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December 6, 2018

Honorable Justices of the United States Supreme Court
Honorable Scott S. Harris, Clerk
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C., 20543

Re: Orus Ashby Berkley, *et al.* v. Federal Energy Regulatory Commission, *et al.*
No. 18-561

Dear Honorable Justices of the United States Supreme Court:

Pursuant to Rule 30.4, Landowner-Petitioners hereby seek review and modification by the Court or by a Justice of the Court of the Clerk's grant in part of Defendants' Motion for an Extension of Time to file a Response. Defendants filed their motion on November 27, 2018, only two days before their November 29 filing deadline. Landowners objected to the extension and filed a Response in opposition on November 28, 2018. Defendants were granted the extension on November 30, 2018, one day after their filing deadline, and Petitioners were notified of the grant in part at 4:54 p.m. on Friday, November 30, 2018. As specified in Rule 30.4, "any party aggrieved by the Clerk's action may request that the application be submitted to a Justice or to the Court." Landowners are aggrieved by the part extension granted by the Clerk in the first instance and respectfully request review by the Court for the following reasons:

While neither FERC nor MVP were justified in relying upon a prospective extension of time, which is only granted in the event of what are here non-existent "extraordinary circumstances" on the part of Defendants (whose "specific reasons" for the extension were declared simply to be a lack of time to review and respond to the filings), Petitioners recognize that this Court would be left without a brief from either Defendant were it to enforce the original November 29 deadline.

Because the Landowners want this Court to reach the merits of their Petition, they do not ask this Court to entirely deny the part extension. However, Petitioners assert that the 20-day extension granted by the Clerk in the first instance is inappropriate in this case for two reasons:

First, each day that the Defendants delay this Court in reaching its decision, more construction occurs on private property. This activity prejudices not only the Landowners,

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whose property is being irreparably harmed, but also MVP, which will have to incur additional expense in cleanup and removal should its exercise of eminent domain ultimately be declared unlawful.

Second, a 20-day extension shifts the Landowners' reply brief deadline to late December/early January, a timespan covering not only Christmas, but also New Year's holidays. This burden on the *individual* Landowners is both inequitable and unnecessary. The Defendants had 30 days to prepare an answer to arguments to which they have responded twice previously. It is implausible that an energy company and the federal government—with almost limitless legal resources— cannot draft a timely answer in response to the Landowners' arguments within that time period.

However, because Petitioners would ultimately like this Court to review the Petition on the merits and would like the Court to have at its disposal everything it requires to render a just decision, in order to give the Defendants time to submit their Responses, and subject the Landowners' arguments to adversarial testing before this Court, the Landowners propose that this Court reverse the Clerk's extension and grant Defendants only an 11-day extension. This would allow the Defendants until Monday, December 10, 2018 to submit their responses. It would also allow the Landowners to submit their reply before the end-of-year holidays so that all filings are completed and ready for distribution to the Court as soon as possible.

Whilst this modified timeframe might require the Defendants to prioritize their efforts in completing their answers, to the extent that a party should be burdened, it should be the parties who caused the delay by failing to meet the Court's filing deadline.

Very truly yours,

GENTRY LOCKE

A large, stylized handwritten signature in black ink, appearing to read 'Guy M. Harbert, III'.

Guy M. Harbert, III
Counsel of Record

A handwritten signature in black ink, appearing to read 'Mia Yugo'.

Mia Yugo

GMH,III:jak

cc: Thomas J. Bondurant, Esq.
Doug R. McKusick, Esq.
See also Attached Service List for Service on Defendants

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