No. 24-1262

In the Supreme Court of the United States

RDFS, LLC, PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

BRIEF FOR THE FEDERAL ENERGY REGULATORY COMMISSION IN OPPOSITION

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QUESTION PRESENTED

Whether the court of appeals correctly dismissed as untimely petitioner's challenge to an order that the Federal Energy Regulatory Commission had issued in 1983.

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OPINIONS BELOW

The order of the court of appeals (Pet. App. 1a) is available at 2025 WL 1648683. The notices of the Federal Energy Regulatory Commission (FERC or Commission) (Pet. App. 2a, 3a-5a) are available at 2024 WL 2272361 and 2024 WL 862628. The blanket-certificate order of the Commission is available at 1983 WL 40465.

JURISDICTION

The judgment of the court of appeals was entered on January 8, 2025. On April 1, 2025, the Chief Justice extended the time within which to file a petition for a writ of certiorari to and including June 7, 2025, and the petition was filed on June 6, 2025. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. a. Congress enacted the Natural Gas Act (NGA), ch. 556, 52 Stat. 821 (15 U.S.C. 717 *et seq.*), to regulate the transportation and sale of natural gas in interstate commerce. See 15 U.S.C. 717(a). The NGA vests the Federal Energy Regulatory Commission (FERC or Commission) with authority to approve the construction and extension of interstate pipelines. See 15 U.S.C. 717f. Approval takes the form of a "certificate of public convenience and necessity." 15 U.S.C. 717f(c). To obtain such a certificate, a pipeline operator must submit an application to FERC, and the agency must "set the matter for hearing" and give "reasonable notice of the hearing" to all "interested persons." 15 U.S.C. 717f(c)(1)(B). If FERC determines that the pipeline project "is or will be required by the present or future public convenience and necessity," it grants the certificate. 15 U.S.C. 717f(e).

The NGA authorizes a certificate holder to take property by eminent domain as necessary to build the approved pipeline. If a certificate holder is unable to acquire the "necessary" property by voluntary agreement, it may bring a condemnation action "in the district court of the United States for the district in which such property may be located, or in the State courts." 15 U.S.C. 717f(h); see 15 U.S.C. 717f(c).

Under Commission rules, certificate-holding pipeline operators are also entitled to apply for a more limited approval called a "blanket certificate." 18 C.F.R. 157.201(a). The blanket-certificate program establishes "'streamlined procedures'" for a "generic class of routine activities" under the NGA, "without subjecting each minor project to a full, case-specific * * * certificate proceeding." *Interstate Natural Gas Ass'n*, 191 F.E.R.C. ¶ 61,206, 2025 WL 1873040, at *1 (June 18,

2025) (quoting 47 Fed. Reg. 24,254, 24,258, 24,263 (June 4, 1982)). For example, a blanket certificate entitles a pipeline owner to undertake construction projects below a specified cost without seeking further approval from FERC. See 18 C.F.R. 157.203(b), 157.208(a) and (d). Other activities, such as construction projects with costs exceeding the automatic-approval threshold, can be undertaken with notice to the Commission and an opportunity for protests. See 18 C.F.R. 157.203(c), 157.205(a).

b. Section 19 of the NGA is the statute's judicial-review provision. To challenge any "order of the Commission" issued pursuant to the NGA, an aggrieved party must first seek rehearing from FERC itself. 15 U.S.C. 717r(a) ("No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon."). The application for rehearing must be submitted to FERC "within thirty days after the issuance of [the] order" being challenged. *Ibid.*

Once the Commission has issued an order on the rehearing application, the aggrieved party may seek judicial review of that order "within sixty days." 15 U.S.C 717r(b). Section 19(b) specifies that such challenges must be brought "in the court of appeals" in which the "natural-gas company to which the order relates is located or has its principal place of business, or in the United States Court of Appeals for the District of Columbia." *Ibid.* Section 19(b) also includes a waiver provision: "No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the

application for rehearing unless there is reasonable ground for failure so to do." *Ibid.*

2. This case arises out of a recent challenge to a blanket certificate that was issued more than 30 years ago to Columbia Gas Transmission Corporation.[1]

In 1983, FERC granted Columbia a blanket certificate, which authorized the company "to conduct many routine activities and abandon facilities and service on a self-implementing basis without further authorization by the Commission." Pet. App. 7a; see *id.* at 6a-11a (blanket-certificate order). Pursuant to the blanket certificate, Columbia owns and operates an interstate natural gas pipeline known as "Line 1983." *Columbia Gas Transmission, LLC* v. *RDFS, LLC*, No. 23-cv-364, 2024 WL 992937, at *1 (N.D. W. Va. Feb. 28, 2024), aff'd, No. 24-1387, 2025 WL 2112924 (4th Cir. July 29, 2025). Line 1983 transports natural gas used by residential and commercial customers in West Virginia and Pennsylvania. *Ibid.*

Petitioner owns a parcel of land in Wetzel County, West Virginia, that is transversed by Line 1983. *Columbia Gas Transmission, LLC* v. *RDFS, LLC*, No. 24-1387, 2025 WL 2112924, at *1 (4th Cir. July 29, 2025). Petitioner acquired the land in 2021, subject to an easement that grants Columbia the right to "operate, maintain, replace, and finally remove" the pipeline "through all that certain tract of land" that makes up the parcel. *Ibid.* (citation omitted).

In June 2023, Columbia learned that a coal mining company planned to conduct mining operations

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[1] The company has since changed its name to Columbia Gas Transmission, LLC. See *Columbia Gas Transmission, LLC* v. *RDFS, LLC*, No. 23-cv-364, 2024 WL 992937, at *1 n.1 (N.D. W. Va. Feb. 28, 2024).

underneath petitioner's land. *Columbia Gas Transmission*, 2025 WL 2112924, at *1. Because the mining was expected to cause the area under Columbia's pipeline to sink by as much as four feet, Columbia determined that it needed to perform significant mitigation work on petitioner's land before the coal mining company began its operations. *Ibid.* Columbia approached petitioner to discuss Columbia's ability to conduct the mitigation work on petitioner's land, but the two companies could not reach an agreement. *Id.* at *2.

3. Both Columbia and petitioner turned to litigation to resolve the dispute. Columbia sued petitioner in the United States District Court for the Northern District of West Virginia, seeking access to petitioner's parcel of land. *Columbia Gas Transmission, LLC*, 2024 WL 992937 at *1. Columbia sought two alternative forms of equitable relief. First, Columbia requested a declaration that its easement permits access to the parcel to carry out the necessary mitigation work. *Ibid.* In the alternative, Columbia sought condemnation and immediate possession of any necessary property interests that were not already secured by the easement. *Ibid.*

The district court in that case entered a preliminary injunction allowing Columbia to enforce its rights under the easement and, alternatively, granted partial summary judgment to Columbia on its condemnation claim. *Columbia Gas Transmission, LLC*, 2024 WL 992937, at *3-*8. The Fourth Circuit recently affirmed the district court's grant of preliminary relief as to Columbia's easement rights. See *Columbia Gas Transmission, LLC*, 2025 WL 2112924, at *4. The court concluded that "the scope of Columbia's easement is sufficiently broad to include the mitigation work." *Ibid.*

4. Meanwhile, in a separate effort to prevent Columbia from conducting its proposed mitigation work, petitioner sought to strip Columbia of its blanket certificate. That action is the subject of the present petition for a writ of certiorari. In January 2024, shortly before Columbia moved for preliminary relief in the district court in the suit described above, petitioner applied to the Commission for rehearing of FERC's 1983 order granting Columbia the blanket certificate. See Pet. App. 3a.

FERC rejected petitioner's application as untimely. Pet. App. 3a-5a. The Commission explained that, under Section 19(a) of the NGA, an aggrieved party "must file a request for rehearing within 30 days after the issuance of a Commission decision, in this case no later than February 7, 1983." *Id.* at 3a-4a. FERC determined that, "[b]ecause the 30-day rehearing deadline is statutorily based, it cannot be waived or extended." *Id.* at 4a (footnote omitted). Petitioner sought further rehearing of the Commission's notice, which was deemed denied by operation of law on April 11, 2024. *Id.* at 2a.

Petitioner then petitioned for judicial review of those orders in the Fourth Circuit. Pet. App. 1a. The Commission moved to dismiss the petition under Section 19(a) based on petitioner's failure to file a timely rehearing request. See FERC C.A. Mot. to Dismiss 4-5. In a summary order, the court of appeals dismissed the petition for review "for lack of jurisdiction." Pet. App. 1a.

ARGUMENT

Petitioner seeks (Pet. 11-25) this Court's review of a single-sentence summary order that dismissed as untimely petitioner's challenge to a 1983 blanket certificate. Petitioner does not dispute that its challenge is untimely under Section 19(a) of the NGA. Instead,

petitioner launches a broadside against the Commission's authority under the NGA and the Fifth Amendment to issue blanket certificates, see Pet. 16-25, and questions whether courts should defer to FERC's assertion of that authority, see Pet. 11-16. This case presents no occasion to address those issues, which were not adjudicated below, and which are unlikely to have a practical effect on petitioner's property interests. In any event, petitioner's sweeping challenges to the blanket-certification program lack merit. This Court should deny the petition.

1. The court of appeals was correct to dismiss petitioner's petition for judicial review, because petitioner failed to apply for agency rehearing before the statutory deadline. Under Section 19(a) of the NGA, judicial review of "any order of the Commission" is unavailable unless the aggrieved party "shall have made application to the Commission for a rehearing thereon." 15 U.S.C. 717r(a); see *Federal Power Comm'n* v. *Colorado Interstate Gas Co.*, 348 U.S. 492, 499 (1955). That application must be filed "within thirty days after the issuance" of the challenged order. 15 U.S.C. 717r(a). Here, petitioner applied for rehearing of a FERC order more than 30 *years* after the order was issued. Pet. App. 3a-4a. The Commission therefore correctly denied petitioner's rehearing application "as untimely." *Id.* at 4a. And petitioner's failure to submit a timely rehearing application precludes review in the court of appeals. See *Associated Gas Distribs.* v. *FERC*, 824 F.2d 981, 1004 (D.C. Cir. 1987) ("Section 19(a) of the NGA prohibits any 'proceeding to review' an order of the Commission in the absence of an application for rehearing filed within 30 days after issuance of the order.") (citation omitted).

Petitioner does not dispute any of that. It does not deny that it has challenged an "order of the Commission," 15 U.S.C. 717r(a), or that it sought rehearing of that order more than thirty years after Section 19(a)'s deadline had passed. It does not dispute that Section 19(a)'s deadline is mandatory. Indeed, petitioner even asserts (Pet. 6) that Section 19(a)'s "thirty-day deadline for an application for rehearing is a jurisdictional bar to challenges to FERC orders." In short, petitioner raises no argument as to why the decision below was incorrect.

2. a. Instead, petitioner contests (Pet. 16-25) FERC's authority to issue blanket certificates. As a threshold matter, petitioner does not explain how this Court can review its arguments notwithstanding petitioner's admitted failure to meet a statutory deadline that petitioner characterizes as "jurisdictional." See *Steel Co.* v. *Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) ("Without jurisdiction the court cannot proceed at all in any cause.") (citation omitted). Even assuming that this Court can review the questions presented, however, it should not do so because they were not passed upon below. Although the court of appeals' summary order gives no reasoning, the only issue raised by the Commission in its motion to dismiss was petitioner's untimeliness. That is accordingly the presumptive basis for the Fourth Circuit's order granting the motion. This Court is "a court of review, not of first view," *Cutter* v. *Wilkinson*, 544 U.S. 709, 718 n.7 (2005), and petitioner identifies no sound reason for this Court to address in the first instance petitioner's broader arguments about the Commission's blanket-certification authority.

Petitioner contends that, by treating FERC's issuance of the blanket certificate (rather than "any future

condemnations executed pursuant to that certificate") as the event that triggers the NGA's 30-day deadline, "the Fourth Circuit's decision begs the question: Does FERC have the power to order the issuance of such a Blanket Certificate in the first place?" Pet. 14. But petitioner does not dispute that its petition in the court of appeals sought review of the blanket certificate, rather than any subsequent Commission action. See Pet. 10 (explaining that petitioner "filed a motion to intervene and for rehearing on Columbia's Blanket Certificate with FERC," and that petitioner subsequently "petitioned the Fourth Circuit for review of FERC's decision to deny [petitioner's] motion"). And for judicial-review purposes, the question whether petitioner complied with the requirements of NGA Section 19(a) is logically antecedent to the question whether the blanket certificate is valid. The court of appeals therefore correctly dismissed petitioner's appeal without considering the merits of petitioner's challenge.

b. In all events, petitioner's arguments lack merit. Petitioner contends (Pet. 16-20) that the blanket-certificate program violates the Fifth Amendment's Due Process and Just Compensation Clauses by allowing pipeline owners to exercise eminent-domain power without adequate notice to landowners or opportunities to be heard. But the blanket-certification regulations provide ample notice and opportunities for meaningful judicial review. When a pipeline operator first applies for a blanket certificate, the Commission must publish notice of that application in the Federal Register, with opportunity for intervention and protest. See 18 C.F.R. 157.9(a), 157.10(a); see also 44 U.S.C. 1508 (Federal Register publication deemed notice to "all persons residing within" the United States). Aggrieved parties can seek

timely rehearing and then judicial review. 15 U.S.C. 717r(a) and (b).

Even after the blanket certificate itself is final and the rehearing deadline has passed, the certificate holder must request that FERC provide public notice and opportunity for protests before undertaking a variety of activities. See 18 C.F.R. 157.205(a) and (d)(1). The certificate holder must also make good-faith efforts to notify affected landowners. 18 C.F.R. 157.203(d)(2). If the protest raises substantive issues, the Commission then converts the request to an application for a case-by-case certificate of necessity and public convenience under Section 7 of the NGA. See 18 C.F.R. 157.205(f); see, *e.g.*, *El Paso Natural Gas Co.*, 192 F.E.R.C. ¶ 61,078, 2025 WL 2112798, at *1-*2 (July 24, 2025) (adjudicating protests). To be sure, some other activities are automatically authorized under blanket certificates without Federal Register notice. 18 C.F.R. 157.203(b). But for those activities, the certificate holder must still make "a good faith effort to notify, in writing all affected landowners, * * * at least 45 days prior to commencing construction or at the time it initiates easement negotiations, whichever is earlier." 18 C.F.R. 157.203(d)(1).

The landowner can also defend against any condemnation actions predicated on the blanket certificate. See 15 U.S.C. 717f(h) (authorizing eminent domain proceedings in federal district court). In such proceedings the landowner can contest the necessity of the taking; indeed, petitioner raised such an argument in the parallel litigation brought by Columbia. See *Columbia Gas Transmission, LLC* v. *RDFS, LLC*, No. 23-cv-364, 2024 WL 992937, at *6-*7 (N.D. W. Va. Feb. 28, 2024), aff'd, No. 24-1387, 2025 WL 2112924 (4th Cir. July 29, 2025). The landowner might also contest whether the activity

necessitating the taking falls within the scope of the blanket certificate. See *Columbia Gas Transmission, LLC* v. *1.01 Acres, More or Less in Penn Twp.*, 768 F.3d 300, 305-306 (3d Cir. 2014) ("[T]he right of blanket certificate holders to replace eligible facilities is not without limits."), cert. denied, 575 U.S. 997 (2015).

c. For similar reasons, there is no merit to petitioner's argument (Pet. 20-25) that the blanket-certificate program is inconsistent with the NGA. FERC created the blanket-certificate program to help the agency perform its statutory duty to grant certificates to pipeline operators. See 15 U.S.C. 717f(c)(2); see also 15 U.S.C. 717*o* ("The Commission shall have power to perform any and all acts, and to prescribe * * * such orders, rules, and regulations as it may find necessary or appropriate to carry out the provisions of this chapter."). Petitioner contends (Pet. 23-24) that the program is inconsistent with the NGA's review provisions, because a blanket certificate enables a pipeline operator to take certain actions at a later date without the need for separate Commission orders that would be independently reviewable under Section 19. But petitioner does not identify any support for that argument in the text of Section 19. That NGA provision establishes a procedure for courts to review "order[s] of the Commission," but it says nothing about what orders FERC may issue or when it may do so. 15 U.S.C. 717r(a).

Petitioner invokes (Pet. 25) this Court's decision in *Corner Post, Inc.* v. *Board of Governors*, 603 U.S. 799 (2024), but that decision is inapposite. In *Corner Post*, this Court interpreted the default statute of limitations for suits against the United States, which requires such claims to be filed "within six years after the right of action first accrues." 28 U.S.C. 2401(a). The Court held

that a claim "'accrues'" within the meaning of Section 2401(a) "when the plaintiff is injured by final agency action," even if the government took the challenged action earlier. *Corner Post*, 603 U.S. at 804. So construed, Section 2401(a) allows a plaintiff to commence suit more than six years after the challenged agency action occurs, so long as suit is filed within six years after the plaintiff is first injured. See *id.* at 824. But the Court did not suggest that its interpretation would apply to every statute governing the commencement of judicial proceedings. On the contrary, the Court distinguished Section 2401(a) from statutory time limits that are tied to "the defendant's action instead of the plaintiff's injury." *Id.* at 812.

Section 19(a) is such a deadline, as the thirty-day clock to seek rehearing starts running upon "the issuance of [the] order" of the Commission being challenged. 15 U.S.C. 717r(a). Indeed, petitioner does not contend that the 30-day window for seeking agency rehearing under Section 19(a) began to run when petitioner became injured by the order being challenged. Such an interpretation would not help petitioner in any event; petitioner sought rehearing on January 24, 2024, more than 30 days after December 20, 2023, the date that Columbia first served its condemnation action on petitioner. See Pet. 9-10.

3. Petitioner also contends (Pet. 11-16) that courts of appeals should not defer to FERC on legal questions concerning the scope of the agency's authority under the NGA. That issue is likewise not implicated in this case. In seeking dismissal of petitioner's judicial challenge on timeliness grounds, FERC made no argument about the merits of the blanket-certificate order or the Commission's blanket-certificate regulations. The court

of appeals therefore could not have deferred, properly or improperly, to the Commission's views concerning FERC's "power to order the issuance of * * * a Blanket Certificate." Pet. 14. And nothing in the court of appeals' summary order dismissing the appeal suggests that the court considered the legality of FERC's blanket-certificate practices or deferred to the Commission in any respect.

Petitioner therefore is incorrect to assert (Pet. 26) that the decision below creates a circuit conflict with the D.C. Circuit "regarding whether FERC is entitled to deference in its interpretation and application of 15 U.S.C. § 717r." Petitioner contends (*ibid.*) that "[t]his case would have been decided differently if [petitioner] had brought it in the District of Columbia Circuit," because in *Allegheny Defense Project* v. *FERC*, 964 F.3d 1, 4-5 (2020), the en banc D.C. Circuit declined to defer to FERC's interpretation of the phrase "acts upon" in Section 19(a). But again, this case does not involve any dispute about the meaning of Section 19(a), let alone one involving deference. Instead, the decision below involved only the straightforward application of Section 19(a)'s mandatory deadline for seeking agency rehearing. See pp. 7-9, *supra*. The D.C. Circuit, like the Fourth Circuit below, adheres to those deadlines. See, *e.g.*, *Associated Gas Distribs.*, 824 F.2d at 1004 ("Section 19(a) of the NGA prohibits any 'proceeding to review' an order of the Commission in the absence of an application for rehearing filed within 30 days after issuance of the order.") (citation omitted); *Williston Basin Interstate Pipeline Co.* v. *FERC*, 475 F.3d 330, 336 (D.C. Cir. 2006) (dismissing petition based on failure to timely seek rehearing under Section 19(a) or review under Section 19(b)).

4. Even if the questions presented warranted this Court's review, this case would be an unsuitable vehicle for considering them because a decision in petitioner's favor likely would have no practical effect on the underlying property dispute between petitioner and Columbia. See *Supervisors* v. *Stanley*, 105 U.S. 305, 311 (1882) (explaining that this Court does not grant a writ of certiorari to "decide abstract questions of law * * * which, if decided either way, affect no right" of the parties).

Petitioner's interest in challenging Columbia's blanket certificate is to prevent Columbia from condemning petitioner's property in order to perform mitigation for Line 1983. See Pet. 9 (explaining that petitioner "attempted to challenge the condemnation of its property"). In the separate litigation discussed above (p. 5, *supra*), however, the Fourth Circuit recently affirmed the grant of preliminary relief to Columbia, concluding that "the scope of Columbia's easement is sufficiently broad to include the mitigation work" that Columbia has proposed. *Columbia Gas Transmission, LLC* v. *RDFS, LLC*, No. 24-1387, 2025 WL 2112924, at *4 (July 29, 2025). And in that separate litigation, petitioner's failure to file a timely request for rehearing of FERC's blanket-certificate order does not prevent petitioner from asserting any merits arguments it may have concerning the scope of Columbia's easement.

So long as Columbia can rely on its existing easement to maintain its pipeline on petitioner's land, it does not need to pursue its alternative claim for condemnation pursuant to the challenged blanket certificate. See *Columbia Gas Transmission, LLC*, 2024 WL 992937, at *2 (noting that condemnation is a claim "in the alternative, to the extent Columbia does not have all of the rights necessary" under the easement). That makes

this case an especially poor vehicle to address the lawfulness of the blanket-certificate program. See *The Monrosa* v. *Carbon Black Exp., Inc.*, 359 U.S. 180, 184 (1959) ("While this Court decides questions of public importance, it decides them in the context of meaningful litigation.").

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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