

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

PENNEAST PIPELINE COMPANY, LLC,

Applicant,

v.

STATE OF NEW JERSEY; NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION;
NEW JERSEY STATE AGRICULTURE DEVELOPMENT COMMITTEE; DELAWARE & RARITAN
CANAL COMMISSION; NEW JERSEY WATER SUPPLY AUTHORITY; NEW JERSEY DEPARTMENT
OF TRANSPORTATION; NEW JERSEY MOTOR VEHICLE COMMISSION,

Respondents.

**APPLICATION TO THE HON. SAMUEL A. ALITO, JR.
FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE
A PETITION FOR A WRIT OF CERTIORARI TO THE
UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT**

Pursuant to Supreme Court Rule 13(5), PennEast Pipeline Company, LLC, hereby moves for an extension of time of 30 days, to and including March 4, 2020, for the filing of a petition for a writ of certiorari. Unless an extension is granted, the deadline for filing the petition for certiorari will be February 3, 2020.

In support of this request, Applicant states as follows:

1. The United States Court of Appeals for the Third Circuit rendered its decision on September 10, 2019 (Exhibit 1), and denied a timely petition for rehearing on November 5, 2019 (Exhibit 2). This Court has jurisdiction under 28 U.S.C. §1254(1).

2. This case concerns whether private companies who hold a Certificate of Public Convenience and Necessity from the Federal Energy Regulatory Commission

(“FERC”) may exercise the federal eminent domain power Congress delegated to them under the Natural Gas Act (“NGA”) to bring an action to condemn private property in which a state asserts an interest. *See* 15 U.S.C. §717f(h). The Third Circuit held that Eleventh Amendment immunity bars private companies from doing so, even though it expressly acknowledged that its holding is contrary to 80 years of practice under the NGA. *See In re PennEast Pipeline Co.*, 938 F.3d 96 (3d Cir. 2019). If that decision remains in effect, states will hold an effective veto over critical national infrastructure projects, “alter[ing] how the natural gas industry has operated for some time.” *Id.* at 113. That result is at odds with Congress’ clear intention in the NGA that natural gas companies exercise the federal eminent domain power to the same extent as the federal government when constructing FERC-approved pipelines, which includes the authority to exercise that power by bringing suit with respect to property in which a state asserts an interest.

3. Yesterday, FERC announced that it will hold an open meeting on January 30, 2020, to address a petition that PennEast has filed seeking a declaratory order from FERC regarding its understanding of the scope of a certificate holder’s authority under §717f(h). Since that meeting may result in an order that provides FERC’s views on the question the petition will present, PennEast respectfully seeks a 30-day extension to ensure time for a thorough and detailed review of the agency’s meeting and any forthcoming order before filing its petition.

4. Additionally, between now and the current due date of the petition, Applicant’s counsel, Paul D. Clement, has substantial briefing obligations, including

an opening brief in *Snyder's-Lance, Inc. v. Frito-Lay N. Am., Inc.*, No. 19-2316 (4th Cir.) and a petition for a writ of certiorari. Counsel also has a reply brief due on February 14 in *Atlantic Coast Pipeline, LLC v. Cowpasture River Preservation Association*, No. 18-1587, and will be presenting argument in both that case and *Seila Law LLC v. Consumer Financial Protection Board*, No. 19-7, on February 24 and March 3, respectively.

5. Applicant's counsel thus requests a modest extension to prepare a petition that fully addresses the important issues raised by the decision below, that gives thorough consideration to FERC's expected open meeting and declaratory order, and that frames the issues in a manner that will be most helpful to the Court.

WHEREFORE, for the foregoing reasons, Applicant requests that an extension of time to and including March 4, 2020, be granted within which Applicant may file a petition for a writ of certiorari.

Respectfully submitted,



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