No. 24-1262

In the Supreme Court of the United States

RDFS, LLC,

Petitioner,

v.

FEDERAL ENERGY REGULATORY COMMISSION AND COLUMBIA GAS TRANSMISSION, LLC,

Respondents.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Fourth Circuit

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Under Section 19(a) of the Natural Gas Act, "[n]o proceeding to review any order of the [Federal Energy Regulatory] Commission [FERC] shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon." 15 U.S.C. § 717r(a). That provision further directs that any such rehearing application "shall" be made "within 30 days" of the order in question.

In 1983, FERC issued an order granting a "blanket certificate" authorizing Respondent Columbia Gas Transmission, LLC's predecessor, Columbia Gas Transmission Corporation, to construct a natural gas pipeline in West Virginia and Pennsylvania (the Blanket Certificate Order). More than forty years later, and years after it purchased the property subject to the pipeline, Petitioner RDFS, LLC filed a motion for rehearing of the Blanket Certificate Order with FERC. After FERC issued a notice denying RDFS's rehearing request as untimely under Section 19(a), RDFS sought rehearing of that notice, which FERC denied by operation of law in a second notice.

Petitioner filed a petition for review of the two FERC notices in the Fourth Circuit. The question presented is:

> Did the Fourth Circuit err in dismissing Petitioner's petition for review under Section 19(a) of the Natural Gas Act where Petitioner did not apply for rehearing of the

Blanket Certificate Order with FERC within 30 days of the Order?

PARTIES TO THE PROCEEDING

Petitioner in this Court is RDFS, LLC.

Respondents in this Court are the Federal Energy Regulatory Commission and Columbia Gas Transmission, LLC.

CORPORATE DISCLOSURE STATEMENT

Pursuant to Supreme Court Rule 29.6, Columbia Gas Transmission, LLC has the following parent corporations:

> TC Energy Corporation; TransCanada PipeLines Limited; TransCanada Pipeline USA Ltd.; Columbia Pipeline Group, Inc.; Columbia Pipelines Intermediate LLC; GIP Pilor Acquisition Partners, L.P.; Columbia Pipelines Holding Company LLC; Columbia Pipelines Operating Company LLC.

Columbia is not a corporation that has issued stock.

STATEMENT OF RELATED CASES

U.S. Court of Appeals for the Fourth Circuit:

- *Columbia Gas Transmission, LLC v. RDFS, LLC*, Case No. 24-1387 (4th Cir.)

U.S. District Court for the Northern District of West Virginia:

- *Columbia Gas Transmission, LLC v. RDFS, LLC*, No. 5:23-cv-364 (N.D. W. Va.)

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BRIEF IN OPPOSITION

INTRODUCTION

Petitioner RDFS, LLC presents two questions for this Court's review regarding FERC's authority to issue its 43-year-old regulations governing blanket certificates and purported judicial deference to that authority. But neither question is implicated by the Fourth Circuit's decision below, which, contrary to Petitioner's contention, did not "defer" to FERC on its authority to issue the regulations or address the validity of the blanket certificate regulations. Rather, the court of appeals' unanimous dismissal of RDFS's petition for review follows from the straightforward application of the Natural Gas Act's unambiguous

provision governing judicial review of orders issued by FERC—Section 19(a)—to the undisputed record. That plainly correct ruling does not warrant this Court's review—and indeed, RDFS does not contend otherwise. Its Petition should be denied.

STATEMENT

1. Congress enacted the Natural Gas Act, 15 U.S.C. § 717, *et seq.* (NGA), in 1938 to govern the transportation of natural gas in interstate commerce. *See* 15 U.S.C. § 717(b). "The NGA provides that in order to build an interstate pipeline, a natural gas company must obtain from FERC a certificate reflecting that such construction 'is or will be required by the present or future public convenience and necessity.'" *PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 489 (2021) (quoting 15 U.S.C. § 717f(e)). "The NGA also provides that, before issuing a certificate of public convenience and necessity, FERC 'shall set the matter for hearing and shall give such reasonable notice of the hearing thereon to all interested persons.'" *Id.* (quoting 15 U.S.C. § 717f(c)(1)(B)).

"As originally enacted, the NGA did not identify a mechanism for certificate holders to secure property rights necessary to build pipelines. Natural gas companies were instead left to rely on state eminent domain procedures, which were frequently made unavailable to them." *Id.* So "[i]n 1947, [Congress] amended the NGA to authorize certificate holders to exercise the federal eminent domain power." *Id.*

(citation omitted). Under the newly enacted 15 U.S.C. § 717f(h):

> When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas . . ., it may acquire the same by the exercise of the right of eminent domain 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). "By enabling FERC to vest natural gas companies with the federal eminent domain power, the 1947 amendment ensured that certificates of public convenience and necessity could be given effect." *PennEast Pipeline*, 594 U.S. at 490.

2. In 1982, FERC promulgated regulations for the issuance of so-called "blanket certificates" that "authoriz[e] certain construction and operation of facilities" of interstate pipelines under the NGA. 18 C.F.R. § 157.201(a) (the Blanket Certificate Regulations). Only those natural gas companies which were previously issued a certificate for an interstate pipeline by FERC may apply for a blanket certificate. *Id.* at § 157.204(a). The Blanket Certificate Regulations provide that certain projects are automatically authorized by a blanket certificate and

do not require further FERC approval. *Id.* at §§ 157.203(b), 157.208(a). Specifically, Section 157.203(b) "provides that blanket certificate holders have automatic authorization to engage in transactions described in certain other provisions, including 18 C.F.R. § 157.208(a), which states, in relevant part:

> If the project cost does not exceed the cost limitations set forth in column 1 of Table I, under paragraph (d) of this section [i.e., $14,500,000 for 2024], or if the project is required to restore service in an emergency, the certificate holder is authorized to make miscellaneous rearrangements of any facility, or acquire, construct, replace, or operate any eligible facility."

Columbia Gas Transmission, LLC v. 1.01 Acres, More or Less in Penn Twp., 768 F.3d 300, 304-305 (3d Cir. 2014) (quoting 18 C.F.R. § 157.208(a)). Contrary to RDFS's assertions (Pet. at 6, 21, 23, and 24), the Blanket Certificate Regulations require that even where a project is automatically authorized under a blanket certificate pursuant to § 157.208(a), notice must be provided to all affected landowners. *Id.* at § 157.203(d)(1).

3. On January 7, 1983, FERC issued an order granting Columbia Gas Transmission Corporation[1] a

[1] In its Petition, RDFS states that the Blanket Certificate was "transferred" to Columbia Gas Transmission, LLC. *See* Pet. at 9. That is wrong. In 2008, Columbia Gas Transmission Corporation simply changed

Continued on following page

blanket certificate of public convenience and necessity pursuant to the Blanket Certificate Regulations. *See* FERC Docket No. CP83-76-000 (the Blanket Certificate Order). The Blanket Certificate Order, a document that is publicly available on the FERC docket, replaced three certificates of public convenience and necessity FERC previously issued to Columbia and covers Line 1983, the pipeline at issue in this case. The Order provides that the construction and operation of, and transportation of natural gas through, Line 1983 is necessary and in the public convenience, and authorizes Columbia to perform the activities specified in the Blanket Certificate Regulations. Pet. App. 10a. Columbia proceeded to construct Line 1983 in West Virginia and Pennsylvania. *See Columbia Gas Transmission, LLC v. RDFS, LLC*, 2024 U.S. Dist. LEXIS 42716, at *3 (N.D. W.Va. Feb. 28, 2024) ("*Columbia I*").

4. Previously, on November 3, 1969, Columbia's predecessor, Manufacturers Light and Heat Company, entered into a pipeline easement agreement with Weldon and Pearl Tennant, predecessors-in-interest to RDFS, concerning the property in question (the Easement Agreement and the Property, respectively). *Id.* In January 2021, RDFS acquired the Property, subject to the Easement Agreement, by quitclaim deed, and with Line 1983

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its name to Columbia Gas Transmission, LLC, informed FERC of the name change via a "Notice of Name Change," and FERC approved the change. *See* Letter Order Pursuant to § 375.307, *Columbia Gas Transmission, L.L.C.*, FERC Docket No. RP09-150-000. No "transfer" of the Blanket Certificate occurred.

already existing under the Property. *Id.* at *3-4. The Easement Agreement grants Columbia the right to construct, operate, and maintain a pipeline "over and through all that certain tract of land" described as the Property.[2] *Id.* at *10.

5. In June 2023, American Consolidated Natural Resources (ACNR), a third-party, underground coal longwall mining company, informed Columbia that the Property would be undermined as part of a longwall panel ACNR planned to begin mining in June 2024. *Id.* at *4. The undermining was likely to cause the ground to subside as much as four feet in places above the area mined—including underneath and around Line 1983—and posed serious risks to the integrity of nearby pipelines and public safety. *Id.*

To avoid these risks, Columbia was required to undertake subsidence mitigation efforts, including completely unearthing Line 1983 in the area under which the planned mining would occur. *Id.* at *10-11. Columbia informed RDFS it needed to use 50 feet on either side of the center of the pipeline to perform the work. *Id.* RDFS responded that it would not allow Columbia onto the Property beyond the easement

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[2] While RDFS asserts that there is no recorded assignment from Manufacturer's to Columbia (Pet. at 8), there would not be one because Manufacturers did not assign its interest to Columbia. Rather, Manufacturers, along with several other entities, merged into Columbia Gas Transmission Corporation, as evidenced by publicly available information at the West Virginia Secretary of State. *See* WV Secretary of State Online Services, https://apps.sos.wv.gov/business/corporations/organization.aspx?org=73952 (last accessed Sept. 9, 2025).

area it claimed Columbia regularly maintains. *Columbia Gas Transmission, LLC v. RDFS, LLC*, __ F.4th __, 2025 U.S. App. LEXIS 18895, *3 (4th Cir. 2025) ("*Columbia II*"). On December 19, 2023, Columbia filed an action against RDFS in the U.S. District Court for the Northern District of West Virginia asserting three counts: (1) for a declaration that the Easement Agreement allowed Columbia to perform the subsidence mitigation work within the 100 total feet; (2) for an injunction, pursuant to the Easement Agreement, granting Columbia access to perform the work; and, alternatively, (3) for condemnation and access to the Property under the Blanket Certificate Order and the NGA if the easement did not provide the necessary rights. *Id.*

Columbia proceeded to file a motion for preliminary injunction or, in the alternative, partial summary judgment and immediate access to and possession of the easement. *Id.* at *3-4. The district court granted the requested injunction, concluding that the plain language of the Easement Agreement allowed Columbia to use the entire Property to perform the subsidence mitigation—not limited to 25 feet on either side of the center of the pipeline as RDFS contended. *Id.* at *4-5. The district court also noted that even if the Easement Agreement did not allow for the mitigation work Columbia sought to perform, Columbia would succeed on its claim for condemnation and immediate access pursuant to the Blanket Certificate Order and the NGA. *See Columbia I*, 2024 U.S. Dist. LEXIS 42716, at *17 n.3; *see also* Order at 9 n.5, *Columbia Gas Transmission, LLC v. RDFS, LLC*, Case No. 5:23-cv-364, ECF No. 73 (N.D. W.Va. April 19, 2024) (stating that "even if

there was no right of way agreement between the parties, Columbia could still obtain the rights to conduct its subsidence mitigation project on RDFS' property").

6. RDFS appealed to the Fourth Circuit, claiming that the easement-based injunction conflicted with the district court's finding that the requirements for condemnation also were met, and that the district court's interpretation of the Easement Agreement was incorrect under West Virginia law. In a unanimous, published decision, the Fourth Circuit disagreed and affirmed the injunction. *See Columbia II,* 2025 U.S. App. LEXIS 1889. The court of appeals found that the Easement Agreement, consistent with settled West Virginia law, gave Columbia broad access to the Property to perform the subsidence mitigation work, and that the alternative condemnation ruling was not law of the case such that it somehow precluded the easement-based injunction. *Id.* at *9-12.

7. In the meantime, on January 24, 2024—more than 30 days *after* Columbia filed the Injunction Action in the Northern District of West Virginia—RDFS initiated this proceeding by filing a motion for rehearing of the 1983 Blanket Certificate Order with FERC, as well as a late motion to intervene in the FERC Line 1983 proceeding. *See* RDFS Motion to Intervene and Request for Rehearing, FERC Docket No. CP83-76-008. In its motion, RDFS challenged the validity of the Blanket Certificate Order and Columbia's planned mitigation work authorized by the Order, claiming that Columbia was attempting to exercise eminent domain power over land that was

not "necessary" to the mitigation activities Columbia sought to perform. RDFS also attacked the Blanket Certificate Regulations on due process grounds because they purportedly "do not require notice and do not afford impacted landowners the opportunity to retroactively challenge the issuance of certificates which were granted decades before the landowner received any notice[.]" *Id.* at 15. Petitioner did not address the timeliness of its rehearing motion under Section 19(a) of the NGA or challenge the constitutionality of that statutory provision or its application to Petitioner's motion.

8. On February 7, 2024, FERC issued a notice rejecting RDFS's rehearing request as untimely because it was filed long after Section 19(a)'s 30-day deadline had expired. *See* Pet. App. 3a. Because the deadline "is statutorily based," FERC explained, "it cannot be waived or extended[.]" *Id.* at 4a (citations omitted). As for RDFS's motion to intervene, because "the purpose of intervening in a Commission Proceeding is to obtain party status, which entitles the intervenor to file a request for rehearing[,]" FERC denied that motion as well because no such rehearing request could timely be made. *Id.*

RDFS requested rehearing of FERC's February 2024 notice. *See* Petition for Rehearing, FERC Docket No. CP83-76-009. It reiterated many of the arguments from its first motion. But again, it did not address the timeliness of its first motion under Section 19(a) or challenge the constitutionality of the provision or its application. On April 11, 2024, FERC issued a notice denying RDFS's second rehearing request by operation of law because the Commission

did not act on the request within 30 days of its filing. *See* Pet. App. 2a (citations omitted).

9. On June 10, 2024, Petitioner filed a petition for review of the two FERC notices (the "Notices") with the Fourth Circuit. *See* Pet. for Review at 1-2, *RDFS, LLC v. FERC*, No. 24-1530, Doc. No. 3. Pursuant to Federal Rule of Appellate Procedure 15(a)(2)(C), Petitioner specified only the two challenged 2024 Notices for review by the Fourth Circuit, attaching them as exhibits. *Id.* The petition for review did not assert that the Notices themselves were flawed, however, or that FERC erred in applying Section 19(a)'s clear commands in rejecting Petitioner's rehearing motions. *See generally* Pet. for Review. Instead, the petition for review's focus was the Blanket Certificate Order and the Blanket Certificate Regulations themselves, neither of which FERC addressed in the Notices given Section 19(a)'s dispositive application. *Id.* at 2.

10. After Columbia successfully moved to intervene in the Fourth Circuit given its substantial interests in the Blanket Certificate Order, *see* Order Granting Mot. to Interv., *RDFS, LLC v. FERC*, No. 24-1530, Doc. No. 12, FERC moved to dismiss Petitioner's petition for review under Section 19(a). *See* Mot. to Dismiss, *RDFS, LLC v. FERC*, No. 24-1530, Doc. No. 20. FERC argued that the 30-day deadline is an "express statutory limitation[]" from which it had no authority to deviate. *Id.* at 4. (citations omitted, alterations in original). And here, there was no dispute that "RDFS did not apply for agency rehearing within thirty days of the Certificate

Order; it did not even apply within thirty *years* of that order." *Id.* at 4-5.

In its opposition, Petitioner did not dispute the application of Section 19(a), the untimeliness of its motions for rehearing before FERC, or the effect of that untimeliness on its petition for review in the court of appeals. *See* RDFS Resp., *RDFS, LLC v. FERC*, No. 24-1530, Doc. No. 25. Nor did it advance any constitutional challenge to Section 19(a) or its applicability in this case. Instead, it targeted the Blanket Certificate *Regulations*, claiming they deprive aggrieved parties of due process because they provide "blank-check-style authorization" of pipeline-related activities. *Id.* at 10. It also asserted that relief was necessary because otherwise, blanket certificate orders supposedly would escape judicial review. *Id.* at 21.

Columbia moved for leave to file a reply to Petitioner's response. In its reply supporting FERC's arguments for dismissal, Columbia refuted Petitioner's claim that applying Section 19(a) to bar its petition would insulate condemnation claims based on blanket certificates from judicial review. As Columbia noted, courts can only order condemnation where the NGA's statutory requirements are met, and in the Injunction Action itself, the district court had considered RDFS's defenses and found that the mitigation operations Columbia wished to undertake were consistent with the Blanket Certificate. *See* Columbia Reply at 2-3 n.2, *RDFS, LLC v. FERC*, No. 24-1530, Doc. No. 28. Columbia also pointed out that despite: (i) acquiring the Property in 2021 with knowledge of the Blanket Certificate Order; (ii) being

notified in 2023 of Columbia's need to access the Easement on the Property; and (iii) being sued in December 2023 in the Injunction Action, Petitioner did not file its rehearing motion with FERC within 30 days of any of those events. *Id.* at 4-5.

11. On January 8, 2025, the Fourth Circuit (Gregory, J., with the concurrence of Thacker and Richardson, JJ.) issued an order granting Columbia's motion for leave to file a reply and FERC's motion to dismiss the petition for review, noting that the court of appeals had "consider[ed] . . . the submissions relative to" FERC's motion and Columbia's motion to reply. Pet. App. 1a.

REASONS FOR DENYING THE PETITION

Applying the plain terms of Section 19(a) of the NGA, FERC properly rejected Petitioner's motion for rehearing of the 1983 Blanket Certificate Order governing Columbia's pipeline, and the Fourth Circuit thereafter correctly dismissed Petitioner's petition for review of FERC's ruling as untimely. As before FERC and the court of appeals, in its Petition here, Petitioner does not dispute the application of Section 19(a)'s clear terms or the untimeliness of Petitioner's rehearing motions and petition for review. And the arguments for review Petitioner does make are not implicated by the Fourth Circuit's or FERC's rulings or properly presented on this record. The Court should deny the Petition.

I. The Fourth Circuit's Decision Correctly Applies The Plain Text Of The Natural Gas Act's Jurisdictional Provisions And RDFS Does Not Contend Otherwise

As noted, the dispositive statutory provision in this case is Section 19(a) of the NGA, which provides:

> Any person . . . aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person . . . is a party may apply for a rehearing within thirty days after the issuance of such order . . . . 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.

15 U.S.C. § 717r(a).

Section 19(a)'s language is mandatory and provides for no judicial discretion. *See Miller v. French*, 530 U.S. 327, 337 (2000) (explaining that "[t]he mandatory 'shall' . . . normally creates an obligation impervious to judicial discretion") (citation omitted). It "mandates that, as a predicate to filing an appeal from an order of the Commission, the affected party must move for rehearing within thirty days of the date on which the order was issued." *Londonderry Neighborhood Coalition v. FERC*, 273 F.3d 416, 421-422 (1st Cir. 2001); *see also Sierra Ass'n for Env't v. FERC*, 791 F.2d 1403, 1406 (9th Cir. 1986) (holding that "the party aggrieved by an order issued by FERC must seek a rehearing before FERC of that order

within thirty days" before it can petition for review); *Boston Gas Co. v. FERC*, 575 F.2d 975, 979 (1st Cir. 1978) ("The fact that a 30 day limit is included in the statute clearly indicates that the [NGA] requires not only administrative exhaustion but immediate action on the part of those aggrieved."). As the First Circuit explained, Section 19(a) reflects Congress's judgment that "[a]ll the parties to a proceeding before the Commission, as well as the Commission itself, have the statutory right to be free from prolonged uncertainty resulting from delayed efforts to resolve an issue[,]" and a "formal time limit assures all participants that their claims will be settled expeditiously." *Boston Gas*, 575 F.2d at 979.

Section 19(a)'s rehearing mandate applies squarely here, and the Fourth Circuit was obligated to adhere to the provision's plain terms and dismiss Petitioner's petition for review as untimely. The Blanket Certificate Order was issued in 1983. Petitioner filed its initial motion for rehearing with FERC more than 40 *years* later. The initial rehearing motion also was filed more than 30 days after Petitioner was on notice of (i) the Blanket Certificate Order, (ii) Line 1983's presence under the Property, *and* (iii) Columbia's intention to perform subsidence mitigation on the portion of the pipeline on Petitioner's Property in advance of ACNR's planned mining. Thus, Petitioner's motion for rehearing was untimely under Section 19(a) and, by operation of the provision's mandatory terms, precluded review in the court of appeals.

Notably, Petitioner does not contend otherwise in its Petition before this Court, just as it did not dispute

as much in the court of appeals or before FERC. Nor could it. The Petition should be denied for this reason alone.

II. Petitioner's Questions Presented Are Not Implicated By The Fourth Circuit's Decision

Rather than contest the Fourth Circuit's ruling that its petition for review was untimely under Section 19(a) of the NGA, RDFS tries to manufacture questions presented not raised by the decisions below, based on arguments FERC and Petitioner did not make, and hypothetical rulings FERC and the court of appeals did not render. That effort is unavailing.

The first proposed question—"[w]hether a court of appeals may defer to FERC on the threshold question of FERC's authority to issue blanket certificates without determining the legality of the agency's asserted power" (Pet. at i)—clearly is not presented here. In its Notices rejecting rehearing, FERC did not even mention its authority to issue the Blanket Certificate Regulations or the Blanket Certificate Order, much less analyze it. *See* Pet. App. 2a, 3a-5a. Instead, FERC rightly concluded that it could not do so given the plain terms of Section 19(a) and the undisputed untimeliness of RDFS's motion for rehearing. *Id.* And before the Fourth Circuit, FERC likewise did not argue that the court of appeals should defer to FERC's Blanket Certificate Regulations or its Order here—it simply asserted what it concluded in the Notices regarding the effect of Section 19(a). *See* FERC Mot. to Dismiss at 3-5; FERC Reply at 1-4.

As for the Fourth Circuit, it plainly did not "defer" to any views on the part of FERC regarding its blanket certificate authority either—because, as noted, FERC never asserted any such views. In its order dismissing Petitioner's petition for review, the court of appeals "consider[ed]" "the submissions relative to [FERC's] motion to dismiss" based solely on Section 19(a), as well as Columbia's "motion to reply[,]" presumptively applied Section 19(a) to the undisputed record, and dismissed the petition for review under the statute's mandatory directive. *See* Pet. App. 1a. Contrary to Petitioner's assertions, that was a quintessential judicial determination—"decid[ing] whether an agency has acted within its statutory authority." *Loper Bright Enters. v. Raimondo*, 603 U.S. 392, 412 (2024).

Because this Court is "a court of final review and not first view, … it does not '[o]rdinarily . . . decide in the first instance issues not decided below.'" *See City of Austin v. Reagan Nat'l Adver. of Austin, LLC*, 596 U.S. 61, 76-77 (2022) (quoting *Zivotofsky v. Clinton*, 566 U. S. 189, 201 (2012)). And that is doubly true of an issue arising out of a purported argument by the respondent for relief that, as here, the respondent did not actually make. *Id.*; *see also Glover v. United States*, 531 U.S. 198, 205 (2001) ("In the ordinary course we do not decide questions neither raised nor resolved below.") (citation omitted). Accordingly, Petitioner's first question presented plainly is not properly raised in this Court.

Moreover, for these same reasons, Petitioner's particular contention that the Fourth Circuit's decision "deferring to FERC" contradicts this Court's

precedents requiring courts to assess whether an agency has exceeded its statutory authority is based on a false premise. *See* Pet. at 12-13. So is its contention (Pet. at 13) that the decision below conflicts with the D.C. Circuit's decision in *Allegheny Defense Project v. FERC*, 964 F.3d 1 (D.C. Cir. 2020) (en banc), which rejected judicial deference to FERC's interpretation of certain NGA provisions. And Petitioner's suggestion that the court of appeals failed to "first determine whether a regulation that purports to strip it of jurisdiction is lawful before dismissing a petition" for review "on that basis" (Pet. at 14-15) is wrong, too, because no regulation purporting to affect jurisdiction is at issue here.

Petitioner's second proposed question—whether the Blanket Certificate Regulations run afoul of the Constitution or the NGA—is not properly before this Court either. The Fourth Circuit's order did not mention the Regulations, nor was there a reason it would have: the petition for review was indisputably untimely under the *statutory* bar of Section 19(a) of the NGA. The Blanket Certificate Regulations had nothing to do with that analysis or conclusion. Nor did FERC or the Fourth Circuit consider RDFS's due-process challenges—for the same reason.

As for Petitioner's contention that the Blanket-Certificate Regulations somehow violate the Takings Clause of the Fifth Amendment, that plainly is not before this Court either. Petitioner did not raise the Takings Clause in its petition for review in the Fourth Circuit or its rehearing motions before FERC, and neither body addressed or decided any Takings-Clause question. *See City of Austin*, 596 U.S. at 76-77;

Glover, 531 U.S. at 205; *Del. Riverkeeper Network v. FERC*, 45 F.4th 104, 115 (D.C. Cir. 2022) (finding claims that FERC interpreted NGA in violation of various constitutional provisions forfeited because petitioner failed to exhaust them before the agency as required by Section 19(a)). For these reasons as well, the Petition should be denied.

III. Condemnation Is No Longer At Issue In The Parties' Dispute

Certiorari is not warranted because the proposed questions presented relate only to Columbia's condemnation authority, which is no longer relevant in the related Injunction Action.

As noted, the target of Petitioner's arguments is the Blanket Certificate Order, which furnishes the basis for Columbia's condemnation claim against Petitioner in the related Injunction Action. But as the Fourth Circuit recently held in that Action, there is no need for condemnation because Columbia has expansive rights to access Petitioner's Property under the parties' Easement Agreement—rights now definitively established by the court of appeals' precedential holding in that case. As the Fourth Circuit reasoned, "Columbia's easement conveys broad authority . . . to 'operate, maintain, replace, and finally remove' its pipeline 'through all that certain tract of land' which makes up the parcel[,]'" and RDFS did "not dispute that the mitigation work is necessary to maintain the pipeline, nor does it dispute that Columbia's easement—by its very terms—provides access to the entirety of RDFS's parcel." *Columbia II*, 2025 U.S. App. LEXIS 18895, at *10.

Thus, the court of appeals held, "the scope of Columbia's easement is sufficiently broad to include the mitigation work[,]" and "West Virginia common law makes clear that power companies retain the right, under a general right-of-way easement like the one at issue here, to access land to maintain and repair equipment to the extent necessary for the safe and effective operation of its equipment, in accordance with the original easement." *Id.* at *11 (citation omitted). "This right includes actions taken to address 'obstructions which pose a danger to, or interfere with the effective operation of, the power company's equipment located upon that land.'" *Id.* (citation omitted).

Given that ruling, whether Columbia also has the right under the Blanket Certificate Order and the statutory eminent domain authority provided by the NGA to access Petitioner's Property via condemnation is all but academic. The same would be true of any decision by this Court on the questions presented, which relate solely to that issue of condemnation. But this Court does not decide such abstract questions with no meaningful (if any) import for the parties and dispute before it. *See Clinton v. Jones*, 520 U.S. 681, 690 n.11 (1997) ("It has long been the Court's 'considered practice not to decide abstract, hypothetical or contingent questions'") (citation omitted). And there is no reason for it to do so here.

IV. Petitioner Misstates The Scope Of Judicial Review Of Blanket Certificates And Blanket-Certificate Authorizations

As noted, Petitioner's misplaced merits attack on the Blanket Certificate Order and Blanket Certificate Regulations rests on its repeated assertion that the Regulations, and orders issued pursuant to them, somehow are shielded from judicial review. Not so.

Petitioner makes the sweeping assertion that "there is no judicial review whatsoever of the regulations[.]" Pet. at 28. That is obviously wrong. The Administrative Procedure Act authorizes judicial review of regulations, *see* 5 U.S.C. § 702, as this Court recently acknowledged. *See Corner Post, Inc. v. Bd. of Governors of the Fed. Rsrv. Sys.*, 603 U.S. 799, 807 (2024). Courts also "presume that 'parties may always assail a regulation as exceeding the agency's statutory authority in enforcement proceedings against them.'" *McLaughlin Chiropractic Assocs. v. McKesson Corp.*, 606 U.S. 146, 156 (2025) (quoting *Corner Post*, 603 U.S. at 823).

Petitioner further contends that "eminent domain exercised under a Blanket Certificate[ ] is effectively immune from judicial review" as well. Pet. at 23. But courts can—and do—consider whether a pipeline construction or maintenance project is within the bounds of automatic authorization under a blanket certificate. *See 1.01 Acres, More or Less in Penn Twp.*, 768 F.3d at 304-05 (holding that the automatic authorization activity limitations were unambiguous, that Columbia's proposed activities fell within those limitations, and that condemnation of the property

interests necessary to carry out those activities was authorized); *Fla. Gas Transmission Co. v. 9.65 Acres of Land in Hillborough Cty.*, 2019 U.S. Dist. LEXIS 113832, *10 (M.D. Fla. Mar. 12, 2019) (determining "whether the Blanket Certificate … authorize[d] FGT's construction of the proposed pipeline").

Indeed, the "right of blanket certificate holders to replace eligible facilities is not without limits." *1.01 Acres, More or Less in Penn Twp.*, 768 F.3d at 305. For example, any project that exceeds $14.5 million triggers formal requirements for notice and environmental-impact statements to FERC. *See* 18 CFR § 157.208(a)-(b), (d). Pipeline companies must provide annual reports to FERC describing the purposes and locations of installed facilities and providing information such as key construction dates; costs, including costs of materials and labor; contacts made and reports produced to ensure compliance with certain federal laws; documentation showing restoration of work areas; and more. *Id.* § 157.208(e).

Beyond this, there are "[o]ther curbs [that] significantly restrict the nature of replacement projects":

> Certificate holders may not construct new "delivery points" under the guise of replacement. 18 C.F.R. § 157.202(b)(2)(ii)(E). Also, in general, "Replacements for the primary purpose of creating additional main line capacity are not eligible facilities" under blanket certificate authority. *Id.* § 157.202(b)(2)(i). That is, "Replacements must be done for sound engineering

> purposes." *Id.* In clarifying this stricture, FERC "underscore[d]" that "there must be a physical need to replace facilities," such that gas companies may not circumvent the general requirements for new pipeline construction simply by designating it "replacement." Revision Of Existing Regulations Under the Natural Gas Act, 64 Fed. Reg. 54522, 54527 (Sept. 29, 1999) (codified at 18 C.F.R 157). FERC also encourages the enforcement of such regulations through the filing of complaints against companies that falsely claim the need to replace pipelines. *Id.*

1.01 Acres, More or Less in Penn Twp., 768 F.3d at 305. The Blanket Certificate Regulations thus "ensure that gas companies do not possess unfettered discretion in constructing and siting replacement pipelines." *Id.* at 306.

Consistent with these limits, courts enforce the terms of blanket certificates and consider challenges to pipeline companies' adherence to those terms. *Supra* at 20-21 (citing cases). The dispute here is a case in point. In the related Injunction Action, the district court considered Petitioner's merits defense to Columbia's condemnation claim, finding "that the mitigation operations that Columbia seeks to perform are consistent with its Certificate of Public Convenience and Necessity" because without those operations, "there is a potential for rupture or explosions of Line 1983, serious injury or death, and the loss of gas service." *See Columbia I*, 2024 U.S.

Dist. LEXIS 42716, at *19-20. And notably, RDFS did not appeal that ruling.

Petitioner's no-judicial-review claims accordingly are baseless and provide no reason for this Court to intervene.

CONCLUSION

For the foregoing reasons, this Court should deny the petition for a writ of certiorari.

Respectfully submitted,

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