

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

FOOD & WATER WATCH;)	
BERKSHIRE ENVIRONMENTAL)	
ACTION TEAM)	
<i>Petitioners</i>)	
)	
v.)	Docket No. _____
)	
FEDERAL ENERGY)	
REGULATORY COMMISSION,)	
<i>Respondent</i>)	
)	

**FOOD & WATER WATCH AND BERKSHIRE
ENVIRONMENTAL ACTION TEAM PETITION FOR REVIEW**

Pursuant to the Natural Gas Act, 15 U.S.C. § 717r(b), and Rule 15(a) of the Federal Rules of Appellate Procedure, Food & Water Watch (“FWW”) and Berkshire Environmental Action Team (“Berkshire”) (collectively “Environmental Petitioners”) hereby petition this Court for review of final agency actions taken by the Federal Energy Regulatory Commission (“FERC” or “Commission”) granting a certificate authorizing construction and operation of the 261 Upgrade Project (“Project”) under Section 7 of the Natural Gas Act, 15 U.S.C. § 717f(e).

Environmental Petitioners seek review of the orders designated below:

1. *Tennessee Gas Pipeline Company, L.L.C.*, FERC Docket No. CP19-7-000, Order Issuing Certificate and Approving Abandonment, 169 FERC ¶ 61,230 (Dec. 19, 2019). (“Certificate Order”)

2. *Tennessee Gas Pipeline Company, L.L.C.*, FERC Docket No. CP19-7-001, Order Denying Rehearing and Stay, 170 FERC ¶ 61,142 (Feb. 21, 2020).

(“Rehearing Denial”)

This Court has jurisdiction under Section 717r of the Natural Gas Act, 15 U.S.C. § 717r, over this Petition for Review. Environmental Petitioners were directly aggrieved by the Commission’s orders approving the project. *See* Declaration of Standing (Attachment 1). FWW and Berkshire intervened and participated in the certificate proceeding before the Commission,¹ and each Petitioner filed a timely Request for Rehearing² of the Commission order granting certificate on Dec. 19, 2019.

On February 21, 2020, the Commission denied all rehearing requests, thus rendering the Certificate Order final for judicial review under 15 U.S.C. § 717r(a). This Petition for Review is timely within sixty days of the Commission’s order on rehearing. *See* 15 U.S.C. §717r(b).

¹ Motion to Intervene of Food & Water Watch in opposition to Tennessee Gas Pipeline's 261 Upgrade Project, FERC Docket CP19-7-000, (Nov. 21, 2018), Access No. 20181121-5126; Motion to Intervene of Berkshire Environmental Action Team, Inc. (BEAT), (Nov. 8, 2018), Access No. 20181108-5133.

² Food & Water Watch Request for Rehearing, FERC Docket CP19-7-000, (Jan. 17, 2020), Access No. 20200117-5209; Berkshire Environmental Action Team Request for Rehearing, FERC Docket CP19-7-000, (Jan. 17, 2020), Access No. 20200117-5210.

This Petition raises several challenges to the Commission’s approval of the Project, including that the Commission arbitrarily and capriciously departed from this Court’s precedent in *Sierra Club v. FERC*, 867 F.3d 1357 (D.C. Cir. 2017), which ruled that the National Environmental Policy Act (“NEPA”) requires FERC to meaningfully evaluate greenhouse gas emissions from fossil fuel production and transportation projects. The Court’s ruling left no ground for the Commission to shirk its obligations under NEPA and yet, that is precisely what FERC’s majority has done in these orders – over a strong and clear dissent from Commissioner Richard Glick.

Moreover, the Commission’s Orders neglect to consider serious changed conditions in the sole remaining precedent agreement upon which the determination of public necessity was made; namely a guilty plea for criminal negligence by Columbia Gas of Massachusetts resulting in an agreement with the U.S. Department of Justice to cease all operations in the Commonwealth of Massachusetts and to sell all of its assets in the state.³

³ U.S. Dep’t of Justice, “Columbia Gas Agrees to Plead Guilty in Connection with September 2018 Gas Explosions in Merrimack Valley: Company agrees to sell its business in Massachusetts and pay a \$53 million fine, the largest criminal fine ever imposed under the Pipeline Safety Act,” U.S. Attorney’s Office – Dist. Of Mass., Feb. 26, 2010. <https://www.justice.gov/usao-ma/pr/columbia-gas-agrees-plead-guilty-connection-september-2018-gas-explosions-merrimack>.

Accordingly, FWW and Berkshire petition this Court to set aside the Commission's orders on review, compel the Commission to comply with this Court's ruling, and grant such other relief as may be appropriate.

Respectfully submitted this 21st day of April 2020.

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