No. _____

In the Supreme Court of the United States

DAVID W. SUNDAY, JR., ATTORNEY GENERAL OF PENNSYLVANIA, AND DARRYL A. LAWRENCE, PENNSYLVANIA CONSUMER ADVOCATE,
Petitioners

v.

TRANSOURCE PENNSYLVANIA, LLC, ET AL.,
Respondents

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

PETITION FOR A WRIT OF CERTIORARI

DAVID W. SUNDAY, JR.
Attorney General
Commonwealth of Pennsylvania

MICHAEL J. SCARINCI
Senior Deputy Attorney General
Counsel of Record

DANIEL B. MULLEN
Chief Deputy Attorney General
Chief, Appellate Litigation Section

Office of Attorney General
15th Floor, Strawberry Square
Harrisburg, PA 17120
(717) 497-4051
COUNSEL FOR PETITIONERS

QUESTION PRESENTED

For years, the Pennsylvania Public Utility Commission, while represented by the Pennsylvania Office of Attorney General, defended a state statute against a federal preemption claim. That state statute requires a utility company to show that the public needs an electrical transmission line before the utility may construct that line within Pennsylvania's borders. The Third Circuit held that the statute is preempted, disrupting the delicate state-federal balance of power over land use. After that loss, the Public Utility Commission unexpectedly refused to continue its defense of this state statute.

As authorized by state law, Pennsylvania's Attorney General and Consumer Advocate promptly moved to intervene so that they could seek further appellate review. Those state officials sought to vindicate several important state sovereign interests, including the continued enforceability of a democratically-enacted statute. The Third Circuit denied these state officials' request to intervene without any explanation.

The question presented is:

Was the Third Circuit's denial of intervention contrary to this Court's decisions in *Cameron v. EMW Women's Surgical Center*, 595 U.S. 267 (2022), and *Berger v. North Carolina State Conference of the NAACP*, 597 U.S. 179 (2022)?

PARTIES TO THE PROCEEDING

Petitioners David W. Sunday, Jr., Attorney General, on behalf of the Commonwealth of Pennsylvania, and Darryl A. Lawrence, the Pennsylvania Consumer Advocate, sought to intervene, as parties before the Third Circuit.

The parties in the court below, respondents here, are Transource Pennsylvania, LLC; Steven M. DeFrank, Chairman, Pennsylvania Public Utility Commission ("PUC"); Kimberly M. Barrow, Vice Chairman, PUC; John F. Coleman, Jr., Commissioner, PUC; Ralph V. Yanora, Commissioner, PUC; Kathryn L. Zerfuss, Commissioner, PUC; and the PUC.

RELATED PROCEEDINGS

Pursuant to this Court's Rule 14.1(b)(iii), the following proceedings are directly related to this case:

- *Transource v. DeFrank*, *et al.*, No. 1:21-cv-01101-JPW (M.D. Pa.) (judgment entered on December 6, 2023).

- *Transource v. DeFrank*, *et al.*, No. 24-1045 (3d Cir.) (judgment entered on September 5, 2025; petition to intervene denied on November 6, 2025; petition for rehearing before the Court *en banc* on the denial of intervention denied on December 15, 2025).

TABLE OF CONTENTS

APPENDIX

TABLE OF AUTHORITIES

Cases

Statutes

Constitutional Provisions

Rules

Regulations

Other Authorities

INTRODUCTION

The Court of Appeals dealt a double blow to state sovereignty. First, the Court of Appeals stripped Pennsylvania of its sovereign right to regulate land use within its borders and delegated it to PJM Interconnection, a private entity that operates the power grid for Pennsylvania and 12 other states. Then, the Third Circuit refused to allow Pennsylvania's Attorney General and Consumer Advocate to intervene to continue defending its sovereign authority over land use.

Pursuant to state law, the Pennsylvania Public Utility Commission (PUC) determined that interstate electrical transmission lines that a utility, Transource Pennsylvania, proposed to construct were not needed. *See* 66 Pa. Cons. Stat. § 1501; 52 Pa. Code § 57.76(a). Those lines would cost $500 million to build and transport Pennsylvania's reliable energy to the D.C.-Metro area, resulting in a decrease in power costs for that area but an $812 million *increase* in costs for Pennsylvania and other states within the PJM-region.

"The states have traditionally assumed *all jurisdiction* to approve or deny permits for the siting and construction of electric transmission facilities[.]" *Piedmont Envt'l Council v. FERC*, 558 F.3d 304, 310 (4th Cir. 2009). But the Court of Appeals held that the PUC was preempted from making that determination here because a far-off federal agency had generally approved of PJM's cost-benefits methodology for use in a process unrelated to the state permitting procedure. Thus, the Third Circuit's determination allows an unaccountable, private entity to usurp a historic state power. It also now allows a utility to condemn land without affording landowners due process of law. That decision was certainly wrong, for Congress has not expressed a "clear and manifest" intent to preempt state law over

this historic state power. *Merck Sharp & Dohme Corp., v. Albrecht*, 587 U.S. 299, 315-16 (2019). For these reasons, a FERC commissioner called this situation "frankly, outrageous." *PJM Interconnection, LLC*, 191 FERC P 61056, ¶ 4 (Apr. 17, 2025) (Chairman Christie, concurring).

This case thus raises fundamental questions about state sovereignty and core constitutional rights. And those questions will undoubtedly recur because of the Third Circuit's sweeping ruling. Utilities and PJM will bulldoze over state authority and the constitutional rights of the 67 million citizens within the PJM-region to "build, baby, build" more transmission to supply data centers' insatiable appetite for power.[1] But the merits of that ruling are not before this Court—at least not yet. That is because the Third Circuit inexplicably refused to allow Pennsylvania's Attorney General and Consumer Advocate to intervene.

Initially, the PUC vigorously defended against PJM's assault on Pennsylvania's sovereignty and appealed the case to the Third Circuit. But, after the Third Circuit's adverse ruling, the PUC unexpectedly changed course and refused to seek further appellate review. As soon as it became clear that the PUC was abandoning its post, Pennsylvania's Attorney General and Consumer Advocate quickly moved to intervene so that they could take up the mantle. State statutes

---

[1] Jeremy Cox, *Plans for Maryland Transmission Line Run Up Against Land Preservation Goals*, Bay Journal (Sept. 16, 2024) (noting "PJM's $5 billion push to expand transmission infrastructure");*Valley Link Transmission Maryland*, 191 FERC P 61113, ¶ 8 (May 13, 2025) (proposed project to build 417 miles of new transmission facilities across state lines); Katherine Blunt and Jennifer Hiller, *America's Biggest Power Grid Operator Has an AI Problem—Too Many Data Centers*, The Wall Street Journal (Jan. 12, 2026).

plainly authorized their intervention. 71 P.S. § 732-204(a)(3), (c) (the Attorney General has a "duty" to "uphold and defend the constitutionality of all statutes" and "may intervene" in any action involving "the constitutionality of any statute"); *see also* 71 P.S. § 309-4(a), (b). Yet the Court of Appeals denied intervention, without even bothering to explain its rationale. That unexplained refusal to allow intervention in this critically important case defies this Court's precedents. *Cameron v. EMW Women's Surgical Ctr.*, 595 U.S. 267, 277 (2022); *Berger v. N. Carolina State Conference of the NAACP*, 597 U.S. 179, 191 (2022).

The proposed intervenors satisfied all the requirements for appellate intervention: state law authorized their intervention; they sought to vindicate important state interests; their motion was timely; and intervention would not have prejudiced the parties. So, this should have been a "textbook case for intervention." *Cameron*, 595 U.S. at 292 (Kagan, J., concurring). But the Third Circuit tossed the textbook aside.

Although this Court cannot "correct every perceived error coming from the lower federal courts," summary relief is warranted here. *Tolan v. Cotton*, 572 U.S. 650, 659 (2014) (per curiam). The orders denying intervention reflect "a clear misapprehension" of this Court's "standards in light of [its] precedents," which bars them from obtaining further review of the panel's erroneous merits decision. *Ibid.*

Accordingly, this Court should grant certiorari, summarily reverse, and remand with instructions to allow the Attorney General and the Consumer Advocate to intervene. Reversing the Court of Appeals on the intervention question is a necessary first step to restoring the state-federal equilibrium that the Constitution and Congress contemplated.

OPINIONS BELOW

The Third Circuit's order denying the petition of the Attorney General and the Consumer Advocate to intervene is unreported and is appended to this petition at App.1a-2a. The Third Circuit's order denying the Attorney General and the Consumer Advocate's motion for reconsideration is not reported and is appended to this petition at App.3a-4a.

The opinion of the Third Circuit affirming the award of summary judgment to Transource on its preemption claim is reported at 156 F.4th 351 and is appended to this petition at App.5a-64a.

The district court's summary judgment opinion is reported at 705 F.Supp.3d 266 and is appended to this petition at App.65a-119a.

STATEMENT OF JURISDICTION

The Third Circuit denied the petition of the Attorney General and the Consumer Advocate to intervene on November 6, 2025. The Third Circuit denied the petition of the Attorney General and the Consumer Advocate, denominated by them as one for rehearing *en banc* but construed by the panel as a motion for reconsideration with request for referral to the *en banc* court pursuant to Third Circuit Internal Operating Procedure 10.3.3, on December 15, 2025. This Court has jurisdiction under 28 U.S.C. § 1254(1) and 28 U.S.C. § 2016.

STATUTORY PROVISIONS INVOLVED

The relevant sections of the Commonwealth Attorneys Act governing the powers and duties of the Attorney General provide: "It shall be the duty of the Attorney General to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a

court of competent jurisdiction." 71 P.S. § 732-204(a)(3). "The Attorney General shall represent the Commonwealth and all Commonwealth agencies and upon request, the Departments of Auditor General and State Treasury and the Public Utility Commission in any action brought by or against the Commonwealth or its agencies, and may intervene in any other action, including those involving *** the constitutionality of any statute." 71 P.S. § 732-204(c).

The relevant section of the Commonwealth Attorneys Act governing the powers and duties of the Consumer Advocate provides: "[It] shall be [the Consumer Advocate's] duty in carrying out his responsibilities under this act, to represent the interest of consumers as a party, or otherwise participate for the purpose of representing an interest of consumers *** before any court." 71 P.S. § 309-4(a). "The Consumer Advocate may exercise discretion in determining the interests of consumers which will be advocated in any particular proceeding and in determining whether or not to participate in or initiate any particular proceeding and, in so determining, shall consider the public interest, the resources available and the substantiality of the effect of the proceeding on the interest of consumers." 71 P.S. § 309-4(b).

The relevant section of the Public Utility Code provides: "Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa. Cons. Stat. § 1501.

The relevant section of the PUC's regulations provides: "The Commission will issue its order, with its

opinion, if any, either granting or denying the application, in whole or in part, as filed or upon the terms, conditions or modifications, of the location, construction, operation or maintenance of the line as the Commission may deem appropriate. The Commission will not grant the application, either as proposed or as modified unless it finds and determines as to the proposed [high-voltage] line: (1) That there is a need for it." 52 Pa. Code § 57.76.

STATEMENT OF THE CASE

1. Transource proposed building interstate electrical transmission lines costing $500 million through parts of Pennsylvania and Maryland. App.26a. The stated purpose of these lines was to reduce "congestion" on the electrical grid. App.24a-26a. Congestion occurs when the least costly generation sources that are available to serve the demand of end-use consumers in a given area (often referred to as load) cannot be delivered because transmission limits constrain power flow on the grid. App.16a, 25a; JA579 (Herling Report).[2] Without these limits, portions of the grid would be at risk of overloading or even collapse. JA431 (Department of Energy Transmission Congestion Study). Because of congestion, higher-cost generation sources are dispatched to load. App.16a-17a, 25a; JA579-80 (Herling Report).

Transource's project would carry Pennsylvania's affordable and reliable energy generation resources to Northern Virginia, the District of Columbia, and Maryland, to meet the increased demand for power by data centers in those areas. App.25a, 76a-77a; JA73 (ALJ

[2] All "JA" references are to the joint appendix filed in the Third Circuit at ECF Nos.26, 27-1, and 27-2. Unless otherwise noted, all ECF citations are to filings in the Third Circuit.

Dec.); JA579-80 (Herling Report); JA680 (PJM White Paper); *see PJM Interconnection, Inc.*, 185 FERC P 61212 ¶ 7 (Dec. 21, 2023) (acknowledging "unprecedented load growth" in "the Data Center Alley" in Northern Virginia). As news reports have recently recounted, these data centers have a "bottomless appetite for electricity."[3] "A data center for AI training," for example, "can devour as much electricity as 1,000 Walmart stores."[4]

2. Like every other state, Pennsylvania requires an applicant seeking to construct an electrical transmission line to apply for a certificate of public convenience from its state utility regulator, the PUC. 66 Pa. Cons. Stat. §§ 1103(a), 1501; 52 Pa. Code § 57.76(a).[5] The PUC will grant a certificate of public convenience when it "is *necessary* or proper for the service, accommodation, convenience, or safety of the public." 66 Pa. Cons. Stat. §§ 1103, 1501 (emphasis added); 52 Pa. Code § 57.76 ("The [PUC] will not grant the application" to site a high-voltage transmission line unless it finds "*there is a need for it*") (emphasis added). The PUC's determination of whether an electrical transmission line is needed is made in the context of a state siting proceeding. *See* 52 Pa. Code § 57.76(a).

Transource filed an application for a siting permit from the PUC. App.28a. Transource also filed 133 eminent domain applications to acquire the land where these lines would be sited. JA76, JA119 (ALJ Dec.).

---

[3] Blunt & Hiller, *supra*.

[4] Jennifer Hiller, *AI Data Centers, Desperate for Electricity, Are Building Their Own Power Plants*, The Wall Street Journal (Oct. 15, 2025).

[5] *See also* Fla. Stat. § 403.537; 35-A Me. Rev. Stat. § 3132; N.Y. Pub. Serv. Law § 122; Tex. Util. § 37.051 (all requiring a showing of need).

Ultimately, the PUC determined that Pennsylvania did not need these lines as they would "function as a high-voltage electric extension cord to serve non-Pennsylvania electricity consumption needs" at the expense of Pennsylvanians. App.31a.[6] The Transource project would cost $500 million to build and provide only $32 million in benefits. App.27a, 30a; JA94, JA168 (ALJ Dec.). This determination considered both the regions, such as Northern Virginia, the District of Columbia, and Maryland, that would see a reduction in power costs ($845 million) and the regions, such as Pennsylvania, that would see an increase in power costs ($812 million). App.30a JA94 (ALJ Dec.).[7] The PUC concluded that spending $500 million to realize $32 million in *net* benefits made "no sense." JA168 (ALJ Dec.); JA275, JA281-82 (PUC Dec.); App.30a.

3. Transource then filed actions in state and federal court. App.33a. The PUC represented itself in state court, while the Attorney General, at the PUC's request, represented the PUC in federal court.

In the federal forum, Transource asserted that the PUC's determination violated the Supremacy Clause and the Dormant Commerce Clause. App.34a. Regarding the Supremacy Clause, Transource claimed that the PUC's determination was preempted because PJM included the Transource project in its 2014/15 regional transmission expansion plan. App.34a-35a.[8]

---

[6] Steven Ferrey, *Constitutional Cutting Edge: Where Federal Planning Implied Preempts State Power*, 27 VT. J. ENVTL. L. 112, 128 (2025).

[7] Portions of Maryland, New Jersey, Delaware, Kentucky, and Illinois would experience this increase. JA102 (ALJ Dec.).

[8] The Third Circuit did not address the Dormant Commerce Clause claim, so we do not detail it here.

3a. PJM is a regional transmission organization. A regional transmission organization is a "voluntary association of utilities that own [the] electrical transmission lines," poles, and other equipment, which is "interconnected to form a regional grid." *Illinois Commerce Comm'n v. FERC*, 721 F.3d 764, 769 (7th Cir. 2013). Utilities, such as Transource, that are members of a regional transmission organization "agree to delegate operational control of the grid to the" organization. *Ibid.* PJM operates the grid for all or part of 13 states and the District of Columbia. FERC, *An Introductory Guide for Participation in PJM Processes*, available at, https://tinyurl.com/v87un7wf; JA84, ¶ 4; JA538. A regional transmission organization's purpose is to promote "efficiency and reliability in the operation and planning of the electric transmission grid and ensur[e] non-discrimination in the provision of electric transmission services." 18 C.F.R. § 35.34(a) (2025).

3b. Pursuant to several FERC orders, public utilities must participate—typically via a regional transmission organization—in a "regional transmission planning process that produces a regional transmission plan." FERC Order 1000, 76 Fed.Reg. 49842-01, Summary (Aug. 11, 2011); *see* FERC Order 890, 72 Fed.Reg. 12266-01, ¶¶ 425, 440, 444 (Mar. 15, 2007). The federal objective behind this regional plan is to identify "transmission system needs and potential solutions to those needs" in a more "open," "transparent" and "efficient" process. FERC Order 1000, 76 Fed.Reg. 49842-01, ¶ 107; FERC Order 1000-A, 77 Fed.Reg. 32184-01, ¶¶ 188, 190, 285 (May 31, 2012). This contrasts with what used to occur before Order 1000 when utility companies were not required to participate in the development of regional transmission plans—they planned for their own commercial interests only. This was an "ineffective, inefficient and chaotic and balkanized process."

JA676 (2009 PUC Comment); JA467-82 (Horger dep.); JA687 (Transmission Expansion Advisory Committee Recommendations).

FERC, however, never intended for the regional planning process to preempt a state's need determination. When FERC issued Order 1000, it emphasized that substantive decisions "regarding the siting, permitting, and construction of transmission facilities" are "made at the state level" by state regulators. FERC Order 1000-A, 77 Fed.Reg. 32184-01, ¶ 188; FERC Order 1000, 76 Fed.Reg. 49842-01, ¶ 107. As one FERC Commissioner noted in response to this very case, the "mere fact that PJM planned a project that was put into the PJM regional transmission plan" does not preempt "a state's sovereign police power authority *** to determine whether the project [i]s needed." *PJM Interconnection, LLC*, 191 FERC P 61056, ¶ 3-4 (Chairman Christie, concurring). Any claim to the contrary, that Commissioner added, is "frankly, outrageous." *Id.*, ¶ 4.

3c. And yet, the district court ruled against the PUC, awarding summary judgment to Transource on its claim under the Supremacy Clause. App.91a-112a. According to the district court, because FERC had approved the methodology that PJM used to determine whether a project should be included in its regional plan, Pennsylvania was preempted from determining whether the project was needed. App.101a-03a. Unlike the PUC, PJM's cost-benefits methodology does not account for those regions, such as Pennsylvania, that would experience an increase in power costs (by $812 million) because of their lower-cost power being dispatched to the Beltway area. App.73a, 75a.

4. The PUC (still represented by the Office of Attorney General) appealed to the Third Circuit. A panel affirmed in a 65-page precedential opinion issued on September 5, 2025. App.5a-64a. The panel held that the

PUC's decision that Transource's project is not needed is preempted because FERC approved PJM's cost-benefits methodology for determining when a project should be included in PJM's regional plan. App.47a-49a.

Given the complexity of this case and the length of the panel's decision, the PUC requested a 30-day extension to file a sur petition for rehearing *en banc*. Fed. R. App. P. 40(d)(1). The Third Circuit granted that request on September 12, 2025. ECF No.87. The PUC then suddenly changed course and refused to defend Pennsylvania law.

5. It was not until September 29, 2025, while undersigned counsel was preparing an *en banc* petition, that the Office of Attorney General learned for the first time from the PUC that it did not want to pursue further appellate review. The Office of Attorney General inquired regarding the basis for this sudden change of course after years of vigorous litigation, and the Attorney General spoke personally with the PUC Chairman. The PUC did not fully articulate its rationale until a meeting with the Attorney General's Office during the week of October 13. On October 16, the PUC released a public letter addressed to several legislators, explaining its reasons for not pursuing further appellate review. ECF No.92, Exhibit A.

The Attorney General, though, who is an "independent" state official and who "do[es] not answer" to the PUC but is "accountable directly to the Pennsylvania voters," had a "different perspective." *Berger*, 597 U.S. at 195, 198; PA. CONST. ART. IV, § 4.1; 71 P.S. § 732-201; *Synthes USA HQ, Inc. v. Commonwealth*, 289 A.3d 846, 859 (Pa. 2023). It is his "duty" as "the Attorney General to uphold and defend the constitutionality of *all* statutes so as to prevent their suspension or abrogation ***." 71 P.S. § 732-204(a)(3) (emphasis added).

The Consumer Advocate, who has a "duty *** to represent the interests of consumers as a party *** before *any* court," shared that same perspective as the Attorney General. 71 P.S. § 732-201(b); 71 P.S. § 309-4(a) (emphasis added); *Berger*, 597 U.S. at 195, 198. They both disagreed with the PUC's reasons for refusing to seek further review.

Thus, the very next day, the Attorney General, on behalf of the Commonwealth, and the Consumer Advocate, on behalf of Pennsylvania consumers, moved to intervene for purposes of filing an *en banc* petition with the Third Circuit and, if denied, a petition for a writ of certiorari to this Court. ECF No.88. The proposed intervenors met all the requirements for appellate intervention: authorization under state law to intervene; a legal interest in the litigation; a timely motion to intervene; and a lack of prejudice to the original parties. *Cameron*, 595 U.S. at 278-82. The PUC did not oppose the motion to intervene, but Transource did. ECF Doc.92. Without any explanation whatsoever, the panel denied leave to intervene. App.1a-2a.

6. The Attorney General and the Consumer Advocate filed a timely petition for rehearing regarding the denial of intervention before the Third Circuit *en banc*. ECF No.96. The panel construed this petition as one for reconsideration of the panel's order denying intervention and a request for referral to the *en banc* court. App.3a-4a, citing Third Circuit Internal Operating Procedure 10.3.3. The panel also denied that petition, without referring the matter to the full court. And, yet again, the panel provided no explanation whatsoever. *Ibid.*

REASONS FOR GRANTING THE PETITION

I. THE THIRD CIRCUIT'S DENIAL OF INTERVENTION CONTRAVENES THIS COURT'S DECISIONS IN *CAMERON* AND *BERGER*.

"This Court's teachings" on the right of authorized state officials to intervene to defend state law "have been many, clear, and recent." *Berger*, 597 U.S. at 192. The Third Circuit's unexplained refusal to allow Pennsylvania's Attorney General and Consumer Advocate to intervene defies those teachings.

As a separate sovereign State under the Constitution, the Commonwealth possesses "'a residuary and inviolable sovereignty.'" *Printz v. United States*, 521 U.S. 898, 918-19 (1997), quoting THE FEDERALIST No. 39 at 245 (J. Madison) (C. Rossiter ed. 1961). A core part of the States' retained sovereignty is the authority to enact and enforce their own laws so long as they do not conflict with federal law. *See Cameron*, 595 U.S. at 277. Thus, "a State 'clearly has a legitimate interest in the continued enforceability of its own statutes.'" *Ibid.*, quoting *Maine v. Taylor*, 477 U.S. 131, 136 (1986). "No one questions" this. *Berger*, 597 U.S. at 191; *Cameron*, 595 U.S. at 277; *Hollingsworth v. Perry*, 570 U.S. 693, 709-10 (2013).

It is axiomatic "that States may organize themselves in a variety of ways. After all, the separation of government powers has long been recognized as vital to the preservation of liberty." *Berger*, 597 U.S. at 191. Further, "it is through the power to 'structure its government, and the character of those who exercise government authority, that a State defines itself as a sovereign.'" *Ibid.*, quoting *Gregory v. Ashcroft*, 501 U.S. 452, 460 (1991); *Cameron*, 595 U.S. at 277-78.

When a constitutional challenge is leveled at state law, the agent who typically represents the State's interest "'in the continued enforceability of its law'" is its Attorney General. *Hollingsworth*, 570 U.S. at 709-10, quoting *Taylor*, 477 U.S. at 137; *see Virginia House of Delegates v. Bethune-Hill*, 587 U.S. 658, 663-64 (2019). Some States, though, "have chosen to authorize multiple officials to defend their practical interests." *See Berger*, 597 U.S. at 184. "'The choice belongs' to the sovereign State." *Id.* at 192, quoting *Bethune-Hill*, 587 U.S. at 664. And "[r]espect for state sovereignty" means taking "into account the authority of a State to structure its executive branch in a way that empowers multiple officials to defend its sovereign interests in federal court." *Cameron*, 595 U.S. at 277. It also happens that "[w]hen a State chooses to allocate authority among different officials who do not answer to one another, different interests and perspectives, all important to the administration of state government, may emerge." *Berger*, 597 U.S. at 191.

Thus, the first inquiry is whether the State has authorized that state official "to defend its sovereign interests in federal court." *Cameron*, 595 U.S. at 277; *see Berger*, 597 U.S. at 193. If so, then an appellate court should examine (1) "the legal 'interest' that a party seeks to 'protect' through intervention on appeal," (2) the timeliness of the motion to intervene, and (3) whether intervention would prejudice the original parties. *Cameron*, 595 U.S. at 277-82, quoting Fed. R. Civ. P. 24(a)(2).

In *Cameron*, the Commonwealth of Kentucky authorized both the Cabinet Secretary for Health and Family Services and the Attorney General to defend a state law regulating abortion. *Id.* at 277-78. The Secretary, while represented by the Attorney General, de-

fended that law in the district court and through appeal to the Sixth Circuit. *Id.* at 272. When, however, the Secretary refused to seek further appellate review, the Attorney General promptly moved to intervene on behalf of the Commonwealth. *Id.* at 273. The Sixth Circuit denied the Attorney General's motion, concluding that no substantial legal interest was at stake, the motion was untimely, and allowing intervention would prejudice the respondents. *Ibid.*

This Court reversed. *Id.* at 282. Turning first to state law, this Court highlighted that the Kentucky Attorney General, just like the Pennsylvania Attorney General, is the "'chief law officer'" for that state "with the authority to represent [Kentucky] 'in all cases.'" *Id.* at 278, quoting Ky. Rev. Stat. Ann. § 15.020(1), (3); *see* PA. CONST. ART. IV, § 4.1.

As Kentucky's authorized agent, the legal interest that he sought to protect through intervention on appeal was "the continued enforceability of [Kentucky's] own statutes." *Id.* at 277. That legal interest was "substantial," and one that "sound[ed] in deeper, constitutional considerations," such as "the power to enact and enforce any laws that do not conflict with federal law." *Ibid.*

As to timeliness, that factor had to "'be determined from all the circumstances,' and 'the point to which a suit has progressed is not solely dispositive.'" *Id.* at 279, quoting *NAACP v. New York*, 413 U.S. 345, 365-66 (1973). Kentucky's Attorney General sought to intervene two days after "'it became clear'" that the parties would not protect the Commonwealth's interests. *Id.* at 280, quoting *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977). This was "[t]he most important circumstance" and, therefore, the Kentucky Attorney General's motion to intervene was timely. *See id.* at 279-80.

Finally, there was no unfair prejudice in permitting Kentucky's Attorney General to intervene. The plaintiffs had "no legally cognizable expectation" that Kentucky's officials would give up defense of Kentucky law until "all available forms of review had been exhausted." *Id*. at 282.

Following quickly on the heels of *Cameron* was this Court's decision in *Berger*. Although it involved state legislative leaders seeking to intervene and not an attorney general, this Court applied the same principles as it did in *Cameron*.

Like Kentucky, North Carolina had "'empower[ed] multiple officials to defend its sovereign interests in federal court'"—the Attorney General and legislative leaders. *Berger*, 597 U.S. at 192, quoting *Cameron*, 595 U.S. at 277. Under North Carolina law, legislative leaders were expressly authorized to "defend state laws 'as agents of the State.'" *Id.* at 193, quoting N.C. Gen. Stat. Ann. § 120-32.6(b). Where, as here, a State had "choose[n] to divide up its sovereign authority among different officials and authorize their participation in a suit challenging state law," a federal court had to respect that State's "plan for the distribution of governmental powers." *Id.* at 192. This Court explained the reasons why a State might choose to divide up this power, including that a State "may judge that important public perspectives would be lost without a mechanism allowing multiple officials to respond." *Id.* at 185.

That is the case here. The Attorney General and the Consumer Advocate have a different perspective than the PUC on whether to continue defending the constitutionality of Pennsylvania law. Through the Commonwealth Attorneys Act, the General Assembly has empowered these state officials to intervene to protect important state interests.

Pennsylvania's Attorney General and Consumer Advocate easily satisfied all the requirements for appellate intervention this Court established in *Cameron* and *Berger*. State statutes empowered their intervention and, in the case of the Attorney General, impel him to defend the constitutionality of state law. *Berger*, 597 U.S. at 184-85; *Cameron*, 595 U.S. at 278. Pennsylvania has a "legitimate interest in the continued enforceability of its own statutes" and in the protection of consumers and landowners. *Cameron*, 595 U.S. at 277; *see Berger*, 597 U.S. at 191. The intervention request was timely because the Attorney General and Consumer Advocate moved "as soon as it became clear that the Commonwealth's interests would no longer be protected by the parties in the case." *Cameron*, 595 U.S. at 279-80 (cleaned up). And there was no conceivable prejudice to the original parties' rights. *Id.* at 281.

A. Pennsylvania Law Authorizes Multiple State Officials to Protect the Commonwealth's Sovereign Interests.

1. The Commonwealth Attorneys Act Empowers the Attorney General to Defend the Constitutionality of "Any" and "All" State Statutes.

The Attorney General is a constitutional state officer whom the voters of Pennsylvania independently elect every four years. *See* PA. CONST. ART. IV, § 4.1. He is also "the chief law officer of the Commonwealth," and he "exercise[s] such powers and perform[s] such duties as [are] imposed by law." *Ibid.*

That law, the Commonwealth Attorneys Act, further details the duties and powers of the Attorney General. *See Commonwealth v. Carsia*, 517 A.2d 956, 958 (Pa. 1986). The Office of Attorney General is an "independent department," and it is "headed by the Attorney

General." 71 P.S. § 732-201(a). The Attorney General is required to "represent the Commonwealth and all Commonwealth agencies *** in any action brought by or against the Commonwealth or its agencies." 71 P.S. § 732-204(c). Excepted from this default representation rule are, among others, the PUC, which may "request" the Attorney General to serve as its attorney. *Ibid.*; *cf.* 66 Pa. Cons. Stat. § 308; *see also Pa. PUC v. Delaware Valley Reg'l Econ. Dev. Fund*, 255 A.3d 602, 615-17 (Pa. Cmwlth. 2021). The PUC made that request here, so the Attorney General represented the PUC in both the District Court and the Court of Appeals.

Crucially here, though, the Attorney General may also "*intervene in any other action*, including those involving *** the *constitutionality* of *any* statute." 71 P.S. § 732-204(c) (emphasis added). Indeed, the Commonwealth Attorneys Act places a "duty" on "the Attorney General to uphold and defend the constitutionality of *all statutes* so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction." 71 P.S. § 732-204(a)(3) (emphasis added). The Attorney General has this duty "*regardless of the nature of the constitutional challeng*e or *the opinion of any other state official* concerning a statute's validity." *City of Phila. v. Commonwealth*, 838 A.2d 566, 583 (Pa. 2003) (emphasis added). This structure ensures that there will always be a state party adverse to the plaintiff who will defend the statute.

"[F]or those who find legislative history useful," that, too, is clear. *See generally Lac du Flambeau Band of Laker Superior Chippewa Indians v. Coughlin*, 599 U.S. 382, 398 (2023). "The Attorney General is specifically empowered to intervene in litigation when *any* State statute is in question." *See* Final Report of the Joint State Government Commission Task Force on the Office of the Elected Attorney General, at 10 (Sept. 1,

1978) (emphasis added), *available at* https://tinyurl.com/muv387pz.

There can be no question that Transource has leveled an as-applied constitutional attack on Section 1501 of the Public Utility Code and Section 57.76(a) of the PUC regulations.[9] Transource is claiming that the PUC's application of these laws—requiring a showing of need for the proposed electrical transmission lines—is preempted by federal law. App.32a, 34a-35a.

Although the panel left its reason for denying intervention unexplained, perhaps it was swayed by Transource's erroneous argument that the Attorney General cannot intervene in litigation involving the PUC unless it requests representation from the Attorney General. ECF No.92 at 7, citing 71 P.S. § 732-204(c). Transource's argument is "more than a little difficult to square with the express statutory language." *Berger*, 597 U.S. at 193.

As the Attorney General explained to the Third Circuit, ECF No.93 at 1-4, this argument confuses representation of the PUC with the Attorney General's *independent* obligation to intervene and defend the constitutionality of Pennsylvania laws. These are separate duties under the Commonwealth Attorneys Act. *See* 71 P.S. § 732-204(c); *cf. with* 66 Pa. Cons. Stat. § 308(b) ("Except for litigation referred to the Attorney General or other appropriate outside counsel, the [PUC] Law Bureau solely shall be responsible to represent the [PUC] upon appeals and other hearings in the courts of [Pennsylvania] *** or in any Federal court"). This is underscored by Section 732-204(c)'s use of independent

[9] "A regulation has the same legal force and effect as a statute." *Commonwealth v. A.J. Wood Research Co. of Pa.*, 431 A.2d 367, 369 (Pa. Cmwlth. 1981).

clauses for these separate duties regarding representation and intervention.

Transource misread the Commonwealth Attorneys Act in another way. Transource read the phrase, "any *other* action," as limiting the Attorney General's right to intervene. This phrase, however, is "unmodified" and "all encompassing"—it is a "catch-all" provision. *See Ali v. Federal Bureau of Prisons*, 552 U.S. 214, 216, 219-20, 227 (2008) (the statutory phrase, "any other law enforcement officer" is "broad" and "covers all law enforcement officers") (collecting authorities). This reading of Section 732-204(c) is further buttressed by the word that follows, "including." That, too, is a word of enlargement. *See Samantar v. Yousuf*, 560 U.S. 305, 317 n.10 (2010).

Moreover, as the Attorney General has a duty to "defend the constitutionality of *all* statutes" and, thus, "may intervene" to defend the "constitutionality of *any* statute," *see* 71 P.S. § 732-204(a)(3), (c), Transource's argument ignores these broad statutory terms of "any" and "all." This is contrary to fundamental principles of statutory interpretation. *See e.g. Samantar*, 560 U.S. at 319 (emphasizing that a statute must be read "as a whole"). So, while the Attorney General does not represent the PUC unless—as it did here—the PUC requests representation, the Commonwealth Attorneys Act empowers the Attorney General to intervene when a state statue is attacked and left undefended. That includes statutes administered by the PUC, even when the PUC is separately represented.

As detailed above, the Commonwealth Attorneys Act is unambiguous. But if there were any doubt, "the final arbiter of [Pennsylvania] law" has spoken on this issue. *Berger*, 597 U.S. at 193; *U.S. v. Taylor*, 596 U.S. 845, 859 (2022). The Pennsylvania Supreme Court has

stated that "the Attorney General is the Commonwealth official *statutorily* charged with defending the constitutionality of *all* enactments passed by the General Assembly *** regardless of the nature of the constitutional challenge or the opinion of any other state official concerning a given statute's validity." *City of Philadelphia*, 838 A.2d at 583 (emphasis added).

As the Attorney General has repeatedly stated (and done) during his first year in office, "[i]f there's a statute that is attacked for its constitutionality, then we will absolutely defend it."[10] The Third Circuit prevented the Attorney General from fulfilling his duty, "evince[ing] disrespect," for both "state sovereignty" and this Court's precedents. *Berger*, 597 U.S. at 191; *Cameron*, 595 U.S. at 277.

2. The Commonwealth Attorneys Act Empowers the Consumer Advocate to Intervene to Protect the Interests of Consumers.

The Attorney General is statutorily required to appoint a Consumer Advocate, subject to the approval of a majority of the Senate. 71 P.S. § 732-201(b). The Consumer Advocate "is authorized, and it shall be his duty *** to represent the interest of consumers as a party *** before *any court* *** in connection with any matter involving regulation by the [PUC]." 71 P.S. § 309-4(a) (emphasis added).

The Consumer Advocate could have intervened in this matter when it was before the PUC or once in the District Court, *see* 71 P.S. § 309-4(b), but declined to do so because the PUC was then adequately representing

---

[10] Jaxon White, *Pa. Attorney General Dave Sunday Says He'll Defend State AI Laws From Trump Administration*, Lancaster Online (Dec. 16, 2025).

the interests of consumers. That is no longer true, necessitating the Consumer Advocate's intervention.

Pennsylvania consumers clearly have an interest in litigation that would raise their power bills by $400 million. App.27a, 30a; JA166 (ALJ Dec.). And the Commonwealth has designated the Consumer Advocate as an agent who will defend the Commonwealth's sovereign interest in protecting consumers from rising energy prices. *See Cameron*, 595 U.S. at 277; *see also Energy Reserves Grp. v. Kansas Power & Light Co.*, 459 U.S. 400, 416-17 (1983) (noting that the State of Kansas "exercised its police power to protect consumers from the escalation of natural gas prices by deregulation").

B. Pennsylvania Has a Substantial Interest at Stake in the Continued Enforceability of a State Statute Regulating Land Use.

Pennsylvania always has a substantial interest in the continued enforceability of any state statute. *Berger*, 597 U.S. at 192; *Cameron*, 595 U.S. at 277; *Maryland v. King*, 567 U.S. 1301, 1303 (2012) (Roberts, C.J., in chambers). But that interest is especially pronounced here.

The Third Circuit's merits decision upset settled law by usurping the Commonwealth of the most "quintessential" state power—the power to regulate its land use—and turning it over to a non-governmental entity, PJM. *Rapanos v. U.S.*, 547 U.S. 715, 738 (2006); *FERC v. Mississippi*, 456 U.S. 742, 767 n.30 (1982).

Contrary to the Third Circuit's reasoning, the PUC's need determination was not novel. States have historically rejected proposed interstate electrical transmission lines that provide no in-state benefits. *Mississippi Power & Light Co. v. Conerly*, 460 So.2d 107, 112 (Miss. 1984) ("public necessity" for 51 miles of

high voltage transmission lines from Mississippi to Louisiana was lacking, as "not one Mississippi consumer will receive electricity directly from the line"); *Clark v. Gulf Power Co.*, 198 So.2d 368, 371-72 (Fla. Dist. Ct. Appeal 1967) ("one way transmission line" from Florida to Georgia, "from which the citizens of Florida will not derive one iota of benefit," was not needed).[11] Now, though, when PJM includes in its regional plan a project for the construction of an interstate electrical transmission line, Pennsylvania has no authority to decide whether that line is needed within its borders.

This preemption did not flow either from the Constitution or from the Federal Power Act. To the contrary, other than the Takings Clause, nothing in the Constitution grants power to the federal government over the use of state land; that power is reserved to the States under the Tenth Amendment. The Federal Power Act itself "teem[s] with references to state involvement" in the regulation of transmission, including a declaration that FERC's jurisdiction "extend[s] only to those matters which are not subject to regulation by

---

[11] *See also* Sandeep Vaheesan, *Preempting Parochialism and Protectionism in Power*, 49 HARV. J. ON LEGIS. 87, 97-98 & n.69 (2012) (acknowledging that the states "retain primary jurisdiction over the siting of transmission lines," which involves a "state-level cost-benefit analysis," including, historically, whether the line would "benefit" "in-state customers"); Associated Press, *Arizona Kills Edison Power Line*, L.A. Times Archive (May 31, 2007), *available at* https://tinyurl.com/5a9srhdf (Arizona Corporation Commission rejected a 230-mile transmission line route to California, a "giant extension cord," that would have benefitted "California utility customers at the expense of their Arizona counterparts"); *Issue Brief: Electric Transmission Infrastructure*, CRES FORUM (July 20, 2023) (noting that states "are often reluctant to allow projects to be sited without any direct benefits to the state or its municipalities"), *available at* https://tinyurl.com/mvupda64.

the States." 16 U.S.C. § 824(a); *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1129 (6th Cir. 2025); *see also* Energy Policy Act of 1992, P.L. 102-486, § 731 ("Nothing in this title or in any amendment made by this title shall be construed as affecting or intending to affect, or in any way to interfere with, the authority of any State *** relating to *** the siting of facilities"). And "the states have traditionally assumed *all jurisdiction* to approve or deny permits for the siting and construction of electric transmission facilities." *Piedmont*, 558 F.3d at 310 (emphasis added).

Instead of the Constitution or a federal statute, the Third Circuit relied on FERC's approval of the methodology that PJM used to determine whether a project should be included in its regional plan. App.48a-49a. According to the Third Circuit, this FERC approval preempts a state law requirement of need. *Ibid.* However, "even FERC's regulatory oversight over [regional transmission organizations] does not represent any intent to preempt the states' decades-authority to conduct [certificate of public convenience and necessity] proceedings." *PPL Elec. Util. Corp. PJM Interconnection, LLC*, 188 FERC P 61084, ¶ 5 (July 29, 2024) (Commissioner Christie dissenting).[12] Indeed, outside very limited circumstances, not even FERC has been given that kind of authority by Congress.

Congress gave FERC the limited authority to issue permits to site interstate transmission lines in areas specifically designated as National Interest Electric Transmission Corridors. 16 U.S.C. § 824p. The

---

[12] *See also* Ferrey, 27 VT. J. ENVTL. L. at 136 (observing that FERC and delegate regional transmission organizations, "such as PJM, cannot extend their statutory authority unilaterally from an administrative order").

Transource project, however, is not within such a corridor. In its Order 1000, FERC itself "said the opposite" of what the panel concluded here. *PJM Interconnection, LLC*, 191 FERC P 61056, at ¶3-4 (Chairman Christie, concurring); FERC Order 1000, 76 Fed.Reg. 49842-01, ¶ 107 (emphasizing that nothing in Order 1000 "involves an exercise of siting, permitting, and construction authority," which has been "traditionally reserved to the states"); *id.*, ¶ 159 (declining "to impose obligations to build"); *see also* FERC Order 1000-A, 77 Fed.Reg. 32184-01, ¶ 188 (Order 1000 was "not intended to dictate substantive outcomes, such as what transmission facilities will be built and where"); *id.*, ¶ 190 (a project selected for inclusion in the regional plan "may not ultimately be constructed should the developer not secure the necessary approvals from the relevant state regulators").

Outside the very limited exception for national interest corridors, nowhere in the Federal Power Act did Congress preempt the States' traditional authority to determine whether a transmission line is needed and hand that authority over to FERC, let alone to a private entity that is unaccountable to the electorate. *See* 16 U.S.C. §§ 824(a), 824p; Energy Policy Act of 1992, P.L. 102-486, § 731. Contrary to the Third Circuit's conclusion, the intent of Congress to preempt state power here is anything but "clear and manifest." App.52a; *see Medtronic, Inc. v. Lohr*, 518 U.S. 470, 485 (1996).[13]

---

[13] More transmission is not necessarily the solution to congestion. Congestion is an economic signal indicating that additional low-cost generation is needed. JA104, JA165 & n.21 (ALJ Dec.); *see Deutsche Bank Energy Trading LLC*, 140 FERC P 61178, 61805 n.28 (2012). Some states, however, have moved to end in-state fossil fuel generation. *See* Blunt & Hiller, *supra* (noting that some states within the PJM-region have shut down goal and gas-fired power plants to reduce carbon emissions).

Even worse than the usurpation of a traditional state police power, the panel's decision will result in the violation of landowners' constitutional rights. In the future, landowners will be limited in their ability to defend against eminent domain because there is no forum for them to challenge the utility's claim that the proposed transmission lines are needed. *See* U.S. CONST. AMEND. V, XIV.

The panel waved away the impact of its decision on due process rights of landowners by misconstruing the PUC's arguments and then setting up a strawman. App.58a-61a. The PUC never contended that preempting the state law requirement of need would mean "ipso facto" that a utility would exercise eminent domain authority. App.61a. Rather, the PUC's argument was that it is now preempted from addressing need—a critical element to both an application to site a transmission line and to condemn land. *See* 15 Pa. Cons. Stat. § 1511(c); 66 Pa. Cons. Stat. § 1501; 52 Pa. Code §§ 57.75(e)(1), 57.76(a)(1); *see also* 52 Pa. Code § 57.75(i)(1-2) (permitting consolidation of siting and eminent domain applications).

Any claim that the PUC's decision was the result of parochialism is false. Pennsylvania approves interstate transmission lines when they are needed. *See*, *e.g.*, *Transource PA, LLC v. Pa. PUC*, 278 A.3d 942, 962 (Pa. Cmwlth. 2022) (collecting examples). In fact, the PUC is statutorily required to "take all necessary and appropriate steps to encourage interstate power pools to enhance competition and to complement industry restructuring on a regional basis." 66 Pa. Cons. Stat. § 2805. And, indeed, Pennsylvania "is the second-largest net supplier, after Texas, of total energy to other states." U.S. Energy Information Administration, Pennsylvania State Energy Profile (last updated Jan. 16, 2025), available at https://www.eia.gov/state/print.php?sid=PA. "Pennsylvania, more than any other state in the nation, functions as the pass-through state 'poster child' in the U.S. electric grid." Ferrey, 27 VT. J. ENVTL. L. at 128.

Instead of addressing that, the panel threw landowners a bone, asserting that other issues must still be addressed before a utility is authorized to site a line and condemn land. App.60a, citing 52 Pa. Code § 57.75(e). This is irrelevant. Even if the panel did not recognize it, the effect of its decision is logical and elementary—the issue of whether a transmission line is needed is preempted. Pennsylvania must now "rubber stamp" PJM's determination of need. App.61a. Utilities are already making this argument. *See infra*, Section II.

Thus, the only process now for challenging whether a transmission line is needed is the PJM regional transmission planning process. But that process "is not remotely the equivalent of a serious, litigated state [certificate of public convenience and necessity] process," like the one the PUC conducted here. *Valley Link Transmission Maryland*, 191 FERC P 61113, ¶ 7 (May 13, 2025) (Chairman Christie concurring and dissenting). The regional transmission planning process does not provide notice to landowners or an opportunity to be heard on whether a project is needed.

In selecting projects for inclusion in the regional plan, the PJM Board does not conduct evidentiary hearings, develop a factual record, take sworn testimony, or permit cross-examination, briefing or argument by interested parties. Dist. Ct. Docket, 164-1 (Ex. A, David Souder Dep. Tr., at 59).[14] The state siting pro-

[14] PJM's so-called engineering experts were ultimately proven wrong, too. *See U.S. v. Skrmetti*, 605 U.S. 495, 531 (2025) (Thomas, J., concurring). In a June 4, 2024 "Market Efficiency Update," PJM acknowledged that the Transource project actually in-

ceeding, in contrast, provides all the procedural protections associated with a trial and "is open to intervenors such as consumer advocates." *Valley Link Transmission Maryland*, 191 FERC P 61113, at ¶ 7. In short, landowners will no longer be heard on the element of need.

In addition to the usurpation of state sovereignty and the violation of landowners' constitutional rights to due process, the Transource project will raise energy prices for Pennsylvania consumers by $400 million. App.27a, 30a; JA166 (ALJ Dec.). Pennsylvania has a "significant and legitimate interest" in "protect[ing] consumers from the escalation of [energy] prices" caused by the panel's authorization of unconstitutional actions. *Energy Reserves Grp., Inc.*, 459 U.S. at 416-17.

These are all reasons why Pennsylvania authorizes "multiple officials to defend [its] practical interests." *Berger*, 597 U.S. at 184, 198; *Cameron*, 595 U.S. at 277. The Attorney General and the Consumer Advocate seek to "vindicate *** valuable state interests" different from those of concern to the PUC.[15] *Berger*, 597 U.S. at 199.[16]

---

creases "uncontrollable congestion." PJM, Market Efficiency Update, slide 20 (June 4, 2024), available at https://tinyurl.com/5b86r5ad.

[15] Unlike the Attorney General, who is independently elected by the voters, the PUC Commissioners are appointed by the Governor with the advice and consent of the Senate. *See* 66 Pa. Cons. Stat. § 301(a).

[16] That Pennsylvania state officials have "different interests and perspectives" is not atypical or even unexpected. *See Berger*, 597 U.S. at 191; *Eakin v. Adams Cty. Bd. of Elections*, 149 F.4th 291 (3d Cir. 2025) (disagreement between Pennsylvania's Attorney General and Secretary of the Commonwealth in a constitutional challenge to a provision of Pennsylvania's Election Code), *cert. pending sub nom Pennsylvania v. Eakin*, 25-967. The General

C. The Motion to Intervene was Timely.

Timeliness must "'be determined from all the circumstances,' and 'the point to which a suit has progressed is not solely dispositive.'" *Cameron*, 595 U.S. at 279, quoting *NAACP*, 413 U.S. at 365-66. "[T]he most important circumstance relating to timeliness is that the attorney general sought to intervene as soon as it became clear that the Commonwealth's interests would no longer be protected." *Id.* at 279-80. That occurred here.

As noted, the Attorney General first learned of the PUC's refusal to seek further review on September 29, 2025. It was not until two weeks later, during the week of October 13, that the PUC explained its rationale. On October 16, 2025, the PUC Chairman mailed legislators a letter outlining the PUC's reasons for not seeking further appellate review. ECF No.92, Exhibit A.

The Attorney General and the Consumer Advocate could not properly determine whether to intervene until they could evaluate the PUC's rationale. Their "need to seek intervention did not arise until the [PUC] ceased defending the state law," and explained its rationale for not pursuing further appellate review. *See Cameron*, 595 U.S. at 280. The timeliness of the intervention "motion should be assessed in relation to that point in time." *Ibid.*

Thus, the fact that this litigation has "proceeded for years *** is not dispositive." *Ibid.* Rather, what is dispositive is that just a few days after learning of the

---

Assembly wrote into the Commonwealth Attorneys Act what should happen when state officials disagree. 71 P.S. § 732-303; 71 P.S. § 732-403. The Governor or the state agency may intervene, as a matter of right, in defense of the agency, and the Attorney General will "continue to represent the Commonwealth." 71 P.S. § 732-303; 71 P.S. § 732-403; *Synthes*, 289 A.3d at 851, 860, 863.

PUC's rationale for not seeking further review, the Attorney General and the Consumer Advocate moved to intervene.

Keep in mind that the Attorney General had been representing the PUC since this case was filed in the District Court and, as explained in the next section, the time for filing a petition for *en banc* review or a petition for certiorari with this Court had not expired. The Attorney General simply sought to pick up where the PUC had left off in this litigation and "pursue only the usual next steps of appellate review." *Cameron*, 595 U.S. at 292 (Kagan, J., concurring). Under these circumstances, the proposed intervenors' motion was timely. *See Cameron*, 595 U.S. at 280-81; *United Airlines*, 432 U.S. at 394-95.

D. Intervention Would Not Prejudice the Parties' Rights.

Permitting the Attorney General and Consumer Advocate to intervene would not prejudice the parties' rights. Indeed, there is no conceivable prejudice because the Attorney General was simply seeking to intervene to maintain the legal defense of the law and had previously represented the PUC throughout the federal litigation.

Further, when the proposed intervenors moved to intervene, the time for filing an *en banc* petition had not expired. And, indeed, as part of their motion to intervene, they requested an extension. Transource did not oppose that request, and the Third Circuit granted it. ECF No.91. The time for filing a petition for certiorari with this Court on the merits had also not expired. *See United Airlines*, 432 U.S. at 395.

The PUC itself did not oppose the motion to intervene. The PUC acquiesced because it recognizes the au-

thority of the Attorney General and the Consumer Advocate to intervene under state law and the lack of prejudice to the parties. The motion to intervene "did nothing to delay the suit's normal progress" or "otherwise prejudice" the parties. *Cameron*, 595 U.S. at 292 (Kagan, J., concurring).

II. THIS CASE IS IMPORTANT

As the Court can see, this "is no ordinary pedestrian dispute." *Ferrey*, 27 VT. J. ENVTL. L. at 153. Indeed, "[t]his case constitutes an inflection point." *Ibid.*

Since the enactment of the Federal Power Act, "federal courts have never sanctioned any implied federal preemptive siting of transmission infrastructure when states do not grant permits for land use." *Ibid.* That is because Congress drew "a bright line easily ascertained, between state and federal jurisdiction." *Fed. Power Comm'n v. S. Cal. Edison Co.*, 376 U.S. 205, 215 (1964). The Third Circuit has erased that line.

Moreover, the Third Circuit's ruling was radical. It delegated sovereign, preemptive authority to a "private, member-run regional transmission organization." Carolyn Elefant, *Alert: Transource Pennsylvania LLC v. DeFrank: Not Your Grandpa's Preemption*, Power Up Legal, *available at* https://tinyurl.com/5cwxpbt6. PJM and its members are not accountable to any electorate. The 67 million people within the PJM region, especially landowners, are at the mercy of PJM and its members as they push more transmission without any notice to those who stand in their way.

The impact of the Third Circuit's ruling is already being felt. A utility has proposed constructing 107.5 miles of 500-kV transmission lines across Maryland, Pennsylvania, West Virginia, and Virginia. That utility recently filed its siting application with the PUC and asserted that, because PJM had already determined

that this project is needed, the PUC is "preempted from denying the *** [p]roject based upon a finding that there is not a sufficient need for it." Nextera Energy Transmission Full Siting Application, Docket No. A-2006-3060856, ¶ 13, available at https://www.puc.pa.gov/pcdocs/1916616.pdf, citing *Transource*, 156 F.3d at 379.

But it will not end with need determinations. Having wrested that power away from Pennsylvania, utilities are hungry for more. Utilities are already using this decision to erode state authority further. *See Dayton Power*, 126 F.4th at 1129 (utilities argued that state law mandating that they participate in a regional transmission organization was preempted). The Third Circuit's ruling "radically" changes "the rules of the game *** after the fact *** without the states' agreement and *** contrary to earlier pledges to respect state laws." *PJM Interconnection, LLC*, 191 FERC P 61056, at ¶10 (Chairman Christie, concurring). If this continues, the states may withdraw from regional transmission organizations like PJM. *Ibid.*; Peter Hall, *Pa. Gov. Shapiro Said Electric Grid Operator PJM Needs to Reform to Put Consumers First*, Pennsylvania Capital-Star (Sept. 22, 2025).

The National Association of Regulatory Utility Commissioners, which represents the interests of public utility commissioners from agencies of all 50 States, the District of Columbia, Puerto Rico, and the Virgin Islands, foresaw this. That is why they filed an amicus brief in the Third Circuit, "vigorously oppos[ing]" the position of Transource and PJM. ECF No.36; *PJM Interconnection, LLC*, 191 FERC P 61056, at ¶10 (Chairman Christie, concurring). These state regulators recognized that the Third Circuit's decision will have a "national impact." ECF No.36 at 5.

And that is why this Court should allow the Attorney General and Consumer Advocate to intervene in this "make or break case." Ferrey, 27 VT. J. ENVTL. L. at 113. That would afford the *en banc* court the opportunity to short-circuit the panel's errors, restore the state-federal balance, and vindicate the due process rights of landowners.

III. SUMMARY REVERSAL IS WARRANTED

Although this Court cannot "correct every perceived error coming from the lower federal courts," summary relief is warranted here to correct the Third Circuit's "demonstrably erroneous application of federal law." *Tolan*, 572 U.S. at 659; *Maryland v. Dyson*, 527 U.S. 465, 467 n.* (1999) (per curiam). The strong medicine of summary reversal promotes respect for the rule of law by "treat[ing] like cases alike." *June Med. Servs. LLC v. Russo*, 591 U.S. 299, 345 (2020) (Roberts, C.J., concurring). The practice ensures that lower courts follow settled precedent and thus guards against "arbitrary discretion in the courts." *Id.* at 346, quoting THE FEDERALIST No. 78, p.529 (A. Hamilton) (J. Cooke ed. 1961).

In the face of settled law and undisputed facts, the panel denied intervention. *See Schweiker v. Hansen*, 450 U.S. 785, 791 (1981) (Marshall, J., dissenting). That the denial was unexplained suggests that it was arbitrary. At the very least, the denial reflects "a clear misapprehension" of this Court's "standards in light of [its] precedents." *Tolan*, 572 U.S. at 659 (summarily reversing award of summary judgment in qualified immunity case because the Circuit Court clearly misapprehended this Court's precedents regarding the summary judgment standards), citing *Brosseau v. Haugen*, 543 U.S. 194, 197-98 (2004); *Florida Dept. of Health and Rehab. Servs. v. Florida Nursing Home Ass'n.*, 450

U.S. 147, 150 (1981) (per curiam). Just as with qualified immunity, where this Court has had to correct the lower courts repeatedly on the principles of that doctrine, the same is true here with respect to the intervention of state officials. *City of Escondido v. Emmons*, 586 U.S. 38, 42 (2019) (per curiam); *Mullenix v. Luna*, 577 U.S. 7, 19 (2015) (per curiam); *Carroll v. Carman*, 574 U.S. 13, 20 (2014) (per curiam).

This Court should repeat what it has previously stated in *Cameron* and *Berger*—the person or persons who will defend a State's sovereign interests in federal court is a "choice [that] belongs to the sovereign State." *Berger*, 597 U.S. at 193; *Cameron*, 595 U.S. at 277-78. For this type of case, Pennsylvania has designated the Attorney General and the Consumer Advocate as its agents to represent the Commonwealth in federal court in defense of state law and for the protection of consumers and landowners. *Berger*, 597 U.S. at 192. The Attorney General and the Consumer Advocate satisfied all the other requirements for intervention. They seek only a "fair opportunity" to overturn the Third Circuit's erroneous merits decision usurping state sovereignty, violating landowners' constitutional rights, and harming consumers. *Cameron*, 595 U.S. at 278.

CONCLUSION

The Court should grant the petition for a writ of certiorari, summarily reverse the Third Circuit's order denying intervention, and permit the Attorney General and the Consumer Advocate to intervene in this appellate proceeding.

Respectfully submitted,

DAVID W. SUNDAY, JR.
Attorney General
Commonwealth of Pennsylvania

MICHAEL J. SCARINCI
Senior Deputy Attorney General
Counsel of Record

DANIEL B. MULLEN
Chief Deputy Attorney General
Chief, Appellate Litigation Section

Office of Attorney General
15h Floor, Strawberry Square
Harrisburg, PA 17120
(717) 497-4051

COUNSEL FOR PETITIONERS

March 2026