


In the
Supreme Court of the United States



DAVID W. SUNDAY, JR.,
ATTORNEY GENERAL OF PENNSYLVANIA, ET AL.,
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

BRIEF OF AMICUS CURIAE
COALITION TO PROTECT FRANKLIN COUNTY
IN SUPPORT OF PETITIONERS

Benjamin C. Dunlap, Jr.
Counsel of Record
Dylan W. LaMorte
COHEN SEGLIAS PALLAS GREENHALL & FURMAN, P.C.
240 North Third Street, 7th Floor
Harrisburg, PA 17101
(717) 480-5303
bdunlap@cohenseglias.com

TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF THE AMICUS CURIAE	1
INTRODUCTION	2
SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. Procedural Due Process Concerns	5
A. The Third Circuit’s Holding Deprives Affected Landowners of Any Meaningful Opportunity to Challenge the Threshold Determination of Need.	7
B. The Risk of Erroneous Deprivation of Affected Landowner’s Property Rights Favors the Implementation of Additional Procedural Safeguards.	14
C. The Government’s Interest in Regional Transmission Planning Does Not Outweigh the Strong Countervailing Interests in Procedural Fairness.....	17
II. Public Interest Considerations Strongly Favor Affording Landowners a Meaningful Opportunity to Challenge PJM’s Determination of Need.....	18
CONCLUSION.....	21

TABLE OF AUTHORITIES

	Page
CASES	
<i>Application of Duquesne Light</i> , 2021 WL 5051984 (Pa. PUC Oct. 28, 2021)	9
<i>Armstrong v. Manzo</i> , 380 U.S. 545 (1965)	6
<i>Berger v. North Carolina State Conference of the NAACP</i> , 597 U.S. 179 (2022)	3
<i>Bi-Metallic Investment Co. v. State Board of Equalization</i> , 239 U.S. 441 (1915)	15
<i>Cameron v. EMW Women’s Surgical Center</i> , 595 U.S. 267 (2022)	3
<i>Commonwealth v. Turner</i> , 80 A.3d 754 (Pa. 2013)	5
<i>Fuentes v. Shevin</i> , 407 U.S. 67 (1972)	5, 8
<i>Kentucky Department of Corrections v. Thompson</i> , 490 U.S. 454 (1989)	6
<i>Ky. W. Va. Gas Co. v. Pa. Pub. Util. Comm’n</i> , 791 F.2d 1111 (3d Cir. 1986)	19
<i>Mathews v. Eldridge</i> , 424 U.S. 319 (1976)	6, 7, 8, 9, 14, 17, 18
<i>Nat’l R.R. Passenger Corp. v. Two Parcels of Land</i> , 822 F.2d 1261 (2d Cir. 1987)	18
<i>Rogin v. Bensalem Twp.</i> , 616 F.2d 680 (3d Cir. 1980)	7
<i>Transource Pa., LLC v. DeFrank</i> , 156 F.4th 351 (3rd Cir. 2025)	3

TABLE OF AUTHORITIES (Cont.)

	Page
<i>United States v. Carmack</i> , 329 U.S. 230 (1946)	18
<i>United States v. James Daniel Good Real Estate</i> , 510 U.S. 43 (1993)	6, 7

CONSTITUTIONAL PROVISIONS

U.S. Const. amend. V	5
----------------------------	---

STATUTES

16 U.S.C. § 824p	19
16 U.S.C. § 824p(a)(1)–(2)	19
16 U.S.C. § 824p(b)	19
15 Pa.C.S. § 1511(c)	9
66 Pa.C.S. § 1501	9

JUDICIAL RULES

Sup. Ct. R. 37	1
----------------------	---

REGULATIONS

18 C.F.R. § 50.4	10
18 C.F.R. § 50.5	10
18 C.F.R. § 385.211	13
52 Pa. Code § 57.71	8, 14, 17
52 Pa. Code § 57.72(c)(4)	13
52 Pa. Code § 57.74(c)(1)(iv)	13
52 Pa. Code § 57.75(d)	13

TABLE OF AUTHORITIES (Cont.)

	Page
52 Pa. Code § 57.76(a).....	9
52 Pa. Code § 69.321.....	13
FERC Order No. 1000, 76 Fed. Reg. 49,842, 49,845 (2011).....	10, 17

OTHER AUTHORITIES

J. Nowak, R. Rotunda & J. Young, <i>Constitutional Law</i> (1978)	7
--	---



INTEREST OF THE AMICUS CURIAE

The COALITION TO PROTECT FRANKLIN COUNTY (“CTPFC”), respectfully submits this *amicus curiae* brief in support of Petitioner, pursuant to U.S. Sup.Ct. Rule 37.¹

CTPFC is a Pennsylvania nonprofit corporation, formed in September 2024, whose mission includes the “goal to forever preserve and protect the richest, most beautiful and highly productive farmlands of Franklin County” and to “maintain a healthy environment and a long-term, sustainable, agricultural economy.” See www.CTPFC.com (last visited April 10, 2026). The individuals involved in CTPFC are homeowners, farmers and business owners in Franklin County whose properties would be permanently affected by the construction of a high-voltage electricity transmission line proposed by Transource PA, LLC (“Transource”), known as Project 9A. Those detriments would include the taking of easements by eminent domain for the placement of monopoles carrying high-voltage lines on and through their lands.

CTPFC (then an association of residents known as Stop Transource Franklin County) intervened and fully participated in the proceedings of the Pennsylvania

¹ In line with U.S. Sup.Ct. Rule 37.2, CTPFC provided notice of its intent to file this amicus brief with the other parties on March 24, 2026. No party or party’s counsel authored this brief in whole or in part or contributed money that was intended to fund preparing or submitting the brief. No person other than CTPFC contributed money that was intended to fund preparing or submitting the brief.

Public Utility Commission (“PUC”), which denied the application of Transource for its transmission line on the basis of need. That decision was appealed and affirmed by the Pennsylvania Commonwealth Court, in which proceeding the predecessor to CTPFC also participated.

CTPFC’s predecessor further sought intervention in the District Court proceeding, which was denied by Judge Jennifer P. Wilson in her Order dated July 23, 2021, based upon the matters before the District Court being legal issues for which its interests were shared with and represented by the PUC. CTPFC’s predecessor participated as an amicus on appeal to the Third Circuit.



INTRODUCTION

CTPFC submits this amicus brief in support of the Petition for a Writ of Certiorari (“Petition”) filed by the Pennsylvania Office of Attorney General (“Petitioner”), docketed on March 16, 2026. Petitioner, along with the Pennsylvania Office of Consumer Advocate, sought to intervene in the underlying proceeding after the PUC refused to continue its defense of the state statute at issue following the Third Circuit’s holding that the statute was preempted. The Pennsylvania statute at issue requires that a public utility show the public need for an electrical transmission line before that line may be constructed within the state.

The Third Circuit denied those requests for intervention without explanation. Petitioner argues that the Third Circuit’s denial of intervention was 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). CTPFC fully supports Petitioner's arguments for intervention pursuant to the reasons set forth in its Petition.

The purpose of CTPFC's amicus brief is to highlight the serious procedural due process violations inherent in the Third Circuit's decision providing a private utility company essentially *de facto* condemnation authority for a high voltage electrical transmission line without recourse to a meaningful hearing for those property owners subject to the takings. A reversal of the determination that the underlying statute is preempted, or alternatively, CTPFC being provided an opportunity to object to the need for the takings in a federal district court would remedy those violations. Petitioner should thus be permitted to intervene to argue on behalf of the Commonwealth of Pennsylvania in support of a proper state/federal balance of power over land use, in line with this Court's prior holdings on intervention.



SUMMARY OF ARGUMENT

The Third Circuit's ruling² that the PUC may not reject a transmission project based on a state law need determination because it conflicts with the Regional Transmission Expansion Plan ("RTEP") of PJM

² Reported as *Transource Pa., LLC v. DeFrank*, 156 F.4th 351 (3rd Cir. 2025).

Interconnection, LLC (“PJM”), eliminates the only meaningful forum in which affected landowners have historically been able to contest the need for a high-voltage transmission line before their property is taken by eminent domain.

Pennsylvania law required that before a public utility could construct a high-voltage transmission line, it was required to demonstrate, in a full evidentiary proceeding before the PUC, that the project was necessary and proper. That process ensured that affected landowners received notice, an opportunity to present evidence, and the ability to test the utility’s position before a neutral judge. In short, it satisfied the requirement of procedural due process, which at a minimum requires a meaningful opportunity to be heard at a meaningful time.

The Third Circuit’s Decision removed those safeguards. By holding that the PUC may not reject a transmission project based on its own independent assessment of need where that assessment conflicts with the RTEP developed by PJM, the Third Circuit has replaced a straightforward evidentiary proceeding with a private and opaque one. Indeed, the threshold determination of whether a project is needed is now made within PJM’s internal planning process, which affords affected landowners no notice, no right to participate, and no opportunity to challenge the evidence on which that determination rests. In short, the Third Circuit transformed PJM’s private, staff-driven process into a binding and unreviewable determination.

Once a project is approved through PJM’s RTEP process, the question of need is effectively settled for all practical purposes. Any subsequent proceedings before the PUC are now limited to issues such as safety

and environmental challenges. By then, the principal decision has already been made, and the exercise of eminent domain becomes all but inevitable. The opportunity to be heard is thus deferred until *after* it can no longer serve its purpose.

When the action of a private entity exercising delegated governmental power threatens to deprive individuals of their property, due process requires more than a delayed opportunity to challenge on the margins of a predetermined outcome. It requires a meaningful opportunity to contest the need for the deprivation of property before it occurs.

This Court should reverse the Third Circuit’s decision below or, at a minimum, remand to ensure that affected landowners are afforded the procedural protections the Constitution requires. Permitting the intervention of Petitioner would permit arguments supporting those due process rights to be heard.



ARGUMENT

I. Procedural Due Process Concerns

The Due Process Clause of the Fifth Amendment to the United States Constitution guarantees that “[n]o person shall be . . . deprived of life, liberty, or property, without due process of law[.]” U.S. Const. amend. V. Under both the federal and state constitutions, the basic elements of procedural due process are adequate “notice and an opportunity to be heard.” *Fuentes v. Shevin*, 407 U.S. 67, 80 (1972); accord, *Commonwealth v. Turner*, 80 A.3d 754, 764 (Pa. 2013).

This Court has consistently held that “some form of hearing” is required before a final deprivation of a protected property interest, although the exact nature and mechanism of the required procedure will vary based upon the unique circumstances surrounding the controversy. *Mathews v. Eldridge*, 424 U.S. 319, 333 (1976). The fundamental requirement of due process is the opportunity to be heard “at a meaningful time and in a meaningful manner.” *Armstrong v. Manzo*, 380 U.S. 545, 552 (1965).

Courts examine procedural due process in two steps: the first asks whether interference with a life, liberty or property interest has occurred, and the second examines whether the procedures attendant to that deprivation are constitutionally sufficient.³ *Kentucky Department of Corrections v. Thompson*, 490 U.S. 454, 460 (1989). In *Mathews*, this Court developed a balancing test that expands the second step of the due process analysis to assess the constitutional sufficiency of the statutory or regulatory procedure. *Id.*, 424 U.S. at 333-335. First, the court must consider the private interest that will be affected by the official action. Second, the court considers the risk of an erroneous deprivation of such interest through the procedures used and the probable value, if any, of additional or substitute procedural safeguards. *Id.* Third, the court

³ CTPFC focuses on the second step, because as to the first, there can be no doubt that the taking of private property for a high voltage transmission line deprives affected landowners of a significant, protected property interest. See *United States v. James Daniel Good Real Estate*, 510 U.S. 43, 53-54 (1993) (“Good’s right to maintain control over his home, and to be free from governmental interference, is a private interest of historic and continuing importance.”)

considers the government's interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail. *Id.*

The Third Circuit has further articulated the following as elements of Due Process:

(1) notice of the basis of the governmental action; (2) a neutral arbiter; (3) an opportunity to make an oral presentation; (4) a means of presenting evidence; (5) an opportunity to cross-examine witnesses or to respond to written evidence; (6) the right to be represented by counsel; and (7) a decision based on the record with a statement of reasons for the result.

Rogin v. Bensalem Twp., 616 F.2d 680, 694 (3d Cir. 1980) (citing J. Nowak, R. Rotunda & J. Young, *Constitutional Law* 488-503 (1978) and cases collected therein). Whether all or any one of these safeguards are required in a particular situation depends on the outcome of the balancing test mentioned above. *Mathews*, 424 U.S. at 335.

A. The Third Circuit's Holding Deprives Affected Landowners of Any Meaningful Opportunity to Challenge the Threshold Determination of Need.

Before a governmental body, or any entity exercising governmental authority, may deprive a landowner of a property interest, it must provide due process. *James Daniel Good Real Estate*, 510 U.S. at 53-56. The first *Mathews* factor requires courts to identify the weight to be given to the private interests affected by the official action at issue. Courts also consider the

“degree of potential deprivation” or “impact” created by the official action on the private interests. *Mathews*, 424 U.S. at 341.

Constitutional considerations generally require a hearing before a governmental body deprives a person of a protected liberty or property interest in order to minimize deprivations from substantially unfair or mistaken deprivations. “If the right to notice and a hearing is to serve its full purpose, then, it is clear that it must be granted at a time when the deprivation can still be prevented.” *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1972).

Prior to the Third Circuit’s decision on Project 9A, Pennsylvania law provided landowners with precisely these protections. Under that framework, when a public utility seeks to site and construct a high-voltage transmission line, it is required to file an application with the PUC under 52 Pa. Code § 57.71. The PUC was then obligated to hold a full evidentiary hearing and make specific findings on four statutory criteria before granting approval or authorizing eminent domain powers:

- (1) That there is a need for the high voltage transmission line.
- (2) That the high voltage transmission line will not create an unreasonable risk of danger to the health and safety of the public.
- (3) That the high voltage transmission line is in compliance with applicable statutes and regulations providing for the protection of the natural resources of the Commonwealth.
- (4) That the high voltage transmission line will have minimum adverse environmental impact, considering the electric power needs of the public, the state of avail-

able technology and the available alternatives.

Application of Duquesne Light, 2021 WL 5051984, at *11 (Pa. PUC Oct. 28, 2021), *citing*, 52 Pa. Code § 57.76(a). This regulation applies whenever a public utility files an application with the PUC seeking authorization to locate and construct a high-voltage transmission line in Pennsylvania.

In practice, the state proceedings afford affected landowners notice, the right to intervene, the opportunity to present evidence and expert testimony on local impacts, the costs to Pennsylvania ratepayers, potential alternatives, the overall public interest, as well as the ability to cross-examine utility witnesses, and to obtain a reasoned decision by a judge. *Id.* at *3, *9.

Only after the PUC affirmatively determined that a project was “necessary and proper” within the meaning of 66 Pa.C.S. § 1501 could the utility exercise eminent domain. *See* 15 Pa.C.S. § 1511(c). “If the applicant establishes that the proposed project is necessary and proper within the meaning of Section 1501, *then* consideration turns to whether the route selected is appropriate in terms of location, safety, health and environmental impacts, and costs.” *Application of Duquesne Light Co.*, 2021 WL 5051984 at *10 (emphasis added).

This framework satisfied due process by ensuring that the dispositive decision, *i.e.*, whether the project was necessary at all, was subject to challenge before any property rights were placed at risk. Indeed, this framework provided all of the fundamental elements described in *Mathews*.

The Third Circuit's ruling changes that landscape entirely. The Third Circuit's ruling, that the PUC may not reject a transmission project based on the PUC need analysis because it conflicts with PJM's RTEP assessment, removes the only forum in which Pennsylvania-affected landowners historically could contest the threshold necessity of a high-voltage transmission line. Indeed, by incorrectly holding that the PUC's independent need determination blocks federal regional planning objectives, the Third Circuit transformed PJM's staff-driven process into binding and unreviewable conduct.

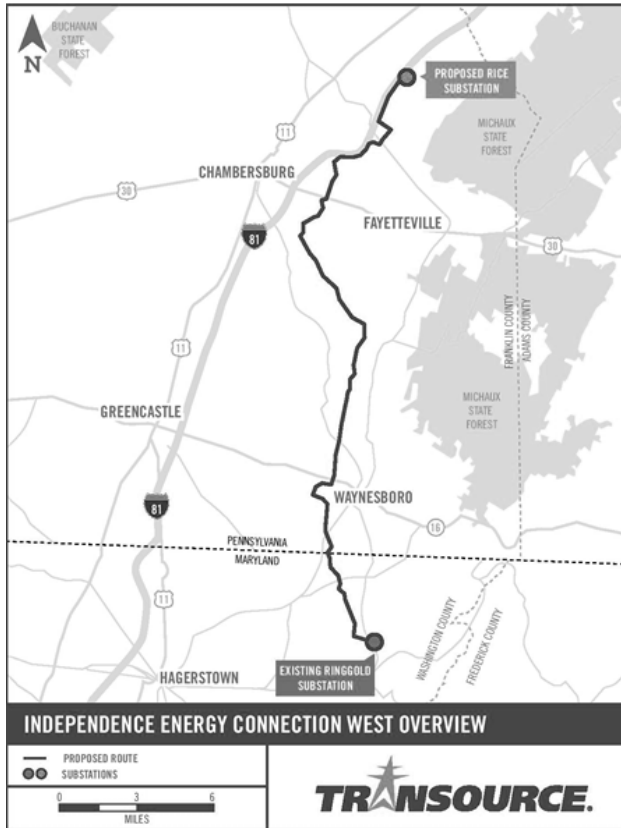
Now, once PJM selects and approves a project in the RTEP, the outcome is functionally predetermined. Meaning, the line *will* be built. The only remaining questions that can be challenged by affected landowners concern potential tweaking of the route and environmental details. An after-the-fact opportunity to protest over the exact location of the line does not cure the absence of any opportunity to contest *whether* it should go anywhere in the first place. Yet that is exactly the system that now exists following the Third Circuit determination.

The RTEP process is governed primarily by FERC Order No. 1000, 76 Fed. Reg. 49,842, 49,845 (2011). Notably, there are no requirements for notice to affected landowners, nor any participation rights, at the RTEP project selection stage. *Cf.* 18 C.F.R. §§ 50.4, 50.5 (notice requirements for high priority National Interest Electric Transmission Corridors). There are no evidentiary hearings, no sworn testimony, no cross-examination, and no discovery open to affected landowners. It is instead an entirely internal process, where PJM Staff perform the need analysis, select the project,

bring it to the PJM Board and the Board approves it. *See* District Court Docket 164-1 (Ex. A, David Souder Dep. Tr., at 59, 127, 149–150 (ECF pagination)).

PJM's RTEP process is inherently and fundamentally opaque and inaccessible. It is staff-driven and conducted entirely by a private regional transmission company with minimal, if any, public oversight and no governmental accountability to the landowners whose property it chooses to affect. Affected landowners receive no formal notice whatsoever at the project-selection stage, have no right to intervene as parties, present evidence or expert testimony, cross-examine PJM staff or utility witnesses, or obtain a reasoned decision from a judge. This lack of transparency and procedural due process safeguards stands in contrast to the evidentiary hearing that Pennsylvania law requires.

PJM's RTEP determination has binding consequences on Pennsylvania landowners' property rights. Indeed, this decision triggers and effectively pre-determines the exercise of eminent domain by private utilities. Once a project is approved in the RTEP, the need for the project is treated as established in subsequent siting proceedings, while the public utility whose application is chosen to carry out the project has already made a determination as to the project's path:



ORIGINAL TEXT WITH IMAGE⁴

The West segment of the project includes approximately 29 miles of new overhead electric transmission line that will connect a new substation to be constructed in Southampton Township in Franklin County, Pennsylvania, to the existing Ringgold Substation, near Smithsburg in Washington County, Maryland.

⁴ The map shown is from an Independence Energy Connection Project Update emailed to various Community Members by Transource Outreach on October 16, 2017, with a link for further information. The link is no longer operative.

In this case, public input hearings were provided before Transource selected the final pathway for its Project 9A, pursuant to 52 Pa. Code § 69.321, due to the substantial public interest in the project. State law then provided that persons owning property within the proposed right-of-way received notice of the utility's application pursuant to 52 Pa. Code §§ 57.72 (c)(4) and 57.74(c)(1)(iv) as well as the opportunity to intervene as a party in the proceedings pursuant to 52 Pa. Code § 57.75(d).

Federal law requires no opportunity for affected property owner input or meaningful opportunities to challenge at any level, and utilities involved in future interstate transmission line projects will not have to provide for public input or challenges to need at any level. Indeed, that outcome is already coming to pass, as shown in the Siting Application of Nextera Energy Transmission MidAtlantic, Inc. ("Nextera") for its interstate MidAtlantic Resiliency Link Project ("MARL Project") in portions of southwestern Pennsylvania filed on March 4, 2026, with the PUC and available at <https://www.puc.pa.gov/pcdocs/1916616.pdf>. At page 9, paragraph 13 of its Application, Nextera cites the Third Circuit Decision to state as follows: "PJM has already determined that there is a need for the MARL Project. Thus, the Commission is preempted from denying the MARL Project based upon a finding that there is not sufficient need for it."

Thus, under the Third Circuit Decision, the most consequential determination is made in a forum that affords no procedural protections. Affected landowners are left with little more than the opportunity to file a protest to a utility's application with FERC under 18 C.F.R. § 385.211, if they are even somehow made

aware that an application affecting their property has been filed. With no notice requirements, the chances of affected property owners obtaining that knowledge are remote. Following approval, the project is essentially a done deal. There is simply no doubt that the Third Circuit's decision dramatically affects landowners' property rights and their procedural due process.

B. The Risk of Erroneous Deprivation of Affected Landowner's Property Rights Favors the Implementation of Additional Procedural Safeguards.

The second *Mathews* factor examines “the risk of an erroneous deprivation of [the affected] interest through the procedures used, and the probable value, if any, of additional or substitute procedural safeguards.” *Mathews*, 424 U.S. at 335. Both considerations weigh heavily in favor of something more than what the Third Circuit has allowed.

By preventing the PUC from conducting an independent need analysis, the Third Circuit's decision eliminates the only meaningful opportunity Pennsylvania landowners have to challenge the threshold necessity of a proposed high-voltage transmission line. This creates a significant risk of erroneous deprivation because it creates an unacceptably high risk that property will be taken for projects that are unnecessary or inefficient. Meanwhile, the PUC proceedings under 52 Pa. Code § 57.71 provided landowners in interstate scenarios with a full evidentiary hearing, the ability to present expert testimony, and the right to cross-examine witnesses on the question of need.

These proceedings can result in project or route changes or, in appropriate cases, the denial of the

application. Indeed, both the PUC and Pennsylvania Commonwealth Court denied the application for Project 9A. The PJM RTEP process offers none of these protections and lacks the appropriate oversight of a judge.

The value of additional safeguards is clearly very high. It is evident that affected landowners have essentially lost their right to challenge a project altogether. In *Bi-Metallic Investment Co. v. State Board of Equalization*, 239 U.S. 441 (1915), the Supreme Court distinguished the concerns arising from actions that affect broad swaths of the population and those zeroing in on a handful of individuals, noting that the latter were more significant. It made clear that, when agency action affects “[a] relatively small number of persons,” who were “exceptionally affected, in each case upon individual grounds,” they have a right to a hearing. *Id.* at 446. That is exactly the situation here, where property owners would be exceptionally affected in individual ways by the transmission line.

Restoring a state-level hearing on need, or an equivalent challenge before a district court, would allow affected landowners to test PJM’s conclusions concerning actual need, especially when the asserted need here is based entirely on market efficiency rather than on reliability, as well as relative ratepayer costs and reasonable alternatives. Such a hearing would materially reduce the risk of unnecessary takings without undermining the federal interest in regional planning.

1. Impacts on Amicus Farmers

Farmers throughout Franklin County described how the project would disrupt farming practices, soil health and livestock operations in the PUC proceedings below. Some farmers explained how their GPS equip-

ment already is unreliable when operating under other transmission lines, making modern farming difficult. See Recommended Decision of Administrative Law Judge Elizabeth Barnes (“RD”), dated December 22, 2020, at 37, Finding of Fact (“FF”) 143, available at <https://www.puc.pa.gov/pdocs/1688185.pdf>. Livestock and farm animals will potentially face risks from stray voltage. RD at 38, FF 147. Additionally, the soils that will be affected represent “one of the largest contiguous areas of high-quality soil in Pennsylvania,” RD at 40, FF 164, and construction could permanently limit the expansion of barns, feeding facilities, waste-handling systems, and compost operations in which farmers have invested significant money. RD at 39-46.

2. Impacts on Amicus Businesses

Local businesses would suffer direct economic harm. By way of one example, Benedict’s Produce, which supplies one hundred (100) Giant Foods stores, would lose vegetable-growing acreage because the proposed route runs through the middle of its fields. Construction would detrimentally affect their ability to plant, grow, and harvest, resulting in lost revenue and potential contract breaches. RD at 119, FF 162-163. The Owl’s Club, a 38-acre recreational property used for trout fishing and other activities, would be divided. RD at 40, FF 166.

3. Impacts on Amicus Residents and Landowners

Residents expressed concerns about health and safety, including hazards associated with using tools or spraying herbicides near high-voltage lines. RD at 37, FF 142. Generally, construction threatens homeowners’ wells, aquifers and natural springs. Blasting, drilling,

and heavy equipment could damage the Falling Spring watershed, which is one of the East Coast's most productive limestone-fed trout fisheries and was historically fished by Presidents Carter and Eisenhower. *Id.* at 38-39, FF 150-154. Any forest clearing would disrupt wildlife habitats and vegetation, affecting tourism. RD at 39, FF 155. Moreover, property values would suffer, as one peer-reviewed study cited in the record found a 44.9% discount for vacant lots adjacent to power lines and a 17.9% discount for non-adjacent lots up to 1,000 feet away. RD at 40-41, FF 168-174.

C. The Government's Interest in Regional Transmission Planning Does Not Outweigh the Strong Countervailing Interests in Procedural Fairness.

The final *Mathews* factor requires consideration of “the Government’s interest, including the function involved and the fiscal and administrative burdens that the additional or substitute procedural requirement would entail.” *Mathews*, 424 U.S. at 335. The governmental interest at issue, the regional transmission planning mandated by FERC Order No. 1000 and implemented through PJM’s RTEP, is undoubtedly significant.

That interest, however, can comfortably coexist with the modest procedural protections historically afforded by Pennsylvania law. For decades, the PUC conducted need determinations under 52 Pa. Code § 57.71 without interfering with PJM’s planning process or FERC’s regulatory authority. Requiring some form of evidentiary hearing ensures that actual need is given meaningful consideration before private property is taken.

This is even more important because PJM is a private company that is now making the determination of need. This Court has long recognized that delegations of eminent domain authority to private entities are inherently limited and must be strictly construed. In *United States v. Carmack*, the Court emphasized that “[a] distinction exists . . . in the case of statutes which grant to others, such as public utilities, a right to exercise the power of eminent domain on behalf of themselves. These are, in their very nature, grants of limited powers.” *Id.*, 329 U.S. 230, 243 n.13 (1946). Courts applying *Carmack* have likewise underscored that such entities do not have the sovereign’s full condemnation authority, but only a constrained power tied to specific statutory purposes. *See, e.g., Nat’l R.R. Passenger Corp. v. Two Parcels of Land*, 822 F.2d 1261, 1264–65 (2d Cir. 1987).

Simply put, there must be some check on a private entity like PJM. And, in balancing the *Mathews* factors, the government’s legitimate interest in efficiency does not justify stripping landowners of any meaningful opportunity to be heard on the fundamental question of whether a transmission line should be built at all, especially when that determination has now shifted to a private entity.

II. Public Interest Considerations Strongly Favor Affording Landowners a Meaningful Opportunity to Challenge PJM’s Determination of Need.

A reversal of the Third Circuit Decision, or alternatively remand to the District Court, that affords CTPFC members and other affected landowners a forum in which to challenge the necessity of Project 9A would serve the broader public interest by preventing

ratepayers from shouldering nearly half a billion dollars in costs for a project whose need remains untested under traditional adversarial procedures. The evidence and arguments that would be presented to satisfy due process requirements are the very same evidence and arguments that bear directly on whether the project is truly in the public interest.

The PUC proceedings generated an extensive record showing that Project 9A is not needed. The Administrative Law Judge, the full Commission, and the Pennsylvania Commonwealth Court all reached that conclusion after full hearings. While a federal court would owe no deference to those state determinations if it upholds the District Court's preemption ruling, *see Ky. W. Va. Gas Co. v. Pa. Pub. Util. Comm'n*, 791 F.2d 1111, 1117 (3d Cir. 1986), a remand providing an opportunity to challenge PJM's internal need determination would give the CTPFC, the state and other intervenors the opportunity to place those critical public interest considerations before a neutral decisionmaker.

Federal authority over transmission siting is deliberately limited. Under Section 216 of the FPA, 16 U.S.C. § 824p, FERC may issue construction permits only within a National Interest Electric Transmission Corridor ("NIETC"). Designation of a NIETC requires the Department of Energy to conduct a congestion study "in consultation with affected States and Indian Tribes," followed by a report that considers alternatives and affords affected States and Tribes an opportunity for comment. *Id.* § 824p(a)(1)–(2). Only then may FERC, "after notice and an opportunity for hearing," find that the proposed construction is "consistent with the public interest." *Id.* § 824p(b). Congress thus demanded rigor-

ous process and substantial state input even for high-priority NIETC projects.

It is difficult to reconcile that statutory framework with a regime in which PJM's internal, non-adjudicatory RTEP process can designate a lower-priority "market-efficiency" project as necessary without any notice to affected landowners or any opportunity for them to test the underlying need determination. If the Third Circuit's decision stands, PJM would effectively receive unchecked authority to trigger the construction of new interstate transmission lines. The NIETC requirements underscore why public-interest considerations weigh heavily in favor of preserving state-level input into Project 9A's necessity. At a minimum, they support remand so that landowners as well as the state may be heard.

A decade after its proposal, and with this project classified as a market-efficiency rather than a reliability project, reexamination of its continuing need is both prudent and consistent with the public interest.



CONCLUSION

The underlying issue in this case does not violate the Constitution's Supremacy Clause or the Dormant Commerce Clause, and the Third Circuit's Order should be reversed. However, if the Third Circuit's Decision should ultimately be affirmed on either basis, remand to the District Court is required to uphold the rights of CTPFC members to procedural due process on the question of need for the project. A remand would serve both protected individual rights as well as the public interest if the Third Circuit decision is not outright reversed. The intervention of the Pennsylvania Attorney General should thus be permitted to argue for these important rights.

Respectfully submitted,

/s/ Benjamin C. Dunlap, Jr.

Benjamin C. Dunlap, Jr.

Counsel of Record

Dylan W. LaMorte

COHEN SEGLIAS PALLAS GREENHALL & FURMAN, P.C.

240 North Third Street, 7th Floor

Harrisburg, PA 17101

(717) 480-5303

bdunlap@cohenseglias.com

Counsel for Amicus Curiae

April 16, 2026