

No. 18-548

In the Supreme Court of the United States

ADORERS OF THE BLOOD OF CHRIST, UNITED STATES
PROVINCE, ET AL.,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.,
Respondents.

*On Petition for Writ of Certiorari to the
United States Court of Appeals for the Third Circuit*

**BRIEF IN OPPOSITION FOR RESPONDENT
TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC**

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QUESTIONS PRESENTED

The Natural Gas Act (“NGA”) grants the Federal Energy Regulatory Commission (“FERC”) authority to grant or deny construction of interstate natural gas pipelines. 15 U.S.C. § 717f. The NGA sets forth a highly reticulated procedure for challenging a FERC certificate to build an interstate pipeline. No one may seek judicial review of a FERC certificate order without first seeking rehearing at FERC. The Courts of Appeals thereafter have exclusive jurisdiction to affirm, modify or set aside FERC’s determination on rehearing. 15 U.S.C. §§ 717r(a)-(b). Once a FERC certificate issues, a certificate holder may acquire necessary rights of ways by eminent domain if it is unable to acquire them by agreement. *See* 15 U.S.C. § 717f(h).

This case seeks to examine whether a party who failed to participate in the pre-certificate FERC review process, failed to seek rehearing from FERC, and failed to appeal a final possession order in eminent domain proceedings can use the Religious Freedom Restoration Act (“RFRA”), 42 U.S.C. §§ 2000bb-1(a)-(b), to circumvent the NGA’s rehearing and review provisions to collaterally attack a certificate order, as well as to overturn a final court order granting possession through eminent domain. The questions presented are:

1. When a person fails to raise with FERC during its extensive review process of an interstate natural gas pipeline project any objections to the project, including any objections based on the exercise of the person’s religion, and FERC thereafter issues a certificate order for the pipeline project and the person does not seek rehearing of the issuance of that

certificate order, may the person avoid the consequences of the certificate order, including eminent domain, by bringing, after completion of a comprehensive FERC review process, a separate action under RFRA claiming violations of RFRA and seeking an injunction against the use of the person's property for the pipeline project?

2. When a person fails to answer a complaint in condemnation filed by an interstate pipeline company which has received a FERC certificate order, fails to respond to a motion for partial summary judgment, and fails to appeal a final order of the district court granting possession of rights of ways, may that person later seek to avoid condemnation and possession of the rights of ways by the pipeline company by bringing a separate action under RFRA in the district court which seeks an injunction permanently enjoining the pipeline company from taking possession of the rights of ways, and permanently enjoining the pipeline company from using any part of the person's property for an interstate natural gas pipeline?

**RULE 29.6 CORPORATE
DISCLOSURE STATEMENT**

Transcontinental Gas Pipe Line Company, LLC (“Transco”) is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce, which owns and operates an interstate natural gas transmission system that extends from Texas, Louisiana and the offshore Gulf of Mexico area to a terminus in the New York City metropolitan area. Its parent corporation is Williams Partners Operating, LLC, which is a wholly-owned subsidiary of The Williams Companies, Inc. (NYSE: WMB). We have no knowledge of any other entity owning 10% or more of Transco or Williams Partners Operating, LLC.

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INTRODUCTION

After several years of intensive review and consideration of hundreds of comments from affected parties, the Federal Energy Regulatory Commission (“FERC”) issued a certificate order to Transcontinental Gas Pipe Line Company, LLC (“Transco”) approving the construction and operation of a nearly \$3 billion interstate pipeline project called the Atlantic Sunrise Project (the “Project”). *See Transcon. Gas Pipe Line Co., LLC*, 158 FERC ¶ 61125 (Feb. 3, 2017) (“Certificate Order”). The Project involved the construction of almost 200 miles of pipeline, which would be located in rights of ways in locations specifically reviewed and approved by FERC. FERC determined that the Project was in the public interest. The pipeline has been installed and is in operation providing enough clean-burning natural gas to meet the daily needs of more than 7 million American homes.

The Adorers of the Blood of Christ (the “Adorers”) is a vowed religious order of Roman Catholic women that owns property used as a farm field by a tenant farmer across which the pipeline runs in rights of ways authorized by FERC’s Certificate Order. The Adorers failed to participate in the FERC review process despite receiving various notices and requests for comments. The Adorers never raised any objections to FERC, including their religious concerns, and they never sought rehearing of the FERC Certificate Order. Instead, the Adorers brought an untimely action under the Religious Freedom Restoration Act (“RFRA”) seeking to avoid (1) an order of the United States District Court for the Eastern District of Pennsylvania

that confirmed Transco’s right to condemn the necessary rights of ways on the Adorers’ property for the Project pursuant to the Natural Gas Act (“NGA”) and the FERC Certificate Order, and (2) a final order of the district court that granted possession of the rights of ways on the Adorers’ property to Transco. The Adorers never appealed the final order of the district court that allowed Transco to obtain possession of the rights of ways on the Adorers’ property and to install and operate the pipeline in those rights of ways.

Despite failing to participate in the process for FERC review of the application for a certificate order and failing to appeal the order granting Transco possession of the rights of ways, the Adorers seek a permanent injunction enjoining Transco from possession of the rights of ways on the Adorers’ property and from operating the pipeline on their property.¹ The Adorers assert that the construction and operation of the pipeline on their property is inconsistent with the exercise of their religion in violation of RFRA.

The district court dismissed the RFRA complaint for lack of subject matter jurisdiction, finding that the Adorers could not circumvent the specific and exclusive procedure prescribed by the NGA for challenging a FERC Certificate Order, and the United States Court of Appeals for the Third Circuit affirmed. There is no conflict among the decisions of this Court or the federal Courts of Appeals on the issues in this case, and there is no conflict between the NGA and RFRA. The Court should deny the petition.

¹ See Amended Complaint at 19, *Adorers of the Blood of Christ v. FERC*, No. 5:17-cv-03163-JLS (E.D. Pa. 2017), ECF No. 10.

STATEMENT OF THE CASE

I. The Atlantic Sunrise Project.

The Project, which has been installed and is in service, is a nearly \$3 billion investment in critical energy infrastructure designed to supply enough natural gas to meet the daily needs of more than 7 million American homes by connecting producing regions in northeastern Pennsylvania to markets in the mid-Atlantic and southeastern states. *See Adorers of the Blood of Christ v. FERC*, 897 F.3d 187, 190 (3d Cir. 2018), App. 5.² Nine shippers have subscribed to 100% of the incremental firm transportation service provided by the Project, demonstrating the need for the Project’s capacity. *Transcon. Gas Pipe Line Co., LLC*, 158 FERC ¶ 61125, ¶ 11 (Feb. 3, 2017). Following an intensive and thorough multi-year review process, FERC approved the Project when it issued the Certificate Order for the Project on February 3, 2017, finding that “the public convenience and necessity requires approval of Transco’s proposal,” based on “the benefits that [the Project] will provide, the absence of adverse effects on existing customers . . . and the minimal adverse effects on landowners or surrounding communities.” *Id.* ¶ 33.

Installation of the Project is complete and FERC authorized Transco to place the Project into service on

² *See also* Williams, *Overview*, Atlantic Sunrise Pipeline Project, <http://atlanticsunriseexpansion.com/about-the-project/overview/> (last visited Nov. 20, 2018).

October 4, 2018.³ Transco placed the Project into full service on October 6, 2018.⁴

II. The Adorers’ Failure to Participate in FERC’s Multi-Year Review of the Project, Despite Multiple Opportunities to Do So.

During the FERC proceedings, “Transco incorporated 132 route variations into the proposed route to avoid or reduce effects on environmental or other resources, resolve engineering or constructability issues, or address stakeholder concerns . . . represent[ing] about a 50 percent change to Transco’s original route design.” *Transcon. Gas Pipe Line Co., LLC*, 158 FERC ¶ 61125, ¶ 151 (Feb. 3, 2017). FERC “staff reviewed the route variations and agreed with Transco’s conclusions regarding their incorporation into the proposed route.” *Id.* But unlike hundreds of other affected landowners, the Adorers never made a single objection to FERC—the agency with exclusive jurisdiction to approve or deny the Project and determine the Project route—over the course of the multi-year review of the Project, let alone an objection indicating that the Project would impose a substantial burden on the exercise of their religious beliefs.

³ Accession No. 20181004-3012, Letter order granting Transco’s request to place facilities into service (Oct. 4, 2018), available on FERC’s eLibrary in Docket Number CP15-138-000, <https://www.ferc.gov/docs-filing/elibrary.asp>.

⁴ Accession No. 20181009-5045, Notification of Placement into Service (Oct. 9, 2018), available on FERC’s eLibrary in Docket Number CP15-138-000, <https://www.ferc.gov/docs-filing/elibrary.asp>.

On July 29, 2014, FERC published a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Atlantic Sunrise Expansion, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* in the *Federal Register*, see 79 Fed. Reg. 44,023-02 (2014), and mailed it to nearly 2,500 interested parties, including affected property owners, to provide notice of the proposed Project. *Adorers*, 897 F.3d at 190-91, App. 6. FERC received more than six hundred written comments from various interested parties, and ninety-three speakers provided comments at Project scoping meetings. *Id.* at 191, App. 6. The Adorers did not provide a written comment or attend any of these meetings. *Id.*

Transco filed its formal application with FERC for a Certificate of Public Convenience and Necessity for the Project on March 31, 2015. *Id.* at 191, App. 6-7. On October 22, 2015, FERC mailed letters to landowners potentially affected by the Project, including the Adorers, describing proposed project reroutes under consideration, inviting newly affected landowners to participate in the environmental review process, and providing a special thirty-day limited scoping period. *Id.* at 191, App. 7. The Adorers did not respond to FERC's October 2015 letter. *Id.*

“On May 5, 2016, FERC issued a draft Environmental Impact Statement (‘EIS’) addressing the issues raised during the scoping period and up to its publication.” *Id.* at 191-92, App. 8. Notice of the draft EIS was published in the *Federal Register* on May 12, 2016, and mailed to the affected parties, including

the Adorers. *Id.* at 192, App. 8.⁵ FERC held four public comment meetings in June of 2016, during which more than 200 speakers provided comments regarding the draft EIS. *Id.* at 192, App. 8. FERC also received more than 560 written comments on the draft EIS. *Id.* at 192, App. 8-9. As a result of the oral and written comments, FERC postponed issuance of the final EIS and nearly 100 additional comments were filed and considered. *Id.* at 192, App. 9.

The Adorers chose not to provide any comments or otherwise participate in this process. *Id.*

On February 3, 2017, FERC issued Transco a Certificate of Public Convenience and Necessity for the Project. *Id.* Among other things, the Certificate Order granted Transco the right to take rights of ways for the Project on private property by eminent domain, “should landowners refuse to voluntarily convey a right to use their land.” *Id.*; *see also* 15 U.S.C. § 717f(h).

The Adorers chose not to seek rehearing of the Certificate Order before FERC.⁶

⁵ Draft Environmental Impact Statement, Appendix A at A-20, FERC Docket CP15-138 (May 5, 2016). Filings in FERC proceedings are available through FERC’s “eLibrary” system, at <https://www.ferc.gov/docs-filing/elibrary.asp>.

⁶ *See* FERC Docket CP15-138, available through FERC’s “eLibrary” system, at <https://www.ferc.gov/docs-filing/elibrary.asp>.

III. The Adorers’ Failure to Answer the Complaint or Respond to Transco’s Motion for Partial Summary Judgment in the Condemnation Proceeding.

The Adorers refused to convey to Transco the rights of ways on their property necessary to construct the Project. *Id.* at 192, App. 9. Accordingly, on April 14, 2017, Transco was forced to file a condemnation action with the district court under the NGA to acquire the necessary rights of ways on the Adorers’ property, consistent with FERC’s Certificate Order. *See id.* The Adorers did not file an answer—or otherwise respond—to the complaint, nor did they oppose Transco’s motion for partial summary judgment as to the substantive right to condemn the rights of ways. *See id.*⁷

The district court granted Transco’s motion for partial summary judgment on July 7, 2017, confirming Transco’s right to condemn rights of ways on the Adorers’ property under the NGA and the FERC Certificate Order.⁸

Only after a July 6, 2017 hearing on an emergency motion for possession of the rights of ways on the Adorers’ property did the Adorers file a pleading and *first* raise a claim that the Project, and the use of the rights of ways for a natural gas pipeline, would

⁷ See also Docket of *Transcontinental Gas Pipe Line Company, LLC v. Permanent Easement for 1.02 Acres, et al.*, No. 5:17-cv-01725-JLS (E.D. Pa.) (“Docket of Condemnation Action”). The Docket of Condemnation Action is included in the Appendix to this Brief in Opposition, cited hereafter as “Transco App.”

⁸ See Docket of Condemnation Action, Transco App. 7.

allegedly burden their exercise of their religious beliefs. *See Adorers*, 897 F.3d at 192, App. 9.⁹ After hearings on July 17, 2017 and July 20, 2017, at which counsel for the Adorers appeared and raised a defense based upon RFRA, the district court entered an order on August 23, 2017 granting Transco possession of the rights of ways on the Adorers' property upon the posting of a bond, which Transco posted one week later. *See Adorers*, 897 F.3d at 192, App. 10.¹⁰

The Adorers did not object, appeal, or seek rehearing regarding any order issued related to the condemnation proceedings, including the order granting to Transco possession of the rights of ways on the Adorers' property. *See Adorers*, 897 F.3d at 192, App. 10.

IV. The Adorers File a RFRA Suit in the District Court.

Instead, on July 14, 2017, a week after the district court issued the order granting Transco's motion for partial summary judgment confirming Transco's right to condemn, the Adorers filed a complaint against FERC in the United States District Court for the Eastern District of Pennsylvania seeking declaratory judgment that FERC violated their rights under RFRA and injunctive relief preventing the pipeline from running across their land. *See id.* The Adorers did not request damages in their complaint. *See id.* at 192, 198, n.11, App. 10, 22. The Adorers later filed an amended complaint reiterating the same claims, listing

⁹ *See also* Docket of Condemnation Action, Transco App. 6-7.

¹⁰ *See also* Docket of Condemnation Action, Transco App. 9-13.

additional plaintiffs, and adding Transco as a defendant, and specifically sought an injunction enjoining Transco from obtaining possession of the rights of ways and enjoining Transco from operating the pipeline on the Adorers' property. *Id.* at 192, App. 10.¹¹ Transco and FERC both moved to dismiss the amended RFRA complaint for lack of subject matter jurisdiction. *See Adorers*, 897 F.3d at 193, App. 11. The Adorers also moved for a preliminary injunction, which Transco opposed.¹²

On September 28, 2017, the district court granted the motions to dismiss for lack of subject matter jurisdiction and denied as moot the Adorers' motion for preliminary injunction. *See Adorers*, 897 F.3d at 193, App. 11.¹³ The district court "held that RFRA did not allow the Adorers to circumvent the specific procedure prescribed by the NGA for challenging a FERC order." *See Adorers*, 897 F.3d at 193, App. 11.

V. The Third Circuit Affirms the District Court's Dismissal of the Adorers' RFRA Complaint for Lack of Subject Matter Jurisdiction.

The Adorers appealed the district court's order dismissing their RFRA complaint to the United States Court of Appeals for the Third Circuit. *See id.* On

¹¹ *See also* Amended Complaint at 19, *Adorers of the Blood of Christ v. FERC*, No. 5:17-cv-03163-JLS (E.D. Pa. 2017), ECF No. 10.

¹² *See Adorers of the Blood of Christ v. FERC*, 283 F. Supp. 3d 342, 343 (E.D. Pa. 2017), App. 25.

¹³ *See also Adorers of the Blood of Christ*, 283 F. Supp. 3d at 343, 347, App. 25, 34.

October 3, 2017, the Adorers sought a preliminary injunction to stay construction pending appeal, but the Third Circuit denied their motion. *See* Docket No. 17-3163 (3d. Cir.). Transco commenced construction on the Adorers' property shortly thereafter. Installation of the pipeline on the Adorers' property is complete and the pipeline is in operation.¹⁴

On July 25, 2018, following briefing and argument, the Third Circuit affirmed the district court's order dismissing the Adorers' RFRA complaint for lack of subject matter jurisdiction. *See Adorers*, 897 F.3d at 190, App. 5. The Third Circuit held "that a RFRA cause of action, brought by invoking a court's general federal question jurisdiction, does not abrogate or provide an exception to a specific and exclusive jurisdictional provision prescribing a particular procedure for judicial review of an agency's action." *Id.*

REASONS FOR DENYING THE PETITION

I. The Third Circuit's Decision Does Not Conflict with RFRA's Statutory Provisions or the Decisions of This Court, or Any Other Federal Court, and Does Not Merit This Court's Review.

The decision below does not merit this Court's review. In the decision below, the United States Court of Appeals for the Third Circuit performed a straightforward jurisdictional analysis that is fully

¹⁴ See Accession No. 20181009-5045, Notification of Placement into Service (Oct. 9, 2018), available on FERC's eLibrary in Docket Number CP15-138-000, <https://www.ferc.gov/docs-filing/elibrary.asp>.

consistent with RFRA and the decisions of this Court and other federal courts.¹⁵ Nothing in RFRA supersedes the NGA’s procedural requirements or exempts the Adorers from following the NGA’s exclusive jurisdictional mandates, which require that all objections to an interstate pipeline be raised before FERC in the first instance and thereafter before an appropriate federal Court of Appeals, as other landowners and stakeholders have done. *See* 15 U.S.C. §§ 717r(a)-(b).

The Adorers’ contention that they may challenge FERC’s approval of a pipeline route in a federal district court is inconsistent with the NGA’s exclusive review scheme, as uniformly interpreted by numerous courts. The Adorers’ objection to the Project based on their religious beliefs does not provide a broad exemption for them to forego participation in the Congressionally-mandated FERC process for reviewing interstate natural gas pipeline projects. RFRA is not a jurisdictional statute, and the specific, exclusive jurisdictional mandates in the NGA do not conflict with RFRA’s judicial relief provision, which provides that “[a] person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain

¹⁵ Although the Third Circuit did not need to consider additional grounds upon which to affirm the district court’s decision, it could have affirmed the decision on other grounds, including: (1) that the Adorers’ RFRA action and the relief they seek constitute a collateral attack on the condemnation proceeding and seeks to invalidate the order of possession of the rights of ways entered in that proceeding which the Adorers failed to appeal; and (2) that the Adorers’ RFRA claims are barred by laches.

appropriate relief against a government.” 42 U.S.C. § 2000bb-1(c).

The Adorers cite a number of decisions discussing the breadth of RFRA’s substantive protections, but those decisions say nothing about the application of an exclusive jurisdictional scheme in another federal statute, and thus there is no conflict between the decision below and the decisions of this Court or any other federal court. The Adorers also assert a number of purported deficiencies with the judicial proceeding provided under the NGA, but all of those challenges are meritless. The NGA’s jurisdictional scheme is fully compatible with RFRA’s provision of a claim or defense in a judicial proceeding with appropriate relief against the government. *See id.*

A. There Is No Conflict Between the Natural Gas Act’s Exclusive Jurisdictional Provisions and RFRA Because RFRA Has No Jurisdictional Provision.

Under the NGA, challenges to orders issued by FERC must follow an exclusive jurisdictional track that requires exhaustion of administrative remedies in FERC proceedings and divests district courts of jurisdiction by vesting exclusive review of FERC orders in the federal Courts of Appeals. *See* 15 U.S.C. §§ 717r(a)-(b). The NGA confers on FERC “exclusive jurisdiction over the transportation and sale of natural gas in interstate commerce.” *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293, 300-01 (1988).

The NGA prescribes a “highly reticulated procedure for obtaining, and challenging, a FERC certificate to

build an interstate pipeline.” *Am. Energy Corp. v. Rockies Express Pipeline LLC*, 622 F.3d 602, 605 (6th Cir. 2010); *accord Adorers*, 897 F.3d at 195, App. 15 (noting Congress’ intent “to confer exclusive jurisdiction to the NGA by a highly reticulated statute nullifying any procedural alternatives an aggrieved party may otherwise have”). First, challenges to a FERC order must be filed as requests for rehearing before FERC. *See* 15 U.S.C. § 717r(a). If FERC denies a request for rehearing, judicial review may then be sought **only** in select federal Courts of Appeals, which have “exclusive” jurisdiction “to affirm, modify, or set aside [a FERC] order in whole or in part.” 15 U.S.C. § 717r(b). The district court has no role in this process. “**Exclusive means exclusive**, and the [NGA] nowhere permits an aggrieved party otherwise to pursue collateral review of a FERC certificate in state court or federal district court.” *Am. Energy*, 622 F.3d at 605 (emphasis added). The NGA’s exclusive jurisdictional provisions encompass all issues “inhering in the controversy” of the issuance of a FERC order. *Williams Nat. Gas Co. v. City of Okla. City*, 890 F.2d 255, 261-62 (10th Cir. 1989) (quoting *City of Tacoma v. Taxpayers of Tacoma*, 357 U.S. 320, 335-36 (1958)); *see also Louisville & Nashville R.R. Co. v. Donovan*, 713 F.2d 1243, 1246 (6th Cir. 1983) (“[I]f there exists a special statutory review procedure, it is ordinarily supposed that Congress intended that procedure to be the exclusive means of obtaining judicial review in those cases to which it applies.”) (citation and internal quotations omitted).¹⁶

¹⁶ As the Third Circuit explained, “even if the NGA did not expressly preclude jurisdiction in this case,” the court “would nonetheless find that it did so implicitly under the two-step

Because the Adorers challenge the presence of the pipeline on their property, their claim “inheres in the controversy” of the proceeding before FERC, and “de novo litigation” of the claim in district court is precluded by the NGA. *See Williams Nat. Gas Co.*, 890 F.2d at 261-62; *see also Me. Council of Atl. Salmon Fed. v. Nat'l Marine Fisheries Serv.*, 858 F.3d 690, 693 (1st Cir. 2017) (Souter, J., sitting by designation) (“The Supreme Court has made it clear that the jurisdiction provided [to the U.S. Courts of Appeals] by [the Federal Power Act’s direct review provision] is ‘exclusive,’ not only to review the terms of the specific FERC order, but over any issue ‘inhering in the controversy.’”) (citing *City of Tacoma*, 357 U.S. at 336);¹⁷ *Nat'l Fuel Gas Supply Corp. v. Pub. Serv. Comm'n*, 894 F.2d 571, 579 (2d Cir. 1990) (routing of interstate natural gas pipelines falls within FERC’s exclusive authority because “Congress placed authority regarding the location of interstate pipelines . . . in the FERC, a

framework provided” by this Court in *Thunder Basin Coal v. Reich*, 510 U.S. 200 (1994) because: (1) “Congress’ intent to vest jurisdiction in circuit courts is fairly discernible in the NGA”; and (2) “the Adorers’ claims are of the type Congress intended to be reviewed within this statutory structure” because, among other things, if the Adorers were successful in their challenge, the FERC Certificate Order would be modified or set aside. *Adorers*, 897 F.3d at 195, App. 15-17 (internal quotations omitted).

¹⁷ The Federal Power Act’s direct review provision, 16 U.S.C. § 825l, “parallels” the NGA provision at issue here. *See Williams*, 890 F.2d at 262; *see also Ark. La. Gas Co. v. Hall*, 453 U.S. 571, 577 n.7 (1981) (because relevant provisions of the NGA and Federal Power Act, both administered by FERC, “are in all material respects substantially identical,” it is “established practice” to cite “interchangeably decisions interpreting the pertinent sections of the two statutes”).

federal body that can make choices in the interests of energy consumers nationally, with intervention afforded as of right to relevant state commissions”). Despite receiving numerous notices regarding the Project and inviting their participation in the FERC proceedings, the Adorers chose not to participate and declined to follow the NGA’s process, which encompasses all challenges relating to FERC’s issuance of the Certificate Order.

The Adorers persist in attempting to construct a conflict between RFRA and the NGA, but there can be no conflict between RFRA and the NGA as to jurisdiction because, unlike the NGA, ***RFRA does not contain a jurisdictional provision.*** Congress’ purpose in enacting RFRA, the text of RFRA, and case law analyzing RFRA have no bearing on whether the district court had subject matter jurisdiction to consider the Adorers’ challenge to the Certificate Order. “Nowhere does [RFRA] specifically confer jurisdiction on federal district courts to hear all RFRA claims.” *Radio Luz v. F.C.C.*, 88 F. Supp. 2d 372, 375 (E.D. Pa. 1999), *aff’d sub nom. Radio Luz v. F.C.C.*, 213 F.3d 629 (3d Cir. 2000). “Rather, it states, ‘A person whose religious exercise has been burdened in violation of this section may assert that violation as a claim or defense in a judicial proceeding and obtain appropriate relief against a government.’ 42 U.S.C. § 2000bb-1(c).” *Id.*

The language from RFRA stating that a violation may be asserted in a judicial proceeding is not amenable to the unsupported and artificially narrow reading advanced by the Adorers, and is fully consistent with the exclusive jurisdictional provisions

in the NGA, which provide the opportunity for judicial proceedings following rehearing before FERC. Nothing in this provision—or RFRA as a whole—“purports to specifically grant the district courts jurisdiction to hear RFRA claims,” where Congress has designated a different route to judicial review. *La Voz Radio de la Comunidad v. FCC*, 223 F.3d 313, 319 (6th Cir. 2000) (affirming district court’s dismissal of RFRA claim in light of exclusive jurisdiction provision in the Federal Communications Act that, like the NGA, channels certain cases to a federal agency, with subsequent judicial review in the Courts of Appeals). As the Sixth Circuit observed, section 2000bb-1(c) “does not provide that the ‘judicial proceeding’ must be in the district court as opposed to a designated court of appeals.” *La Voz Radio*, 223 F.3d at 319; *accord Adorers*, 897 F.3d at 194, App. 14 (“Nowhere does the text specifically confer jurisdiction to the federal district courts to hear RFRA claims.”).

Finally, the Adorers argue that the NGA’s administrative exhaustion requirement irreconcilably conflicts with RFRA, which does not have an exhaustion requirement, but this argument misconstrues how the two statutes relate to one another. While RFRA itself does not require a plaintiff to exhaust administrative remedies, *see, e.g.*, *Oklevueha Native Am. Church of Hawaii, Inc. v. Holder*, 676 F.3d 829, 838 (9th Cir. 2012), other statutes’ exhaustion requirements can, and do, apply to RFRA claims. *See Care Net Pregnancy Ctr. of Windham Cty. v. U.S. Dep’t of Agric.*, 896 F. Supp. 2d 98, 113 (D.D.C. 2012) (rejecting plaintiff’s argument that RFRA obviated another statute’s exhaustion provision and explaining that “[r]egardless of whether

the RFRA requires exhaustion, parties challenging adverse decisions under the [federal loan program at issue] are required by statute and regulation to exhaust their administrative remedies . . .”). Here, unlike in *Oklevueha*, the issue is not whether an exhaustion requirement can or should be read into RFRA; instead, the issue is whether statutes that contain explicit exhaustion requirements, such as the NGA, apply to RFRA claims. Nothing in RFRA purports to moot or obviate other statutes’ exhaustion requirements, and tellingly, the Adorers fail to cite a single case in which a statute containing a mandatory exhaustion provision was superseded by RFRA.

The Adorers’ failure in this regard underscores that despite the Adorers’ efforts to suggest otherwise, the NGA and RFRA are not jurisdictionally incompatible. RFRA simply does not provide an end-run around the NGA’s administrative exhaustion requirement.

1. The NGA’s Specific and Exclusive Jurisdictional Provisions Supersede the General Grants of Jurisdiction to Federal District Courts Over Federal Question and Civil Rights Actions.

Because RFRA does not contain a jurisdictional provision, there is no conflict between RFRA and the NGA. Instead, the “conflict” here is between the NGA’s specific and exclusive jurisdictional provisions and the general grants of jurisdiction cited in the Adorers’ amended complaint, 28 U.S.C. § 1331 and 28 U.S.C. § 1343(a)(4). This Court’s precedent instructs that “district courts possess federal-question jurisdiction” under 28 U.S.C. § 1331 when federal law creates a private right of action, “***unless Congress divests***

federal courts of their [section] 1331 adjudicatory authority.” *Mims v. Arrow Fin. Servs., LLC*, 565 U.S. 368, 378-79 (2012) (emphasis added); *cf. K Mart Corp. v. Cartier, Inc.*, 485 U.S. 176, 188 (1988) (noting that Congress can express intent to convey exclusive jurisdiction to particular courts for all civil actions relating to a particular subject area); *see also Radio Luz*, 88 F. Supp. 2d at 375-76 (“The general jurisdictional grant of [28 U.S.C.] § 1331 . . . does not trump a specific jurisdictional provision adopted by Congress for review of an agency action.”) (citation omitted); *Gen. Fin. Corp. v. FTC*, 700 F.2d 366, 368 (7th Cir. 1983) (“You may not bypass the specific method that Congress has provided for reviewing adverse agency action simply by suing the agency in federal district court . . . ; the specific statutory method, if adequate, is exclusive.”).

Likewise, 28 U.S.C. § 1343(a)(4) is a general grant of original, but not exclusive,¹⁸ jurisdiction to the federal district courts over actions “[t]o recover damages or to secure equitable or other relief under any Act of Congress providing for the protection of civil

¹⁸ *DeHorney v. Bank of Am. Nat. Tr. & Sav. Ass’n*, 879 F.2d 459, 463 (9th Cir. 1989) (“28 U.S.C. § 1343(a) provides that federal courts shall have *original*, not *exclusive* jurisdiction”) (emphasis in original); *Brooks v. Cty. of San Joaquin*, 275 F.R.D. 528, 533 n.4 (E.D. Cal. 2011) (“Federal courts have original, but not exclusive, jurisdiction . . . pursuant to 28 U.S.C. § 1343”). The Adorers cite *Rogers v. U.S.*, 14 Cl. Ct. 39, 50 (1987) as support for the proposition that district courts have not only original, but also exclusive, jurisdiction over civil rights claims under 28 U.S.C. § 1343(a)(4), but that decision is flatly at odds with the plain language of the statute, which provides only that “district courts shall have **original** jurisdiction,” 28 U.S.C. § 1343(a) (emphasis added).

rights.” *See also Simmons v. Ark. Power & Light Co.*, 655 F.2d 131, 133 (8th Cir. 1981) (recognizing section 1343 as a “general jurisdictional statute[]” that can be “supplanted by” more specific statutes “providing for exclusive jurisdiction” in the Courts of Appeals); *Currie v. Flack*, 190 F.2d 549, 550 (1st Cir. 1951) (recognizing section 1343 as “a general grant of original jurisdiction . . . given to the district courts”); *Nat'l Union Fire Ins. Co. of Pittsburgh, Pa. v. City Sav.*, F.S.B., 28 F.3d 376, 392 n.22 (3d Cir. 1994), *as amended* (Aug. 29, 1994) (listing 28 U.S.C. § 1343 as example of general grant of jurisdiction). This statute is not specific to RFRA, but rather applies to any number of civil rights laws. However, where, as here, Congress has specifically stated that the federal Courts of Appeals shall have exclusive jurisdiction over certain actions, the specific legislation controls. *See id.*; *Media Access Project v. F.C.C.*, 883 F.2d 1063, 1067 (D.C. Cir. 1989) (explaining that when two jurisdictional statutes provide for different judicial review schemes, courts must apply the more specific legislation).

The decision of the United States District Court for the Eastern District of Pennsylvania in *Radio Luz v. F.C.C.* is particularly instructive. *See Radio Luz*, 88 F. Supp. 2d at 375. *Radio Luz* involved the interplay between RFRA and the Federal Communications Act, 47 U.S.C. § 402, which, like the NGA, mandates an administrative review process followed by exclusive review in the federal Courts of Appeals. *See id.* at 374-75. The court in *Radio Luz* held that “[section] 1331 jurisdiction cannot supersede the provisions of a statute conferring exclusive jurisdiction in the court of appeals.” 88 F. Supp. 2d at 376; *see also La Voz Radio*, 223 F.3d at 318-19 (allowing parties to bring RFRA

suits in district courts when there is an exclusive statutory review scheme would constitute an “impermissible end-run” around the statutory review scheme) (internal quotations omitted). Notably, *Radio Luz* also explained that the district court’s lack of jurisdiction “does not undermine RFRA, which provides that an aggrieved party may obtain review ‘in a judicial proceeding’ because, as with the NGA, “[j]udicial review of plaintiffs’ claim under RFRA is available in the court of appeals on appeal from an adverse [agency] order.” 88 F. Supp. 2d at 376; *see also La Voz Radio*, 223 F.3d at 319 (explaining RFRA “provides that a person who believes that his ‘religious exercise’ has been ‘burdened’ in violation of RFRA ‘may assert that violation as a claim or defense in a judicial proceeding’ but RFRA **“does not provide that the ‘judicial proceeding’ must be in the district court as opposed to a designated court of appeals”**”) (emphasis added) (citation omitted).

Here, as interpreted by numerous courts, the NGA’s “highly reticulated” scheme of judicial review vests exclusive jurisdiction in the federal Courts of Appeals, thereby divesting federal district courts of jurisdiction to determine any and all issues inhering in FERC certificate proceedings.¹⁹ The district court correctly

¹⁹ *Am. Energy Corp. v. Rockies Express Pipeline LLC*, 622 F.3d 602, 605 (6th Cir. 2010); *Williams Nat. Gas Co. v. City of Okla. City*, 890 F.2d 255, 261-62 (10th Cir. 1989); *Steckman Ridge GP, LLC v. An Exclusive Natural Gas Storage Easement Beneath 11.078 Acres*, Civil Action Nos. 08-168, 08-169, 08-177, 08-179, 08-180, 2008 WL 4346405, at *4 (W.D. Pa. Sept. 19, 2008); *Tenn. Gas Pipeline Co. v. Mass. Bay Transp. Auth.*, 2 F. Supp. 2d 106, 110 (D. Mass. 1998); *Town of Dedham v. FERC*, Civil Action No. 15-12352-GAO, 2015 WL 4274884, at *2 (D. Mass. July 15, 2015); *Hunter v. FERC*, 569

concluded that here, as in *Radio Luz*, the judicial proceeding guaranteed by RFRA was available in the federal Courts of Appeals and appropriately dismissed the Adorers' RFRA claims for lack of subject matter jurisdiction. The Third Circuit's well-supported decision affirming the district court's dismissal order does not warrant review by this Court.

2. The Breadth of RFRA's Substantive Protections Is Not a Substitute for Jurisdiction.

RFRA, though substantively broad, is not a jurisdictional statute and has no jurisdictional provision. The Adorers cite a number of decisions out of context to create the appearance of a conflict between RFRA and the NGA that simply does not exist. All of the cases the Adorers cite pertaining to RFRA's sweeping protections of religious exercise are inapposite to the jurisdictional issue that is the sole issue in this case.²⁰

The Adorers rely heavily on this Court's decision in *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751 (2014), but that case, like the other cases the Adorers

F. Supp. 2d 12, 15 (D.D.C. 2008); *see also Me. Council of Atl. Salmon Fed.*, 858 F.3d at 693; *Pub. Util. Dist. No. 1 of Snohomish Cty. v. FERC*, 270 F. Supp. 2d 1, 5 (D.D.C. 2003); *Sw. Center for Biological Diversity v. FERC*, 967 F. Supp. 1166, 1172 (D. Ariz. 1997).

²⁰ The Adorers citation to *Sossamon v. Texas*, 563 U.S. 277 (2011) conflates the availability of a cause of action under RFRA with the issue of subject matter jurisdiction to adjudicate such a cause of action, on which RFRA is silent and, in this case, the NGA controls. *See Pet.* at 18, 26.

cite, did not address the jurisdictional issues involved here. Whether RFRA’s definition of the “exercise of religion” is to be interpreted broadly and “to the maximum extent,” as acknowledged in *Hobby Lobby*, is not the issue here, and a broad interpretation of the “exercise of religion” does not create jurisdiction or implicitly revoke jurisdiction that Congress has expressly provided in other statutes.

To the contrary, the decisions of the Courts of Appeals in *Hobby Lobby Stores, Inc. v. Sebelius*, 723 F.3d 1114 (10th Cir. 2013) and *Korte v. Sebelius*, 735 F.3d 654 (7th Cir. 2013), also cited by the Adorers, *see* Pet. at 22, 23, 31, demonstrate that RFRA does not conflict with or implicitly supersede other statutes that govern jurisdiction. In both cases, the Courts of Appeals considered whether the plaintiffs’ RFRA claims were foreclosed by jurisdictional limitations in the Anti-Injunction Act. *See Hobby Lobby*, 723 F.3d at 1126-28; *Korte*, 735 F.3d at 666, 669. If, however, RFRA displaced other statute’s jurisdictional provisions, as the Adorers claim, then there would have been no need for the courts to undertake such an analysis.

B. The Natural Gas Act Provides a Full Opportunity to Assert RFRA Claims in a Judicial Proceeding and Obtain Appropriate Relief.

To be clear, the FERC certificate proceeding is not a substitute for a judicial proceeding; participating in the FERC proceeding is simply a prerequisite to bringing claims related to FERC’s orders in a judicial proceeding in a Court of Appeals. The Third Circuit recognized this when it observed that “an agency

proceeding alone would not qualify as . . . a ‘judicial proceeding,’ but “the NGA’s ‘FERC + Court of Appeals’ framework” provides the judicial proceeding guaranteed in RFRA. *Adorers*, 897 F.3d at 194 n.6, App. 15; *cf. Shalala v. Ill. Council on Long Term Care, Inc.*, 529 U.S. 1, 23-24 (2000) (“[A] court reviewing an agency determination . . . has adequate authority to resolve any statutory or constitutional contention that the agency does not, or cannot, decide”) (citations omitted). “[T]he NGA simply lays out what procedural rules a claimant must adhere to when exercising their RFRA right to a ‘judicial proceeding’ in the pipeline context.” *Adorers*, 897 F.3d at 194 n.6, App. 15; *see also id.* at 193, App. 12 (“[T]he NGA merely provides for complementary procedural requirements that a claimant must adhere to when exercising their RFRA right to a ‘judicial proceeding.’”). As this Court has explained, there is “nothing extraordinary in a statutory scheme that vests reviewable factfinding authority in a non-Article III entity that has jurisdiction over an action but cannot finally decide the legal question to which the facts pertain.” *Elgin v. Dep’t of Treas.*, 567 U.S. 1, 19 (2012).

As demonstrated below, the Adorers’ arguments that their RFRA claim could not have been fully adjudicated before the Court of Appeals are unavailing.

1. A Court of Appeals Exercises *De Novo* Review Over an Alleged RFRA Violation.

The Adorers’ argument that review of FERC’s Certificate Order before the Court of Appeals does not qualify as the type of “judicial proceeding” contemplated by RFRA because the NGA purportedly

provides only “limited” and “deferential review” is meritless. *See* Pet. at 16, 29-30. First, the Adorers seek to import language into RFRA that the statute simply does not contain—RFRA guarantees a “judicial proceeding” for “appropriate relief against a government,” not a “judicial proceeding” that guarantees some standard of review that the Adorers have not specified. *See* 42 U.S.C. § 2000bb-1(c). In any event, the Adorers’ characterization of the standard of review under the NGA for RFRA claims ignores case law establishing that because FERC is not charged with interpreting RFRA, a Court of Appeals’ review of an alleged RFRA violation would be *de novo*. *See, e.g.*, *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 396 (D.C. Cir. 2017) (“A court does not defer to an agency’s interpretation of a statute that it is not charged with administering. Our review of the requirements of [such a statute] is *de novo*.”) (internal citations omitted); *cf. Chevron, USA, Inc. v. Nat. Res. Def. Council*, 467 U.S. 837, 842-43 (1984) (FERC does not receive deference in interpreting unambiguous terms of a federal statute, even one that it administers, because “[i]f the intent of Congress is clear, that is the end of the matter; for the court, as well as the agency, must give effect to the unambiguously expressed intent of Congress”). Indeed, the Adorers’ citation to *Northern Arapaho Tribe v. Ashe* belies their assertion that a Court of Appeals is empowered to review a RFRA claim only deferentially and only on the basis of the administrative record. *See* *N. Arapaho Tribe v. Ashe*, 925 F. Supp. 2d 1206, 1211 (D. Wyo. 2012) (rejecting argument that the Administrative Procedure Act’s arbitrary or capricious standard of review and “record rule” applies to RFRA claims); *compare In re Permian Basin Area Rate Cases*, 390 U.S. 747, 791–92 (1968) (discussing unique

standard of review for review of FERC’s orders in rate-making cases).

In short, had the Adorers followed the NGA’s judicial review process, they could have received a full and fair *de novo* review of their RFRA claims in a “judicial proceeding” in the Court of Appeals, and in accordance with RFRA, after those claims had been presented to FERC.

2. A Court of Appeals May Award All Appropriate Relief to a Petitioner Who Prevails on a RFRA Challenge to a FERC Order.

The Adorers erroneously claim that the NGA’s judicial review process would categorically eliminate a Court of Appeals’ ability to “award all appropriate relief, such as damages or attorney’s fees,” if a petitioner were to prevail on a RFRA claim. *See* Pet. at 30. There is no support for the Adorers’ claim that an appellate court reviewing a FERC determination of a RFRA claim (or any other claim) would lack power to order all appropriate relief under RFRA (or any applicable statute). Here, the Adorers in their amended complaint sought declaratory relief, injunctive relief, attorney’s fees and costs, and such further relief as deemed appropriate.²¹ There is no

²¹ There is no dispute that the Adorers did not seek damages in their amended complaint, so there is no occasion to address the hypothetical question of the availability of damages in the context of this petition. *See* Pet. at 15; *Adorers*, 897 F.3d at 192, 198, n.11, App. 10, 22. In any event, petitioners in NGA cases routinely raise claims under a variety of statutes, and there is no reason to presume that a Court of Appeals is incapable of awarding all appropriate relief under the relevant statutes.

question that federal Courts of Appeals are empowered to issue declaratory and injunctive relief using their power under the NGA to “affirm, modify, or set aside” FERC’s orders,²² and have issued such relief by ordering FERC to proceed in a manner consistent with their opinions. *See, e.g., Emera Maine v. FERC*, 854 F.3d 9, 30 (D.C. Cir. 2017) (vacating and remanding FERC orders for further proceedings consistent with court’s findings); *Associated Gas Distrib. v. FERC*, 824 F.2d 981, 1044 (D.C. Cir. 1987), *modified*, 89 P.U.R.4th 273 (F.E.R.C. Dec. 23, 1987) (same); *see also United Mun. Distrib. Grp. v. FERC*, 732 F.2d 202, 207 n.5 (D.C. Cir. 1984) (noting that a Court of Appeals motions panel stayed an aspect of FERC’s orders).

In this case, had the Adorers participated in the FERC process, and had FERC not ordered a different route for the pipeline or otherwise addressed their concerns, the reviewing Court of Appeals would have been fully capable of setting aside or modifying FERC’s Certificate Order to avoid the Adorers’ property, if the Adorers had succeeded on their RFRA claim.

The Adorers’ claim that they would not be entitled to receive attorneys’ fees under the NGA’s jurisdictional framework is likewise belied by NGA cases in which parties did, in fact, receive attorneys’ fees. *See, e.g., Raton Gas Transmission Co. v. FERC*, 891 F.2d 323, 331 (D.C. Cir. 1989) (awarding petitioner over \$12,000 in attorneys’ fees under Equal Access to Justice Act (“EAJA”) § 204(a), (b), (d)(1)(A), 28 U.S.C. § 2412(b), (d)(1)(A)); *see also Wash. Urban League v. FERC*, 743 F.2d 166, 167-68 (3d Cir. 1984)

²² *See* 15 U.S.C. § 717r(b).

(determining that petitioner was entitled to attorneys' fees under EAJA). The EAJA empowers "***a court***" to award attorneys' fees in certain instances involving the review of agency action. 28 U.S.C. § 2412(b) (emphasis added). Similarly, 42 U.S.C. § 1988(b) guarantees that "***the court***, in its discretion," may award attorneys' fees for violations of RFRA. 42 U.S.C. § 1988(b) (emphasis added). Nothing in this statutory provision limits the power to award attorneys' fees to federal district courts. Appellate courts have authority to order attorneys' fees under this statute, if warranted. *See, e.g., Vasquez v. Fleming*, 617 F.2d 334, 336 (3d Cir. 1980) (fees in civil rights case recoverable under 42 U.S.C. § 1988). Accordingly, attorneys' fees would have been available to the Adorers had they followed the NGA's jurisdictional framework, prevailed on their claims, and satisfied any applicable statutory requirements for attorneys' fees.

3. Article III Standing Requirements Did Not Bar the Adorers from Participating in the FERC Proceedings.

Article III's requirements do not exempt the Adorers from complying with the NGA's mandatory scheme for obtaining judicial review. The Adorers' claim that RFRA's Article III standing requirements prevented them from participating in the FERC proceedings (thereby preserving their ability to obtain judicial review in the Court of Appeals) is wrong because Article III standing requirements do not apply to agency proceedings. *See City of Orrville v. FERC*, 147 F.3d 979, 985-86 (D.C. Cir. 1998) (standing different for agency and court proceedings). Thus, any

interested individual or entity may intervene and participate as a party in a FERC certificate proceeding. FERC's regulations establish permissive criteria for such interventions. *See* 18 C.F.R. § 385.214(c) (if a motion to intervene is unopposed, movant becomes a party 15 days after filing motion; if motion is opposed or untimely, movant becomes a party after the motion is granted).²³

The Adorers' argument that RFRA's standing requirement precluded them from participating in the FERC process is based on a misreading of the statute. RFRA's standing requirement applies only in the context of judicial proceedings; it appears in the section entitled "Judicial relief," after the sentence granting persons "whose religious exercise has been burdened in violation of" RFRA the right to "assert that violation as a claim or defense in a judicial proceeding." 42 U.S.C. § 2000bb-1(c). There is no dispute that the proceedings before FERC are not judicial proceedings, and thus the standing requirement did not apply to (much less preclude) the Adorers' participation in the FERC proceedings.

To be sure, the Adorers (like any other petitioner) must have Article III standing to initiate a judicial

²³ If the Adorers' contrary view that standing is required to participate in FERC's proceedings were correct, no stakeholders could participate in FERC's proceedings because the effects of a pipeline would not be sufficiently concrete until FERC issues a certificate and authorizes construction. That would turn the entire administrative process on its head and deprive FERC of the opportunity to take into account the comments of interested parties in carrying out its duties under the NGA, the National Environmental Policy Act, and a host of other statutes (in this instance, RFRA).

proceeding in the Court of Appeals following the agency proceedings before FERC, irrespective of RFRA's standing requirement. But the Adorers would likely have satisfied Article III's requirements if they had participated in the FERC proceeding, raised their RFRA claims in a request for rehearing of the Certificate Order, and then sought judicial review if FERC denied their rehearing request and upheld the Certificate Order, which authorized the Project and its route through the Adorers' property.

CONCLUSION

For each of the foregoing reasons, the Court should deny the petition.

Respectfully submitted,

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November 26, 2018

APPENDIX

APPENDIX
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APPENDIX 1

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA
(ALLENTOWN)**

CASE NO. 5:17-cv-01725-JLS

*Transcontinental Gas Pipe Line Company, LLC
v. Permanent Easement for 1.02 Acres and
Temporary Easements for 1.65 Acres in
West Hempfield Township,
Lancaster County, Pennsylvania,
Tax Parcel Number 3000462100000 et al*

Date Filed	#	Docket Text
04/14/2017	<u>1</u>	COMPLAINT against ADORERS OF THE BLOOD OF CHRIST, ALL UNKNOWN OWNERS, UNITED STATES PROVINCE, PERMANENT EASEMENT FOR 1.02 ACRES AND TEMPORARY EASEMENTS FOR 1.65 ACRES IN WEST HEMPFIELD TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA, TAX P A R C E L N U M B E R 3000462100000 (Filing fee \$ 400 receipt number 158070.), filed by TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. (Attachments: # <u>1</u> Civil Cover Sheet, # <u>2</u> Designation Form,

App. 2

Date Filed	#	Docket Text
		# <u>3</u> Case Management Track Form, # <u>4</u> Notice of Condemnation)(jwl,) Modified on 4/17/2017 (jwl,). (Entered: 04/17/2017)
04/14/2017	<u>2</u>	Disclosure Statement Form pursuant to FRCP 7.1 Identifying Corporate Parent WILLIAMS PARTNERS OPERATING LLC, Corporate Parent WILLIAMS PARTNERS L.P. for TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. by TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC.(jwl,) (Entered: 04/17/2017)
04/14/2017	<u>3</u>	ENTRY of Appearance by ELIZABETH UTZ WITMER on behalf of TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC (jwl,) (Entered: 04/17/2017)
04/14/2017	<u>4</u>	ENTRY of Appearance by SEAN T. O'NEILL on behalf of TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC (jwl,) (Entered: 04/17/2017)
04/14/2017		Summons Issued as to ADORERS OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE, PERMANENT EASEMENT FOR 1.02 ACRES AND TEMPORARY EASEMENTS FOR 1.65 ACRES

App. 3

Date Filed	#	Docket Text
		IN WEST HEMPFIELD TOWNSHIP, LANCASTER COUNTY, PENNSYLVANIA, TAX PARCEL NUMBER 3000462100000. Two Forwarded To: Counsel on 4/17/17 (jwl,) (Entered: 04/17/2017)
04/27/2017	5	ORDER THAT THE ABOVE-CAPTIONED CASES ARE REASSIGNED FROM THE CALENDAR OF THE HONORABLE JOSEPH F. LEESON, JR. TO THE CALENDAR OF THE HONORABLE JEFFREY L. SCHMEHL. SIGNED BY KATE BARKMAN, CLERK OF COURT ON 4/27/17. 4/27/17 ENTERED AND COPIES E-MAILED.(kw,) (Entered: 04/27/2017)
05/11/2017	6	AFFIDAVIT of Service by CONRAD VAUGHN re: served Civil Cover Sheet, Designation Form, Case Management Form, Disclosure Statement, EOA – Witmer, EOA – O’Neill, Notice of Condemnation and Complaint upon Adorers of the Blood of Christ by personal service accepted by Lindsey Boss-Rech, Corporation Service Co., registered agent for Adorers of the

App. 4

Date Filed	#	Docket Text
		Blood of Christ on April 21, 2017 (WITMER, ELIZABETH) (Entered: 05/11/2017)
05/15/2017	<u>7</u>	MOTION for Partial Summary Judgment filed by TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. Memorandum, Declaration, Certificate of Service. (Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Stipulation of Material Facts, # <u>3</u> Statement of Undisputed Material Facts in Support of Motion for Partial Summary Judgment, # <u>4</u> Memorandum of Law in Support of Motion for Partial Summary Judgment, # <u>5</u> Declaration of Aaron Blair, # <u>6</u> Declaration of David Sztroin, # <u>7</u> Certificate of Service)(WITMER, ELIZABETH) (Entered: 05/15/2017)
06/20/2017	<u>8</u>	Emergency MOTION for Default Judgment against Defendant, Adorers of the Blood of Christ, et al. and For Possession of Rights of Way in Unopposed Condemnation Action filed by TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. Memorandum, Declaration and Certificate of Service.

App. 5

Date Filed	#	Docket Text
		(Attachments: # <u>1</u> Text of Proposed Order, # <u>2</u> Declaration of Aaron Blair, # <u>3</u> Memorandum of Law in Support of Plaintiff's Emergency Motion, # <u>4</u> Certificate of Service)(WITMER, ELIZABETH) Modified on 6/22/2017 (tjd). (Entered: 06/20/2017)
06/23/2017	<u>9</u>	NOTICE of Appearance by MATTHEW MARK HENNESY on behalf of ADORERS OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE with Certificate of Service(HENNESY, MATTHEW)(Entered: 06/23/2017)
06/23/2017	<u>10</u>	NOTICE of Appearance by JOSHUA J. KNAPP on behalf of ADORERS OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE with Certificate of Service(KNAPP, JOSHUA)(Entered: 06/23/2017)
06/28/2017	<u>11</u>	MOTION for Preliminary Injunction <i>for Possession of Rights of Way by August 18, 2017</i> filed by TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. Memorandum, Declaration, Certificate of Service. (Attachments: # <u>1</u> Exhibit Part 1, # <u>2</u> Exhibit Part 2, # <u>3</u> Declaration

App. 6

Date Filed	#	Docket Text
		of David Sztroin, # <u>4</u> Declaration of Aaron Blair, # <u>5</u> Memorandum, # <u>6</u> Certificate of Service)(WITMER, ELIZABETH) (Entered: 06/28/2017)
06/30/2017	<u>12</u>	ORDER THAT AN EVIDENTIARY HEARING SHALL BE HELD ON 7/17/2017 AT 11:00 A.M. BEFORE THE HONORABLE JEFFREY L. SCHMEHL. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 6/30/17. 6/30/17 ENTERED AND COPIES E-MAILED. (ky,) (Entered: 06/30/2017)
07/05/2017	<u>13</u>	ORDER THAT A HEARING ON PLAINTIFF'S EMERGENCY MOTION FOR DEFAULT JUDGMENT SHALL BE HELD ON 7/6/2017 AT 2:00 P.M. IN READING, PA. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 6/30/17. 7/5/17 ENTERED AND COPIES E-MAILED. (ky,) (Entered: 07/05/2017)
07/06/2017	<u>14</u>	Memorandum of Law in Opposition re <u>8</u> MOTION for Default Judgment against Defendant, Adorers of the Blood of Christ, et al. filed by ADORERS

App. 7

Date Filed	#	Docket Text
		OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE. (Attachments: # <u>1</u> Exhibit)(KNAPP, JOSHUA) Modified on 7/7/2017 (tjd). (Entered: 07/06/2017)
07/07/2017	<u>15</u>	Minute Entry for proceedings held before HONORABLE JEFFREY L. SCHMEHL re: A HEARING ON THE EMERGENCY MOTION FOR DEFAULT JUDGMENT was held on 7/6/17. COURT REPORTER: ESR. (ky,) (Entered: 07/07/2017)
07/07/2017	<u>16</u>	ORDER THAT PLAINTIFF'S MOTION FOR PARTIAL SUMMARY JUDGMENT IS HEREBY GRANTED. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 7/7/17.7/7/17 ENTERED AND COPIES E-MAILED. (ky,) (Entered: 07/07/2017)
07/07/2017	<u>17</u>	ORDER THAT PLAINTIFF'S EMERGENCY MOTION FOR DEFAULT JUDGMENT IS GRANTED IN PART AND DENIED IN PART. PLAINTIFF'S REQUEST FOR POSSESSION OF THE RIGHTS OF WAY IN QUESTION WILL BE ADDRESSED AT THE HEARING

App. 8

Date Filed	#	Docket Text
		TO BE HELD ON JULY 17, 2017, REGARDING PLAINTIFF'S OMNIBUS MOTION FOR PRELIMINARY INJUNCTION. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 7/7/17. 7/7/17 ENTERED AND COPIES E-MAILED..(ky,) (Entered: 07/07/2017)
07/14/2017	<u>18</u>	Memorandum of Law In Opposition re <u>11</u> MOTION for Preliminary Injunction <i>for Possession of Rights of Way by August 18, 2017</i> filed by ADORERS OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE. (Attachments: # <u>1</u> Exhibit, # <u>2</u> Exhibit)(HENNESY, MATTHEW) (Entered: 07/14/2017)
07/14/2017	<u>19</u>	Proposed Findings of Fact and Conclusions of Law by ADORERS OF THE BLOOD OF CHRIST, UNITED STATES PROVINCE. Certificate of Service (HENNESY, MATTHEW) (Entered: 07/14/2017)
07/14/2017	<u>20</u>	Proposed Findings of Fact and Conclusions of Law by TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. Certificate of Service (WITMER, ELIZABETH) (Entered: 07/14/2017)

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Date Filed	#	Docket Text
07/17/2017	<u>21</u>	TRANSCRIPT of Emergency Motion Hearing held on 7/6/17, before Judge Jeffrey L. Schmehl. Court Reporter/Transcriber ESR (Writer's Cramp Transcription Service). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/7/2017. Redacted Transcript Deadline set for 8/17/2017. Release of Transcript Restriction set for 10/16/2017. (kw,) (Entered: 07/18/2017)
07/17/2017	<u>22</u>	Notice of Filing of Official Transcript with Certificate of Service, re: <u>21</u> Transcript – PDF. 7/18/17 Entered and Copies E-mailed. (kw,) (Entered: 07/18/2017)
07/19/2017	<u>23</u>	Minute Entry for Evidentiary Hearing held on 7/17/17, before Judge Jeffrey L. Schmehl. ESR. (er,) (Entered: 07/19/2017)
07/19/2017	<u>24</u>	REPLY to Response to Motion re <u>11</u> MOTION for Preliminary Injunction <i>for Possession of Rights of Way by August 18, 2017</i> filed by

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Date Filed	#	Docket Text
		TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. (WITMER, ELIZABETH) (Entered: 07/19/2017)
07/24/2017	<u>25</u>	Minute Entry for Evidentiary Hearing held on 7/20/17, before Judge Jeffrey L. Schmehl. ESR. (er,) (Entered: 07/24/2017)
08/01/2017	<u>26</u>	TRANSCRIPT of Evidentiary Hearing held on 7/17/2017, before Judge Jeffrey L. Schmehl. Court Reporter/Transcriber ESR (Writer's Cramp Transcription Service). Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2017. Redacted Transcript Deadline set for 9/1/2017. Release of Transcript Restriction set for 10/30/2017. (kw,) (Entered: 08/01/2017)
08/01/2017	<u>27</u>	TRANSCRIPT of Evidentiary Hearing held on 7/20/2017, before Judge Jeffrey L. Schmehl. Court Reporter/Transcriber ESR (Writer's Cramp Transcription Service). Transcript may be

App. 11

Date Filed	#	Docket Text
		viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER. Redaction Request due 8/22/2017. Redacted Transcript Deadline set for 9/1/2017. Release of Transcript Restriction set for 10/30/2017. (kw,) (Entered: 08/01/2017)
08/01/2017	<u>28</u>	Notice of Filing of Official Transcript with Certificate of Service, re <u>27</u> Transcript – PDF, <u>26</u> Transcript – PDF. 8/1/17 Entered and Copies E-mailed. (kw,) (Entered: 08/01/2017)
08/23/2017	<u>29</u>	MEMORANDUM OPINION. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 8/23/17. 8/23/17 ENTERED AND COPIES E-MAILED.(er,) (Entered: 08/23/2017)
08/23/2017	<u>30</u>	ORDER THAT THE OMNIBUS MOTION FOR PRELIMINARY INJUNCTION, IS GRANTED, ETC. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 8/23/17. 8/23/17 ENTERED AND COPIES E-MAILED.(er,) (Main Document 30 replaced on

App. 12

Date Filed	#	Docket Text
		8/25/2017) (er,). Modified on 8/25/2017 (er,). (Entered: 08/23/2017)
08/24/2017	<u>31</u>	NOTICE by TRANS - CONTINENTAL GAS PIPE LINE COMPANY, LLC of Bond in Condemnation Proceedings re <u>30</u> Order (Memorandum and/or Opinion). (WITMER, ELIZABETH) (FILED IN ERROR BY ATTY; ATTY TO RE-SUBMIT ORIGINAL BOND) Modified on 8/28/2017 (md). (Entered: 08/24/2017)
08/24/2017	<u>32</u>	ORDER THAT THE CLERK IS HEREBY DIRECTED TO SUBSTITUTE EXHIBIT A ATTACHED HERETO FOR THE EXHIBIT A THAT WAS ERRONEOUSLY ATTACHED TO THIS COURT'S ORDER OF AUGUST 23, 2017, LOCATED AT DOCKET NUMBER 30. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 8/24/17. 8/25/17 ENTERED AND COPIES MAILED TO UNREP, E-MAILED.(er,) Modified on 8/25/2017 (er,). (Entered: 08/25/2017)
08/30/2017	33	Bond In Condemnation Proceedings in the amount of

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Date Filed	#	Docket Text
		\$329,220.00 with Fidelity and Deposit Company of Maryland as surety posted by PLFF TRANSCONTINENTAL GAS PIPE LINE COMPANY, LLC. (kw,) (Entered: 08/31/2017)
09/13/2018	<u>34</u>	ORDER THAT THE CLERK OF COURT PLACE THIS MATTER IN SUSPENSE PENDING THE OUTCOME OF THE APPEAL OF ITS RELATED CASE, CIVIL ACTION NUMBER 17-3163. SIGNED BY HONORABLE JEFFREY L. SCHMEHL ON 9/12/18. 9/13/18 ENTERED AND COPIES E-MAILED.(ky,) (Entered: 09/13/2018)