York State Dep’t of Env’t Conservation v. FERC*, 991 F.3d 439, 445 (2d Cir. 2021); *see also Green Island Power Auth. v. FERC*, 577 F.3d 148, 158 (2d Cir. 2009) (construing parallel provision in Federal Power Act, 16 U.S.C. § 825l(b)). “A party is ‘aggrieved’ if it can establish that it has both constitutional and prudential standing.”

Green Island Power Auth., 577 F.3d at 158 (quoting Federal Power Act, 16 U.S.C. § 825*l*). (The Supreme Court has explained that “relevant provisions of the [Federal Power Act and Natural Gas Act] are analogous” and that the Court has “routinely relied on [Natural Gas Act] cases in determining the scope of the [Federal Power Act], and vice versa.” *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 n.10 (2016).)

Before the agency, Petitioners “fail[ed] to identify how they are aggrieved” by the Remand Order. Dismissal Order P 16. The Remand Order simply confirmed that the prior agency proceedings addressed in Nos. 16-345 and 19-4338 were dismissed, consistent with this Court’s Vacatur Order. *See* Vacatur Order at 2; Dismissal Order P 17. Petitioners’ rehearing request did not identify—nor could it have identified—“any injury in fact attributable” to the Remand Order. Dismissal Order P 17. Indeed, Petitioners themselves “urged the Commission to confirm that the proceedings in question were dismissed.” *Id.*

The assertion that Petitioners are aggrieved by an order that they invited is “not credible,” and the Commission accordingly dismissed the

requests for rehearing of the Remand Order. *Id.* This Court should do the same as to their petitions for review in this Court.

II. Petitioners lack Article III standing.

For much the same reasons that Petitioners lack statutory aggrievement (*see supra* Argument § I), they also lack Article III standing. To establish Article III standing, a party must show (1) an “injury in fact,” (2) “a causal connection between the injury and the conduct complained of,” and (3) that it is “likely, as opposed to merely speculative,” that the injury will be “redressed by a favorable decision.” *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992) (internal quotation marks and citation omitted).

The injury must be “concrete and particularized and actual or imminent, not conjectural or hypothetical.” *Spokeo, Inc. v. Robins*, 578 U.S. 330, 339 (2016) (internal quotation marks and citation omitted). Because Petitioners are not the “object of the government action or inaction” challenged, “standing is not precluded, but it is ordinarily substantially more difficult to establish.” *Lujan*, 504 U.S. at 562 (internal quotations omitted); *see also Neurological Surgery Prac. of*

Long Island, PLLC v. U.S. Dep’t of Health & Hum. Servs., 145 F.4th 212, 225 (2d Cir. 2025) (same, citing *Lujan*).

Because the Remand Order does not require Petitioners “to do anything or to refrain from doing anything,” they “suffer no concrete harm,” they are not aggrieved in any real sense, and they thus lack standing to challenge the Remand Order. *Trump v. New York*, 592 U.S. 125, 134 (2020) (quoting *Ohio Forestry Ass’n, Inc. v. Sierra Club*, 523 U.S. 726, 733 (1998)). The Remand Order and Dismissal Order “simply confirmed” that the proceedings addressed by this Court in Nos. 16-345 and 19-4338 are dismissed. *See* Remand Order P 1; Dismissal Order P 17.

“Rehearing Parties do not and cannot identify any injury in fact attributable to that action.” Dismissal Order P 17. In cases—such as this one—where the agency has not rendered a final, adverse decision, “the Article III requirements have not been met.” *Coffran v. Board of Trustees of New York City Pension Fund*, 46 F.3d 3, 4 (2d Cir. 1995).

III. Petitioners do not challenge any final Commission action subject to review under the Natural Gas Act.

In addition to the aggrievement component of 15 U.S.C. 717r(b) (*see supra* Argument § I), Supreme Court precedent construing a

“parallel” provision of the Federal Power Act, 16 U.S.C. 825*l*, requires finality. *See Pub. Utilities Comm’n of Cal. v. FERC*, 894 F.2d 1372, 1377 (D.C. Cir. 1990) (citing *FPC v. Metro. Edison Co.*, 304 U.S. 375 (1938)). Finality of Natural Gas Act orders is “necessary” to the appellate court’s jurisdiction. *Id.* at 1376. This Court has found the same in the context of reviewing agency action under the Federal Power Act. *See Niagara Mohawk Power Corp. v. FPC*, 538 F.2d 966, 969, 971 (2d Cir. 1976) (applying *Metropolitan Edison* and finding that agency orders denying requests to dismiss a pending investigation were “unreviewable, interlocutory orders” and that review of such orders “must be dismissed”). As in *Niagara Mohawk*, countenancing judicial review of preliminary, non-final procedural actions would cause the very administrative delay the finality requirement prevents. *See id.* at 969; *see also Metro. Edison*, 304 U.S. at 383-84.

A final order ready for judicial review satisfies two criteria. First, the order must “mark the consummation of the agency’s decisionmaking process—it must not be of a merely tentative or interlocutory nature.” *Bennett v. Spear*, 520 U.S. 154, 177-78 (1997) (internal quotation marks and citation omitted); *see also Nat’l Labor Rels. Bd. v. Nexstar Media*

Inc., 133 F.4th 201, 204 (2d Cir. 2025) (same, quoting *Bennett*); *Papago Tribal Util. Auth. v. FERC*, 628 F.2d 235, 239 (D.C. Cir. 1980) (noting that an agency order is final for purposes of appellate review when it is “definitive” and “imposes an obligation, denies a right, or fixes some legal relationship as a consummation of the administrative process” (internal quotation marks and citations omitted)).

Second, the action must “be one by which rights or obligations have been determined, or from which legal consequences will flow.” *Bennett*, 520 U.S. at 178 (quotation marks and citation omitted); *see also Nexstar Media*, 133 F.4th at 204 (same, citing *Bennett*). “For the second prong, the core question is whether the result of the agency’s decisionmaking process is one that will directly affect the parties.” *Salazar v. King*, 822 F.3d 61, 82 (2d Cir. 2016) (alterations, internal quotation marks, and citation omitted); *see also Nexstar Media*, 133 F.4th at 204 (citing *Bennett* and describing finality requirements); *Pub. Utils. Comm’n of Cal.*, 894 F.2d at 1377 (applying *Metropolitan Edison’s* finality requirement to “parallel” judicial review provision in similarly worded Natural Gas Act); *Metro. Edison*, 304 U.S. at 384 (explaining that statute provides for judicial review only of “orders of a definitive

character dealing with the merits of a proceeding before the Commission and resulting from a hearing upon evidence and supported by findings appropriate to the case”).

Petitioners’ assertions of error on rehearing did not concern any action the Commission took in the Remand Order—which, as noted, took no action whatsoever except to confirm that the proceedings addressed in the Vacatur Order were dismissed, as Petitioners themselves requested. Rather, Petitioners’ rehearing arguments were directed toward (1) the Commission’s prior docketing and noticing of the Constitution Petition; (2) the Commission’s ongoing consideration (rather than immediate dismissal) of the Constitution Petition; or (3) a hypothetical possible future order granting the Constitution Petition. *See* Dismissal Order P 18 (describing arguments advanced in rehearing requests). None of these assertions address the narrow scope of the Remand Order, which only confirmed that the proceedings identified by this Court were dismissed. *See id.* And neither the docketing of the newly-filed Constitution Petition nor the ongoing proceeding to consider it constitutes a “final Commission decision or other final order” that would permit the filing of a request for agency rehearing (or a later

petition for judicial review). 18 C.F.R. § 385.713(a)(1) (parties may request rehearing of a “final” Commission decision or other “final” order); *see also 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 consequences will flow.’”) (quoting *Bennett*, 520 U.S. at 178); *cf. Venture Glob. Calcasieu Pass, LLC*, 189 FERC ¶ 61,003, at P 15 (2024); *Pine Creek Mine, LLC*, 156 FERC ¶ 61,181 (2016) (rejecting as premature a request for rehearing of a Commission-issued notice of application, explaining that “merely accept[ing an] application for filing” is not a final Commission decision).

Ministerial 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. *MISO Transmission Owners v. FERC*, 45 F.4th 248, 262 (D.C. Cir. 2022); *Florida Municipal Power Agency v. FERC*, 315 F.3d 362, 366 (D.C. Cir. 2003). The Commission explained that the Constitution Petition had been assigned “new subdockets,” and that

nothing in its enabling statutes, rules, precedent, or this Court’s mandate bars filings in (or action on) such dockets. Remand Order P 10. “Thus, even had [the Commission] formally documented the dismissal of the proceedings in 2022, nothing would have barred Constitution from filing its [petition] in these dockets, nor would the manner in which [the Commission] processed and noticed that filing have differed in any way.” *Id.*

As it pertains to the consideration of the Constitution Petition, the Commission has not issued anything that is the consummation of its decision-making process, but has only acted in a quintessentially tentative, interlocutory manner. *See Air Espana v. Brien*, 165 F.3d 148, 152 (2d Cir. 1999) (explaining that a final action “must not be of a merely tentative or interlocutory nature” (quoting *Top Choice Distributors, Inc. v. U.S. Postal Serv.*, 138 F.3d 463, 466 (2d Cir. 1998))). For example, the Commission issued public notice of the Constitution Petition (and the Iroquois Petition), soliciting comments, protests, and interventions. *See* Notice, 91 Fed. Reg. 1311 (Jan. 13, 2026) (notice of Constitution Petition cited in Remand Order P 10 n.13); Notice, 91 Fed. Reg. 9847 (Feb. 27, 2026) (notice of Iroquois Petition referenced in

Dismissal Order P 13); *see also* Notice, 91 Fed. Reg. 17798 (April 8, 2026) (providing notice of Commission’s intent to prepare an environmental document that will discuss potential environmental impacts related to the Constitution and Iroquois Petitions and soliciting public comment on scope of environmental review). Any assertion about what will happen or what action the Commission will take following responses to these notices is pure speculation.

In *Greene Cnty. Plan. Bd. v. FPC*, 455 F.2d 412, 425 (2d Cir. 1972) (reviewing agency Federal Power Act action), this Court cited *Metropolitan Edison* and explained lack of jurisdiction “where the issues raised could be disposed of in review of a final Commission order without serious detriment to the rights of the parties.” Same here. *See* No. 26-1422, New York Department Motion, Dkt. Entry No. 10, at 2 (explaining that “ongoing administrative proceedings before FERC may obviate the need for judicial review of the FERC orders at issue in these proceedings”), 15 (explaining that “Petitioners are not at this point seeking any relief that would interfere in FERC’s ongoing consideration of the petitions seeking to revive the pipeline project”) (June 9, 2026).

Accordingly, any assertions of hardship resulting from allowing agency proceedings to run their normal course would not be credible.

It is not surprising that Petitioners do not seek any identifiable relief at this time. Any asserted error or injury related to docketing and noticing the Constitution Petition, including the Commission's ongoing consideration (rather than immediate dismissal) of that petition, relies on speculation regarding a future order addressing that petition. *See* Dismissal Order P 18. And the Challenged Orders explicitly declined to prejudge any of the matters raised in the Constitution Petition. *See* Remand Order P 10 (explaining that action on the Constitution Petition “is currently pending,” and that the Commission “is not in any way prejudging the merits” of that filing); Dismissal Order P 18.

Therefore, the Remand Order is not a merits determination; it only “confirm[s] that the proceedings referenced in [its] caption . . . are dismissed”—and nothing more. Remand Order P 11. The Dismissal Order emphasizes that neither the Commission's docketing of a petition nor its “continuing to entertain” that petition is a final order—and petitioners' arguments about what the Commission might do later are “plainly and irremediably premature.” Dismissal Order P 18.

Finally, dismissal would not prejudice Petitioners. As noted above, Petitioners agree that agency proceedings should be allowed to run their normal course. But the Commission's docketing choices have the advantage of making all parties involved in previous subdockets participants in the newly created subdockets. *See* Remand Order P 10 n.13. Assuming a future, final aggrieving order, intervention status entitles a party (including any of the Petitioners) to file a request for agency rehearing (18 C.F.R. § 385.713(b)), which, in turn, entitles that party to seek judicial review at the appropriate time in the appropriate court of appeals (15 U.S.C. § 717r(b)). Petitioners will have their opportunity for judicial review of a final order resolving the Constitution Petition, if and when the appropriate time comes. But that time is not now.

Conclusion

For the reasons discussed above, these petitions should be dismissed.

Respectfully submitted,

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June 15, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that the foregoing complies with the type-volume limitation of Fed. R. App. P. 27(d)(2) because it contains 3,357 words.

I further certify that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Century Schoolbook 14-point font using Microsoft Word.

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June 15, 2026

ATTACHMENTS

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ATTACHMENT 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).

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.

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.

- 2 -

For these reasons, I respectfully concur.

David LaCerte
Commissioner

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

ATTACHMENT 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)

CP13-499-007.docx.....1

ATTACHMENT C

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)).

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).

ATTACHMENT D

FERC
CP18-5-000
CP18-5-001
CP18-5-002
CP18-5-003
CP13-499-000
CP13-499-001
CP13-502-000
CP13-502-001

United States Court of Appeals
FOR THE
SECOND CIRCUIT

At a stated term of the United States Court of Appeals for the Second Circuit, held at the Thurgood Marshall United States Courthouse, 40 Foley Square, in the City of New York, on the 18th day of November, two thousand twenty-one.

Present:

Debra Ann Livingston,
Chief Judge,
John M. Walker, Jr.,
Richard C. Wesley,
Circuit Judges.

New York State Department of Environmental Conservation, et al.,

Petitioners,

v.

19-4338 (L),
20-158 (Con),
20-208 (Con)

Federal Energy Regulatory Commission,

Respondent.

Catskill Mountainkeeper, Inc., et al.,

Petitioners,

v.

16-345 (L),
16-361 (Con)

Federal Energy Regulatory Commission,

Respondent,

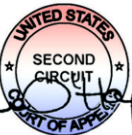
Constitution Pipeline Company, LLC, et al.,

Intervenors.

The above-captioned proceedings are consolidated for purposes of this order. Respondent moves to dismiss as moot these petitions for review; Petitioner Stop the Pipeline moves to dismiss the petitions docketed in 2d Cir. 19-4338, 20-158, and 20-208 for lack of jurisdiction, and moves for vacatur of the underlying agency orders. Environmental & Natural Resources Law Clinic of Widener University Delaware Law School moves to file an amicus brief. Upon due consideration, it is hereby ORDERED that Respondent's motions to dismiss are GRANTED and Stop the Pipeline's motions to dismiss for lack of jurisdiction are DENIED as moot. It is further ORDERED that Stop the Pipeline's motions for vacatur are GRANTED, the underlying agency orders are VACATED, and the cases are REMANDED with instructions to dismiss the agency proceedings. *Lamar Advert. of Penn, LLC v. Town of Orchard Park, New York*, 356 F.3d 365, 375 (2d Cir. 2004) ("The voluntary cessation of allegedly illegal conduct usually will render a case moot if the defendant can demonstrate that (1) there is no reasonable expectation that the alleged violation will recur and (2) interim relief or events have completely and irrevocably eradicated the effects of the alleged violation." (internal quotation marks omitted)); *Radiofone, Inc. v. Fed. Commc'ns Comm'n*, 759 F.2d 936, 940-41 (D.C. Cir. 1985) (finding vacatur appropriate where agency order was "moot for a reason that deprives the agency action of all operative effect"); see *Bragger v. Trinity Capital Enter. Corp.*, 30 F.3d 14, 17 (2d Cir. 1994) ("When a civil case becomes moot while an appeal is pending, it is the general practice of an appellate court to vacate the unreviewed judgment granted in the court below and remand the case to that court with directions to dismiss it.") (citing *United States v. Munsingwear, Inc.*, 340 U.S. 36, 39-40 (1950)). Finally, it is ORDERED that the motion to file an amicus brief is DENIED as moot.

FOR THE COURT:

Catherine O'Hagan Wolfe, Clerk of Court

CERTIFICATE OF SERVICE

I hereby certify that, on June 15, 2026, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Scott Ray Ediger
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June 15, 2026