

**BEFORE THE UNITED STATES JUDICIAL PANEL
ON MULTIDISTRICT LITIGATION**

Petitions for Review of Orders of the)
Federal Energy Regulatory Commission:) MCP No. _____
Calpine Corp. v. PJM Interconnection, L.L.C.,)
171 FERC ¶ 61,034,)
Calpine Corp. v. PJM Interconnection, L.L.C.,)
171 FERC ¶ 61,035,)
Issued Apr. 16, 2020)

NOTICE OF MULTICIRCUIT PETITIONS FOR REVIEW

Pursuant to 28 U.S.C. § 2112(a)(3) and the Rules of Procedure of the Judicial Panel on Multidistrict Litigation, the Federal Energy Regulatory Commission (“FERC” or the “Commission”) notifies the Judicial Panel of the filing of multicircuit petitions for review of Commission orders issued in *Calpine Corp. v. PJM Interconnection, L.L.C.*, FERC Docket Nos. EL16-49 and EL18-178 (consolidated). The FERC orders at issue are: (1) Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under Section 206 of the Federal Power Act, 163 FERC ¶ 61,236 (issued June 29, 2018); (2) Order Establishing Just and Reasonable Rate, 169 FERC ¶ 61,239 (issued Dec. 19, 2019) (“Initial Order”); (3) Order on Rehearing and Clarification, 171 FERC ¶ 61,034 (issued Apr. 16, 2020) (“Rehearing Order I”); and (4) Order on Rehearing and Clarification, 171 FERC ¶ 61,035 (issued Apr. 16, 2020) (“Rehearing Order II”).

As required by Panel Rule 25.2, the Commission submits with this Notice: (1) a schedule listing petitions for review filed in the circuit courts of appeals within ten days after the issuance of the final agency orders and court-stamped petitions

received by the Commission within that time period (Attachment A), *see* 28 U.S.C. § 2112(a)(1)–(3); and (2) copies of each petition (Attachment B). In accordance with Panel Rule 25.3, as indicated in the attached certificate of service, the Commission is filing and serving this notice on the clerks of the courts of appeals where petitions for review have been filed, along with counsel for all parties in the petitions for review.

Pursuant to 28 U.S.C. § 2112(a)(1)–(3) and Panel Rule 25.2(c), this notice exclusively embraces court-stamped petitions for review filed in the courts of appeals within the 10-day period following the Commission’s issuance of Rehearing Order I and Rehearing Order II on April 16, 2020 (i.e., by April 27, 2020), and received by the Commission within that period. *See In re FERC, Atl. Coast Pipeline, LLC, 164 FERC 61,000, Issued on Aug. 10, 2018, 341 F. Supp. 3d 1378, 1379–80 (J.P.M.L. 2018)*. Accordingly, the attached schedule does not include petitions for review filed outside of this 10-day period, including petitions that were filed prior to the two Rehearing Orders. *See Federal Power Act, 16 U.S.C. § 825l(a)–(b)* (establishing a period of 60 days after issuance of Commission orders on rehearing for the filing of petitions for review in the courts of appeals).

Respectfully Submitted,

Robert H. Solomon
Solicitor

/s/ Jared B. Fish _____

Jared B. Fish
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May 4, 2020

ATTACHMENT A

Rule 25.2(b)(ii) Schedule

Issuance Date of the FERC Orders: April 16, 2020

Case Name	Circuit Court	Docket Number	Rehearing Orders Challenged	Filing Date	Date Received by FERC
<i>Illinois Commerce Commission v. FERC</i>	7th Circuit	No. 20-1645	Rehearing Orders I & II	Apr. 20, 2020	Apr. 21, 2020
<i>American Public Power Association, et al. v. FERC</i>	D.C. Circuit	No. 20-1129 ¹	Rehearing Orders I & II	Apr. 20, 2020	Apr. 22, 2020
<i>North Carolina Electric Membership Corp. v. FERC</i>	D.C. Circuit	No. 20-1130	Rehearing Order II	Apr. 20, 2020	Apr. 23, 2020
<i>Energy Harbor LLC v. FERC</i>	D.C. Circuit	No. 20-1133	Rehearing Order II	Apr. 21, 2020	Apr. 24, 2020
<i>New Jersey Division of Rate Counsel, et al. v. FERC</i>	D.C. Circuit	No. 20-1135	Rehearing Order II	Apr. 23, 2020	Apr. 27, 2020

¹ The petition for review in D.C. Circuit No. 20-1129 has been consolidated with three other petitions challenging one of the April 16 Rehearing Orders: D.C. Circuit Nos. 20-1130, 20-1133, and 20-1135. The Commission received court-stamped copies of all four petitions within the 10-day period following issuance of the Rehearing Order. Those four petitions have been consolidated with two other petitions challenging the April 16 Rehearing Orders: D.C. Circuit Nos. 20-1131 and 20-1139. Because the Commission did not receive court-stamped copies of those latter two petitions within the 10-day period, pursuant to 28 U.S.C. § 2112(a)(1)–(3) and Panel Rule 25.2(c), those two petitions are not individually listed on this Schedule.

The above-specified D.C. Circuit petitions have also been consolidated with several petitions filed in the D.C. Circuit that seek review of FERC orders that issued prior to the April 16 Rehearing Orders: D.C. Circuit No. 20-1059 (filed Feb. 28, 2020; motion to dismiss pending), No. 20-1095 (filed Mar. 27, 2020; motion to dismiss pending), No. 20-1118 (filed Apr. 10, 2020), No. 20-1120 (filed Apr. 13, 2020), No. 20-1125 (filed Apr. 17, 2020), and No. 20-1126 (filed Apr. 17, 2020). Those petitions were not filed within 10 days of issuance of any Commission order challenged therein, and so they, too, are not listed on this Schedule.

ATTACHMENT B

SHORT RECORD
NO. 20-1645
FILED 04/20/2020

Case: 20-1645

Document: 1-1

Filed: 04/20/2020

Pages: 376

No. _____

ORIGINAL

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

ILLINOIS COMMERCE COMMISSION,)
)
Petitioner,)
)
v.)
)
FEDERAL ENERGY REGULATORY)
COMMISSION,)
)
Respondent.)

Petition for Review

APR 20 2020
10 09 AM
CLERK OF COURT

PETITION FOR REVIEW OF FERC ORDERS

Pursuant to Rule 15(a) of the Federal Rules of Appellate Procedure, and Section 313(b) of the Federal Power Act, 16 U.S.C. § 825l(b), petitioner Illinois Commerce Commission, by its counsel, Kwame Raoul, Attorney General of Illinois, and Assistant Attorney General Richard S. Huszagh, petitions for review of the each of the following orders of respondent Federal Energy Regulatory Commission ("FERC"), in FERC Docket Nos. EL16-49-000, EL16-49-001, EL16-49-002, ER18-1314-000, ER18-1314-001, ER18-1314-002, EL18-178-000, EL18-178-001, and/or EL18-178-002, concerning provisions of the PJM Interconnection, LLC tariff.

- a. **June 29, 2018 Order.** *Calpine Corporation, Dynegy Inc., et al. v. PJM Interconnection, L.L.C.*, Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under Section 206 of the Federal Power Act, 163 FERC ¶ 61,236 (June 29, 2018) (available at <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=14961692>).
- b. **December 19, 2019 Order.** *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, Order Establishing Just and Reasonable Rate, 169 FERC ¶ 61,329 (December 19, 2019) (available at <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15428534>).

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- c. **February 18, 2020 Order.** *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, Order Granting Rehearings for Further Consideration (Feb. 18, 2020) (available at <https://elibrary.ferc.gov/IDMWS/common/opennat.asp?fileID=15465599>).
- d. **April 16, 2020 Order.** *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, Order Denying Petitions for Rehearing, and Granting Requests for Clarification, of the June 29, 2018 Order described above in subparagraph *a*. 171 FERC ¶ 61,034 (April 16, 2020) (available at <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15511636>).
- e. **April 16, 2020 Order.** *Calpine Corp., et al. v. PJM Interconnection, L.L.C.*, Order Granting in Part and Denying in Part Petitions for Rehearing and Requests for Clarification of the December 19, 2019 Order described above in subparagraph *b*. 171 FERC ¶ 61,035 (April 16, 2020) (available at <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15511640>), as modified by the errata page issued on April 16, 2020, correcting paragraph 82 of 171 FERC ¶ 61,035 (available at <https://elibrary.ferc.gov/idmws/common/OpenNat.asp?fileID=15511644>).

April 20, 2020

Respectfully submitted,

KWAME RAOUL
Attorney General
State of Illinois

/s/ Richard S. Huszagh
Assistant Attorney General
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Counsel for the Illinois Commerce Commission

Case: 20-1645 Document: 1-1 Filed: 04/20/2020 Pages: 376

Certificate of Service

I hereby certify that on April 20, 2020, I caused copies of the foregoing Petition for Review to be served on the parties on the attached service list at their indicated e-mail addresses, and that, upon receiving a file-stamped copy of this petition, I will cause a paper copy of it to be delivered by courier to:

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE
Washington, DC 20426

/s/ Richard S. Huszagh

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

)	
AMERICAN PUBLIC POWER)	
ASSOCIATION AND AMERICAN)	
MUNICIPAL POWER, INC.,)	
)	
Petitioners,)	
)	
v.)	No. <u>20-1129</u>
)	
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
)	
Respondent.)	
)	

PETITION FOR REVIEW

Pursuant to section 313(b) of the Federal Power Act, 16 U.S.C. § 825l(b), Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15, the American Public Power Association and American Municipal Power, Inc. hereby jointly petition for review of the following orders issued by the Federal Energy Regulatory Commission:

1. *Calpine Corp. v. PJM Interconnection, L.L.C.*, Docket Nos. EL16-49-000, ER18-1314-000, ER18-1314-001, and EL18-178-000, “Order Rejecting Proposed Tariff Revisions, Granting in Part and Denying in Part Complaint, and Instituting Proceeding Under

Section 206 of the Federal Power Act,” 163 FERC ¶ 61,236 (June 29, 2018);

2. *Calpine Corp., v. PJM Interconnection, L.L.C.*, Docket Nos. EL16-49-000 and EL18-178-000, “Order Establishing Just and Reasonable Rate,” 169 FERC ¶ 61,239 (Dec. 19, 2019);

3. *Calpine Corp. v. PJM Interconnection, L.L.C.*, Docket Nos. EL16-49-001, EL18-178-001, and ER18-1314-002, “Order on Rehearing and Clarification,” 171 FERC ¶ 61,034 (April 16, 2020); and

4. *Calpine Corp. v. PJM Interconnection, L.L.C.*, Docket Nos. EL16-49-002 and EL18-178-002, “Order on Rehearing and Clarification,” 171 FERC ¶ 61,035 (April 16, 2020), *errata* issued April 16, 2020.

Copies of these orders are attached to this petition as Attachments

A through D, respectively.

Respectfully submitted,

/s/ John E. McCaffrey

Delia Patterson

Senior Vice President, Advocacy &

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John E. McCaffrey

Senior Regulatory Counsel

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/s/ Gerit F. Hull

Gerit F. Hull

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DATED: April 20, 2020

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

)	
AMERICAN PUBLIC POWER)	
ASSOCIATION AND AMERICAN)	
MUNICIPAL POWER, INC.,)	
)	
Petitioners,)	
)	
v.)	No. <u>20-1129</u>
)	
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
)	
Respondent.)	
)	

**CORPORATE DISCLOSURE STATEMENT OF
THE AMERICAN PUBLIC POWER ASSOCIATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, the American Public Power Association (“APPA”) hereby submits this corporate disclosure statement.

APPA has no parent corporation or publicly traded stock. APPA is the national trade association representing the interests of not-for-profit, state, municipal, and other locally owned electric utilities in the United States.

Respectfully submitted,

/s/ John E. McCaffrey _____

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DATED: April 20, 2020

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

)	
AMERICAN PUBLIC POWER)	
ASSOCIATION AND AMERICAN)	
MUNICIPAL POWER, INC.,)	
)	
Petitioners,)	
)	
v.)	No. <u>20-1129</u>
)	
FEDERAL ENERGY REGULATORY)	
COMMISSION,)	
)	
Respondent.)	
)	

**CORPORATE DISCLOSURE STATEMENT OF
AMERICAN MUNICIPAL POWER, INC.**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1, American Municipal Power, Inc. (“AMP”) hereby submits this corporate disclosure statement.

American Municipal Power, Inc. is a non-profit Ohio corporation organized in 1971. AMP has 135 members, including 134 member municipal electric systems in the states of Ohio, Pennsylvania, Michigan, Virginia, Kentucky, West Virginia, Indiana, and Maryland, and the Delaware Municipal Electric

Corporation, a joint action agency with nine members that is headquartered in Smyrna, Delaware. AMP provides wholesale energy supply and related services to its members. AMP issues no stock, has no parent corporation, and is not owned in whole or in part by any publicly held corporation.

Respectfully submitted,

/s/ Gerit F. Hull

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DATED: April 20, 2020

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

North Carolina Electric)	
Membership Corporation,)	
)	
Petitioner,)	
)	
v.)	No. <u>20-1130</u>
)	
Federal Energy Regulatory)	
Commission,)	
)	
Respondent.)	

PETITION FOR REVIEW

Pursuant to Section 313(b) of the Federal Power Act (“FPA”), 16 U.S.C. § 825l(b), Rule 15 of the Federal Rules of Appellate Procedure, and Circuit Rule 15, North Carolina Electric Membership Corporation (“NCEMC”) hereby petitions this Court for review of the following orders of the Federal Energy Regulatory Commission (“Commission” or “FERC”):

- *Calpine Corp. v. PJM Interconnection, L.L.C.*, Order Establishing Just and Reasonable Rate, Docket Nos. EL16-49-000 and EL18-178-000, 169 FERC ¶ 61,239 (Dec. 19, 2019) (“December 19 Order”).
- *Calpine Corp. v. PJM Interconnection, L.L.C.*, Order on Rehearing and Clarification, Docket Nos. EL16-49-002 and EL18-178-002, 171 FERC ¶ 61,035 (Apr. 16, 2020) (“April 16 Order”).

Copies of the December 19 Order and the April 16 Order are attached hereto as Exhibits A and B respectively. Also attached to this petition are the corporate disclosure statement required by Rule 26.1 of the Federal Rules of Appellate Procedure, and a Certificate of Service, with the list of parties to the underlying proceedings.

Respectfully submitted,

/s/ Denise C. Goulet

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*Attorneys for
North Carolina Electric Membership
Corporation*

Dated: April 20, 2020

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

North Carolina Electric)	
Membership Corporation,)	
)	
Petitioner,)	
)	
v.)	No. <u>20-1130</u>
)	
Federal Energy Regulatory)	
Commission,)	
)	
Respondent.)	

**CORPORATE DISCLOSURE STATEMENT OF
NORTH CAROLINA ELECTRIC MEMBERSHIP CORPORATION**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1 of the United States Court of Appeals for the District of Columbia Circuit, North Carolina Electric Membership Corporation (“NCEMC”) hereby files its corporate disclosure statement in the above-captioned proceeding.

NCEMC is a not-for profit generation and transmission cooperative incorporated under North Carolina law that owns and/or purchases generation and transmission services on behalf of its 25 member distribution cooperatives. NCEMC is wholly owned by its members and has no parent companies. No publicly held company has any ownership interest in NCEMC.

Respectfully submitted,

/s/ Denise C. Goulet

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Attorneys for

North Carolina Electric Membership

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Dated: April 20, 2020

Respectfully submitted,

/s/ James E. Tysse

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Counsel for Energy Harbor LLC

Dated: April 21, 2020

A file-stamped copy of this Petition for Review will be served on the respondent, pursuant to 18 C.F.R. § 385.2012, at the following address:

Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street, NE Washington, DC 20426

Respectfully submitted,

/s/ James E. Tysse

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Counsel for Energy Harbor LLC

Dated: April 21, 2020

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OF COUNSEL

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MARGARET A. MCGOLDRICK

April 27, 2020

Via e-filing

Hon. Kimberly D. Bose
Secretary
Federal Energy Regulatory Commission
888 First Street NE
Washington, DC 20426

Re: Petition for Review, Docket Nos. EL16-49-000, EL18-178-000, et al.

Dear Ms. Bose:

Pursuant to Commission Rule 2012, 18 C.F.R. § 385.2012, New Jersey Division of Rate Counsel, Office of the People's Counsel for the District of Columbia, Maryland Office of the People's Counsel, and Delaware Division of the Public Advocate hereby submit a stamped copy of their Petition for Review filed in the United States Court of Appeals for the District of Columbia Circuit on April 23, 2020. The Petition for review has been assigned Case No. 20-1135, and relates to the Commission's orders dated December 19, 2019 and April 16, 2020 issued in Docket Nos. EL16-49-000 and EL18-178-000, *et al.* We are contemporaneously filing this document in the above-referenced dockets through the Commission's electronic filing system. A stamped copy of this petition has been served on all persons whose names appear on the Commission's official service list in Docket Nos. EL16-49-000 and EL18-178-000, *et al.*

Please let me know if you need any additional information or assistance.

Sincerely,

/s/ Scott H. Strauss

Scott H. Strauss

cc: All Parties

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUITNEW JERSEY DIVISION OF RATE
COUNSEL, OFFICE OF THE
PEOPLE'S COUNSEL FOR THE
DISTRICT OF COLUMBIA,
MARYLAND OFFICE OF THE
PEOPLE'S COUNSEL, AND
DELAWARE DIVISION OF THE
PUBLIC ADVOCATE,*Petitioners,*

v.

CASE NO. 20-1135FEDERAL ENERGY REGULATORY
COMMISSION,*Respondent.***PETITION FOR REVIEW AND REQUEST FOR CONSOLIDATION**

The New Jersey Division of Rate Counsel, the Office of the People's Counsel for the District of Columbia, the Maryland Office of People's Counsel, and the Delaware Division of the Public Advocate (collectively, Petitioners) hereby each petition this Court, pursuant to Section 313(b) of the Federal Power Act ("FPA"), 16 U.S.C. § 825l(b), and Fed. R. App. P. 15(a), to review and set aside two final orders issued by the Federal Energy Regulatory Commission (FERC or Commission). The jurisdiction and venue of this Court is established by FPA Section 313(b), 16 U.S.C. § 825l(b).

The Orders as to which review is sought were issued in Commission Docket Nos. EL16-49 and EL18-178 (consolidated). The orders are:

- *Calpine Corp. v. PJM Interconnection, L.L.C.*, “Order Establishing Just and Reasonable Rate,” 169 FERC ¶ 61,239 (2019) (December 19 Order).
- *Calpine Corp. v. PJM Interconnection, L.L.C.*, “Order on Rehearing and Clarification,” 171 FERC ¶ 61,035 (April 16, 2020), *as corrected*, No. EL16-49-002 (Apr. 16, 2020), eLibrary No. 20200416-3120 (correcting P 82) (Rehearing Order).

Copies of the December 19 Order and the Rehearing Order are attached hereto as exhibits to this Petition.

In addition, and for the reasons explained below, Petitioners request that this Petition be consolidated with a set of recently-consolidated petitions for review of one or both of the above orders currently pending before this Court.

In support of this request, Petitioners state:

On February 28, 2020, Petitioners filed in this Court a Petition for Review of the December 19 Order, coupled with a request that the Petition be held in abeyance. The Petition has been styled as *New Jersey Division of Rate Counsel, et al. v. Federal Energy Regulatory Commission*, Case No. 20-1059 (February 28 Petition). Three similar petitions for review of the December 19 Order and requests for abeyance have since been filed with the Court, which has

consolidated each of them with Case No. 20-1059.¹ In addition, several Petitions have been filed seeking review of both the December 19 Order and the Rehearing Order; these have likewise been consolidated with Case No. 20-1059.² Petitioners request that the instant Petition likewise be consolidated with Case No. 20-1059, as well as any additional petitions that are filed seeking review of the December 19 Order and the Rehearing Order.

This relief is justified by the circumstances surrounding the submission of the February 28 Petition (and the similar petitions filed thereafter). Petitioners explained (February 28 Petition at 3-4) that they were seeking judicial review of the December 19 Order before the Commission had ruled on the merits of requests for rehearing of that Order because this Court's ruling in a pending, *en banc* proceeding, *Allegheny Defense Project v. FERC*, Case No. 17-1098 ("*Allegheny Defense*"), could impact the timeliness of petitions filed for review of the December 19 Order. Petitioners were concerned that awaiting a Commission ruling on the merits of the rehearing requests before seeking judicial review of the

¹ The other petitions for review are: (1) *National Rural Elec. Coop. Ass'n v. FERC*, Case No. 20-1095; (2) *Old Dominion Elec. Coop. v. FERC*, Case No. 20-1118; and (3) *East Ky. Elec. Coop. v. FERC*, Case No. 20-1120.

² *Allegheny Electric Coop. v. FERC*, Case No. 20-1125; (2) *Illinois Municipal Electric Agency v. FERC*, Case No. 20-1126; (3) *American Public Power Ass'n v. FERC*, Case No. 20-1129; (4) *North Carolina Electric Membership Corp. v. FERC*, Case No. 20-1130; (5) *Environmental Defense Fund v. FERC*, Case No. 20-1131; and (6) *Energy Harbor LLC v. FERC*, No. 20-1133.

December 19 Order could result in the loss of Petitioners' ability to do so.³ Because the Commission has now acted on the merits of the rehearing requests, Petitioners are submitting this petition for review in order to more fully protect their appeal rights given the uncertainties posed by the pendency and potential disposition of *Allegheny Defense*.⁴

Petitioners recognize that consolidation of the instant petition and the other pending cases will result in Petitioners having two petitions before this Court for review for the same December 19 Order. Petitioners have asked that the February 28 Petition be held in abeyance, and now request that it be consolidated with this Case. We believe that this is in the interest of justice, accords with the Court's inherent authority to control its docket, and enables the prosecution of the

³ The issue in *Allegheny Defense* is “whether the Natural Gas Act [(NGA)], and specifically 15 U.S.C. § 717r(a), authorizes [FERC] to issue tolling orders that extend the statutory 30-day period for Commission action on an application for rehearing.” *Allegheny Def. Project v. FERC*, 943 F.3d 496, 497 (D.C. Cir. 2019). Should the Court issue that ruling under 15 U.S.C. § 717r(a), that determination would almost certainly mean that FERC cannot do so under the counterpart provision of the FPA, section 313(a), 16 U.S.C. § 825l(a). February 28 Petition at 3 & n.4.

⁴ On April 14, 2020, the Commission filed with respect to Case Nos. 20-1059 and 20-1095 a “Respondent’s Motion to Dismiss Petitions for Review, or, in the Alternative, Motion for Abeyance” (FERC Motion). Petitioners have not yet responded to the FERC Motion.

appeals from FERC's orders to go forward without delay.⁵ More specifically:

(1) The Court's *en banc* decision in *Allegheny Defense* will effectively determine, or at least will inform the Court's decision as to, which of the Petitions for review of the December 19 Order were timely filed. Consolidating the Petitions will allow the cases to go forward without delay by ensuring that at least one Petition is timely and will establish the Court's jurisdiction to review FERC's Order.

(2) If the Court consolidates the instant Petition with Case No. 20-1059 and the *en banc* Court in *Allegheny Defense* finds that FERC cannot extend the thirty-day statutory deadline to act on requests for rehearing by means of tolling orders, the Court can determine if that ruling extends to the FPA and should be accorded retroactive effect. If so, then the February 28 Petition was timely filed and the Court can deny FERC's Motion to dismiss that Petition. This case can proceed apace because the February 28 Petition would then afford the Court jurisdiction.

(3) Alternatively, if the Court concludes in *Allegheny Defense* that FERC could in these proceedings extend the thirty-day deadline to act on requests for rehearing by means of a tolling order, then the Court can grant FERC's Motion

⁵ See generally *Landis v. N. Am. Co.*, 299 U.S. 248 (1936).

and dismiss the Petition in Case No. 20-1059, and this appeal can continue to proceed pursuant to the instant Petition.

(4) Either way, so long as the Court consolidates the instant Petition and Case No. 20-1059 (and denies or defers action on FERC's Motion or otherwise holds the Petition in Case No. 20-1059 in abeyance), Petitioners' right to seek judicial review of the Commission's actions in FERC Docket Nos. EL16-49 and EL18-178 will have been protected, and this appeal can proceed apace.⁶

For the reasons stated here, Petitioners ask that the Court consolidate the instant petition with Petitioner's February 28 Petition.

⁶ That said, and depending on the outcome in *Allegheny Defense*, one of the issues that may need to be addressed in these consolidated proceedings is the legal "status" of the Rehearing Order.

Respectfully submitted,

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April 23, 2020

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

NEW JERSEY DIVISION OF RATE
COUNSEL, OFFICE OF THE
PEOPLE’S COUNSEL FOR THE
DISTRICT OF COLUMBIA,
MARYLAND OFFICE OF THE
PEOPLE’S COUNSEL, AND
DELAWARE DIVISION OF THE
PUBLIC ADVOCATE,

Petitioners,

v.

FEDERAL ENERGY REGULATORY
COMMISSION,

Respondent.

CASE NO. _____

**CORPORATE DISCLOSURE STATEMENT OF
PETITIONERS**

The New Jersey Division of Rate Counsel, the Office of the People’s Counsel for the District of Columbia, the Maryland Office of People’s Counsel, and the Delaware Division of the Public Advocate are governmental entities that do not issue any stock and thus are not subject to the corporate disclosure statement requirement of Rule 26.1 of the Federal Rules of Appellate Procedure.

Respectfully submitted,

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April 23, 2020

CERTIFICATE OF SERVICE

In accordance with Rule 25.3 of the Judicial Panel on Multidistrict Litigation and Federal Rule of Appellate Procedure 25(a), I certify that, on this 4th day of May, 2020, a copy of the foregoing was served electronically, in accordance with the applicable ECF procedures of the following courts:

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Copies of the foregoing notice were also served on counsel through the ECF systems of the U.S. Court of Appeals for the District of Columbia Circuit and the U.S. Court of Appeals for the Seventh Circuit, or by email. Service was provided to:

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