

No. 25-1095

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IN THE  
*Supreme Court of the United States*

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

*v.*

TRANSOURCE PENNSYLVANIA, LLC, ET AL.,  
*Respondents.*

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

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BRIEF IN OPPOSITION OF  
TRANSOURCE PENNSYLVANIA, LLC

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**QUESTION PRESENTED**

Whether the Third Circuit acted so clearly in defiance of *Cameron v. EMW Women’s Surgical Center, P.S.C.*, 595 U.S. 267 (2022), and *Berger v. North Carolina State Conference of the NAACP*, 597 U.S. 179 (2022), as to warrant summary reversal when it denied Petitioners’ belated motion to intervene to defend a single order of the Pennsylvania Public Utility Commission denying siting approval for a single electric transmission project.

**RULE 29.6 DISCLOSURE STATEMENT**

Transource Pennsylvania, LLC is owned 100% by Transource Energy, LLC. Transource Energy, LLC is owned 86.5% by AEP Transmission Holding Company, LLC and 13.5% by GPE Transmission Holding Company, LLC. AEP Transmission Holding Company, LLC is a wholly owned subsidiary of American Electric Power Company, Inc., which is a publicly traded company (stock ticker: AEP). GPE Transmission Holding Company, LLC, is owned by Evergy, Inc., which is a publicly traded company (stock ticker: EVRG). No publicly traded company owns 10% or more of the stock of American Electric Power Company, Inc., or Evergy, Inc.

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## INTRODUCTION

The petition seeks review of a one-line order denying Petitioners' request to intervene in a narrow dispute over a single decision of a state agency. Although Petitioners hypothesize that this order reflected a "clear misapprehension' of this Court's 'standards,'" Pet. 3 (citation omitted), the petition betrays the truth: the intervention dispute below turned largely on idiosyncratic state-law questions, including whether Petitioners could defend the orders of an independent agency under Pennsylvania law. Pet. 17-22. For that reason and more, this case is miles away from *Cameron v. EMW Women's Surgical Center, P.S.C.*, 595 U.S. 267 (2022), which raised no such issue. Even farther afield is *Berger v. North Carolina State Conference of the NAACP*, 597 U.S. 179 (2022), which Petitioners also invoke. Contested state-law questions are not the stuff of this Court's summary docket. Nor does the intervention issue have relevance beyond this case. The Court should deny the petition and reject Petitioners' suggestion that *Cameron* requires this Court to arbitrate every intervention decision somehow involving a state.

The underlying dispute is about how an order of the Pennsylvania Public Utility Commission ("PUC") meshes with orders of the Federal Energy Regulatory Commission ("FERC"). Pennsylvania authorized its utilities to join a FERC-regulated regional transmission organization ("RTO"). RTOs seek to save customers money via region-wide planning and pooling, and FERC regulates and approves how RTOs do so. Here, an RTO applied its FERC-approved benefit-cost methodology to

decide that a new transmission line was needed in Pennsylvania to relieve “congestion.” That is, bottlenecks were trapping electricity in Pennsylvania and blocking it from flowing to Maryland, Virginia, and the District of Columbia.

That is where the dispute arose. Although Pennsylvania has long reaped the benefits of FERC’s regional system, the PUC sought to avoid the results that system yielded in this case. Fixing a bottleneck will, after all, raise costs for those who today buy electricity that—because trapped—is artificially cheap. In particular, the PUC denied siting approval on the ground that the new line was not “need[ed].” Pet. App. 32a. And it did so based on its own, conflicting calculation of the benefits and costs *to Pennsylvania*, rejecting the FERC-approved method in favor of its own.

The Third Circuit issued a narrow opinion holding only that this approach was preempted because it impermissibly “second-guess[ed]” the FERC-approved methodology. Pet. App. 48a. Respondent Transource Pennsylvania, LLC (“Transource”) still must get the PUC’s “siting” approval before building the new line. And the PUC still may assess a variety of siting factors set forth by PUC regulation, including assuring that the line “will not create an unreasonable risk of danger to the health and safety of the public” and complies with environmental laws. 52 Pa. Code § 57.76(a).

Precisely because the Third Circuit’s decision was so narrow, the PUC acquiesced and declined to seek

further review. The PUC's Chairman explained in a public letter to legislators that he "d[id] not envision that the two lower court opinions would be overturned" and that "[a]dditional appeals could risk creating broader, precedent-setting losses." 3d.Cir.Dkt. 92, at 17-18. Then, after waiting several weeks, Petitioners moved to intervene and to seize control of the PUC order from the PUC itself. Transource opposed. The panel denied intervention, denied a motion for reconsideration, and denied referral to the *en banc* court.

Further review is unwarranted. Petitioners do not and cannot claim this issue warrants plenary review. No circuit split exists, and the Third Circuit's factbound order poses no important, recurring question beyond this case. Petitioners instead seek summary reversal on the theory that this case is a *Cameron* clone and the decision below is clearly inconsistent with *Cameron*. But that is false. In *Cameron*, no one disputed that Kentucky's Attorney General had state-law authority to intervene; below, the parties vigorously litigated whether Pennsylvania's Attorney General has authority to displace an independent agency's assessment of how best to protect its own power. More: *Cameron* concerned a facial challenge to an abortion statute, and the sovereign interests in vindicating that state law were large indeed; this case, by contrast, is about the rationale of a single agency order and does not challenge the constitutionality of any state law or regulation. And more still: Kentucky's Attorney General moved to intervene in just *two days*; Petitioners waited many weeks. We could go on (and do below), but what we have already said is enough. The Court cannot appropriately

resolve this case's factbound, state law-heavy issues on its summary docket, and no one claims (or could claim) this case belongs on the merits docket.

Denial is especially straightforward because the underlying merits also do not warrant review. No other court has even considered the issues raised by the PUC's one-off order, much less disagreed with the Third Circuit. Meanwhile, other circuits have, if anything, only reaffirmed states' broad authority to regulate even when utilities have joined RTOs—including by dictating RTO membership itself. *E.g.*, *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1113 (6th Cir.), *cert. denied*, 146 S. Ct. 397 (2025); *Pacific Gas & Elec. Co. v. FERC*, 2025 WL 1912363, at \*1 (9th Cir. July 11, 2025), *cert. denied*, No. 25-438, 2026 WL 490575 (U.S. Feb. 23, 2026). Nor is this Court's intervention in any way necessary: if Petitioners disagree with the results that stem from PJM's FERC-approved tariff, they can take that issue up with FERC.

The Court need not take Transource's word. As the PUC publicly explained in declining to seek further review, the Third Circuit's decision recognized "that [the regional grid operator] is not entitled to exercise eminent domain authority"; "preserv[ed] the procedural protections of Pennsylvania landowners in eminent domain proceedings"; "[r]etain[ed] Pennsylvania's authority to approve construction in a particular place, preserving public safety and environmental rights"; and "[p]reserve[d] Pennsylvania's ability to evaluate the need for a transmission project that does not originate with regional planning." 3d.Cir.Dkt. 92, at 17-18. That

summary is correct, and all of Petitioners' overheated claims wither when set against it.

The petition should be denied.

### STATEMENT OF THE CASE

#### **A. Pennsylvania has divided authority internally and shared authority with FERC-regulated regional transmission organizations.**

This case is about how Pennsylvania has decided to divide and allocate authority over transmission.

Within its borders, Pennsylvania has vested authority in the PUC, an “independent administrative commission.” 66 Pa.C.S. § 301(a). Substantively, the PUC has sole authority over siting and must approve construction of transmission projects. The PUC must find that “there is a need” for the line; that the line “will not create an unreasonable risk of danger to the health and safety of the public”; that the line “is in compliance with applicable statutes and regulations providing for the protection of the natural resources” of the state; and that the line “will have minimum adverse environmental impact.” 52 Pa. Code § 57.76(a).

Procedurally, the PUC has independent authority too. When Commonwealth agencies are sued, the Pennsylvania Attorney General in general “shall represent” those agencies. 71 P.S. § 732-204(c). The PUC is one of three exceptions; as to those three departments and agencies, the Attorney General’s representation is only “upon request.” *Id.* The Attorney General also “may intervene in any *other* action”—that

is, actions besides those where the Attorney General either must represent Commonwealth agencies or “upon request” may represent the PUC. *Id.* (emphasis added).

Beyond its borders, Pennsylvania has vested substantial responsibility in—and reaped substantial benefits from—PJM Interconnection, L.L.C. (“PJM”), an RTO serving thirteen states and the District of Columbia. Pet. App. 19a; see *PJM Interconnection L.L.C.*, 101 FERC ¶ 61,345, at 62,444-45 (2002), *on reh’g*, 105 FERC ¶ 61,123 (2003).

FERC has authorized RTOs to operate the transmission system and plan new transmission projects needed to ensure reliability and relieve grid congestion. See *Reg’l Transmission Orgs.*, Order No. 2000, 89 FERC ¶ 61,285, 1999 WL 33505505, at \*2-3, 2 n.3 (1999), *on reh’g*, 90 FERC ¶ 61,201 (2000). RTOs save money for customers by creating a broad network with common markets for electricity and coordinated transmission planning. See, e.g., *Dayton Power*, 126 F.4th at 1113 (“RTOs operate regional electricity grids and facilitate competition, efficiency, and reliability. They also lower consumer prices.”). Pennsylvania has benefited from its utilities’ participation in PJM. Indeed, states are increasingly mandating RTO participation. See *id.*; *PG&E*, 2025 WL 1912363, at \*1. Months before the decision below, such legislation was introduced in Pennsylvania. H.R. 782, Gen. Assemb., Reg. Sess. (Pa. 2025); see also, e.g., H.B. 1532, 2026 Reg. Sess., § 4, at 40 (Md. 2026) (enacted Apr. 14, 2026) (to be codified at Md. Code Ann., Pub. Utils. § 7-109) (enacting similar legislation).

**B. The PUC attempted to keep the benefits of FERC-regulated regional transmission while avoiding the burdens.**

This case concerns just one type of transmission project and, indeed, a single project: Transource's Project 9A. Several types of projects, serving different purposes, may be built in PJM. *PJM Manual 14B*, § 1.4 (2025), <https://www.pjm.com/-/media/DotCom/documents/manuals/m14b.pdf>. This case concerns a “[m]arket [e]fficiency” project; other types include baseline reliability projects, operational performance projects, supplemental projects, and customer-funded upgrades. *Id.*

A market efficiency project seeks to make PJM's markets more efficient by eliminating congestion. Pet. App. 71a. Congestion occurs when “limits on the electricity grid's ability to carry traffic[] ... restrict[] the flow of energy from where it is generated to where it is needed.” Pet. App. 16a. When “congestion exists downstream of cheap power generation, it can force consumers to purchase from a more expensive power source.” Pet. App. 16a-17a. Market efficiency projects aim to fix that type of problem.

PJM has a FERC-approved benefit-cost methodology to determine when a market efficiency project is cost-justified. That methodology measures: (a) the amount by which wholesale electricity payments will fall for customers whose access to cheaper electricity is currently constrained, and (b) the costs of constructing the line (which will be paid for only by the customers who benefit). *PJM Interconnection, L.L.C.*,

119 FERC ¶ 61,265, at 62,488-89 (2007), *on reh'g*, 123 FERC ¶ 61,051 (2008). If the ratio of benefits to costs exceeds 1.25 over a 15-year span, the line is cost-justified under the FERC-approved methodology. Pet. App. 20a.

As part of its planning process, PJM applied its benefit-cost methodology specifically to approve Project 9A. Project 9A will relieve a bottleneck inhibiting the flow of power from Pennsylvania and points west, where wholesale electricity prices are comparatively lower, to Maryland, Virginia, and the District of Columbia, where wholesale electricity prices are higher.<sup>1</sup> PJM concluded that the project was needed to reduce congestion. Pet. App. 20a-21a.

PJM did not include as a “cost” the increased wholesale electricity payments that could result in parts of Pennsylvania. Pet. App. 20a, 27a. That is for good reason: Today’s low prices are inefficient, reflecting the very congestion that RTOs aim to eliminate. Pet. App. 20a. “FERC approved this approach in 2008, deeming it reasonable,” and “FERC has rejected requests to revisit the methodology.” Pet. App. 20a-21a.

Transource then sought siting approval for Project 9A from the PUC.

The PUC issued an order denying Transource’s application by rejecting PJM’s FERC-approved methodology. In particular, the PUC treated the

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<sup>1</sup> Wholesale electricity is electricity sold for resale, *see* 16 U.S.C. § 824(d)—for example, by power plants to utilities, which resell the electricity to end-users like homes and businesses.

increase in wholesale electricity prices for certain Pennsylvania customers as a “cost.” Pet. App. 31a-32a. And based on that conflicting methodology, the PUC concluded that the project was not “need[ed].” Pet. App. 32a. The PUC did not reach the other siting factors under Pennsylvania law, including the protection of natural resources and the minimizing of environmental impacts. Pet. App. 30a-32a.

**C. The Third Circuit held the PUC’s order was preempted on narrow grounds.**

Transource in 2021 filed suit against the PUC commissioners in federal district court, narrowly challenging the PUC’s need determination on the ground that it was preempted by the FERC-approved tariff and violated the dormant Commerce Clause. Pet. App. 33a. Transource acknowledged that the PUC could continue to assess the other siting factors under Pennsylvania law. *E.g.*, Pet. App. 109a-110a.

Petitioners did not intervene in district court. At the PUC’s request, the Attorney General served as counsel to the PUC. Pet. 8, 18-19.

The district court granted summary judgment to Transource. Pet. App. 65a-119a. It concluded that the PUC’s order was conflict-preempted on the ground that the specific rationale in the PUC’s order “disagree[d] with PJM’s FERC-approved benefit-cost methodology” and “directly contradict[ed] PJM’s FERC-approved tariff.” Pet. App. 102a. The district court also held that the order “was a per se violation of the dormant Commerce Clause driven by economic protectionism.”

Pet. App. 117a. It explained that the “PUC’s opposition to the Project is rooted in economic protectionism in the form of maintaining the status quo imbalance of access to low-priced electricity.” *Id.*

The Third Circuit on September 5, 2025 affirmed the district court’s preemption holding and did not reach its dormant Commerce Clause holding. Pet. App. 5a-64a. It found a “clear” conflict—namely, “the PUC’s denial [was] the result of second-guessing the FERC-approved benefit-cost methodology.” Pet. App. 48a.

The Third Circuit made clear that its decision was narrow, emphasizing that “the PUC may, consistent with our opinion today, ‘grant[] or deny[]’ a siting application for reasons other than a disagreement with PJM’s FERC-approved basis for selecting the project,” including “public safety and environmental concerns.” Pet. App. 55a. It emphasized, too, that the PUC could continue to assess need in many cases—because “the vast majority of new transmission lines did not originate with an RTO’s regional planning process, and instead address ‘local problems.’” Pet. App. 55a-56a (citation omitted). And it reiterated that its opinion did not in any way abridge or alter Pennsylvania’s scheme for protecting landowners. To the contrary, the Third Circuit explained that its decision preserved “Pennsylvania’s ‘robust process for public involvement’ in siting and eminent-domain applications,” and did not “improperly empower any private party to wield the sovereign power of eminent domain.” Pet. App. 61a (citation omitted).

**D. After the PUC made a litigation judgment that acquiescing was the best way to protect its authority as an independent agency, Petitioners belatedly sought to seize the case.**

On September 12, 2025, the PUC sought a 30-day extension to decide whether to seek further judicial review, which the Third Circuit granted. Pet. 11.

On September 29, 2025, the PUC conveyed to the Office of the Attorney General that it had decided not to seek further review. Pet. 29.

Several weeks later, on October 16, 2025, the PUC's Chairman issued a public letter providing reasons for the PUC's judgment. 3d.Cir.Dkt. 92, at 17-18. The Chairman explained that the Third Circuit's decision was the "second adverse federal judicial opinion against the PUC on this project"; that he did not "envision that the two lower court opinions would be overturned upon reargument or an appeal"; and that further appeals "could risk creating broader, precedent-setting losses that may weaken Pennsylvania's authority in future cases." *Id.*

Meanwhile, the Chairman viewed the Third Circuit's opinion as an "improvement upon the" district court's opinion because it "[f]inds that PJM is not entitled to exercise eminent domain authority, preserving the procedural protections of Pennsylvania landowners in eminent domain proceedings"; "[r]etains Pennsylvania's authority to approve construction in a particular place, preserving public safety and environmental rights"; and "[p]reserves Pennsylvania's ability to evaluate the need

for a transmission project that does not originate with regional planning.” *Id.* at 18. The Chairman also invoked financial considerations distinctively within the PUC’s expertise, including the “steep costs” of further litigation, “with Pennsylvania taxpayers funding the PUC and Pennsylvania ratepayers funding Transource.” *Id.*

Thereafter, on October 17, 2025, the business day before the extended October 20, 2025 deadline to seek *en banc* review, Petitioners filed an omnibus motion to intervene, in which the Attorney General sought leave to withdraw as counsel for the PUC, permission for Petitioners to appeal, and an extension of time to petition for *en banc* review. Pet. 12.

Transource opposed on the ground that Petitioners lacked any legal interest under state law that authorized them to litigate for the PUC. Transource argued that the Pennsylvania Attorney General lacks authority to administer Pennsylvania’s siting regime and has no authority under state law to intervene in PUC matters. Transource further argued that the Consumer Advocate lacks authority to represent the PUC’s interests (or the State’s interests under *Cameron*) because state law authorizes the Consumer Advocate to intervene in certain circumstances to vindicate consumer interests rather than the State’s “weighty interest” in “protecting its own laws.” *Cameron*, 595 U.S. at 278. And Transource contended that Petitioners’ intervention motion was untimely—taking nine times as long as the Kentucky Attorney General’s intervention motion in *Cameron*—and would prejudice Transource by

prolonging the case based on forfeited and (in any case) meritless arguments. *See* 3d.Cir.Dkt. 92, at 6-13.

The Third Circuit denied intervention in a summary order on November 6, 2025. Pet. App. 1a-2a.

On December 15, 2025, the Third Circuit denied Petitioners' rehearing petition, which the court construed as a motion for reconsideration and request for referral to the *en banc* court. Pet. App. 3a-4a.

### **REASONS FOR DENYING THE PETITION**

The Court should deny the petition. Petitioners rely entirely on the claim that the Third Circuit's intervention denial so clearly conflicts with *Cameron* (and the Court's elaboration of *Cameron* in *Berger*) as to warrant summary reversal. Pet. 3, 33-34. But while both *Cameron* and this case involve a state attorney general and a state agency, the similarities stop there. The Kentucky Attorney General's authority to intervene under state law was undisputed; here, it is hotly contested. *Cameron* involved a facial challenge to a state abortion statute that the Attorney General played a role in enforcing; this case is about a narrow preemption challenge to a particular rationale in a single PUC order issued by an independent state agency pursuant to state law and PUC implementing regulations that Petitioners do not administer. The *Cameron* intervention motion came within two days of the Attorney General learning that the agency was dropping its defense; here, by their own account, Petitioners waited weeks. Transource, meanwhile, would be prejudiced by further prolonging this case.

The Third Circuit’s decision was correct and, in all events, fundamentally unlike *Cameron* and *Berger*. And not even Petitioners claim (or could claim) that this case belongs on the merits docket.

### **I. PETITIONERS HAVE NOT SATISFIED THE HIGH BAR FOR SUMMARY REVERSAL.**

*Cameron* explains that intervention on appeal is governed by the “policies underlying intervention’ in the district courts.” 595 U.S. at 276-77 (quoting *International Union, United Automobile, Aerospace & Agricultural Implement Workers of America AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 217 n.10 (1965)). These policies consider a state official’s authority; the “legal ‘interest’ that a party seeks to ‘protect,’” *id.* at 277 (quoting Fed. R. Civ. P. 24(a)(2)); whether intervention was timely, *id.* at 279; and whether any party would be prejudiced, *id.* at 281-82.

In *Cameron*, Kentucky’s Attorney General sought to intervene after the Secretary for Health and Family Services dropped his defense of a statute “regulat[ing] the abortion procedure known as dilation and evacuation.” *Id.* at 271. The Sixth Circuit had denied intervention largely based on “timeliness”: Even though the Attorney General moved just “two days after learning” of the Secretary’s decision, *id.* at 280, the court denied intervention because the motion came “years into [the case’s] progress” and rehearing *en banc* and certiorari are not “matter[s] of right.” *EMW Women’s Surgical Ctr., P.S.C. v. Friedlander*, 831 F. App’x 748, 750-51 (6th Cir. 2020). *Cameron* held this decision was an abuse of discretion. 595 U.S. at 279. The Attorney

General had an undisputed and “weighty” interest in defending state law, *id.* at 278; he timely moved “as soon as” the Secretary made his decision, *id.* at 280; and no other party faced prejudice, *id.* at 281-82.

There is nothing to Petitioners’ strained request for summary reversal under *Cameron*. This Court summarily reverses only when the “lower court result is so clearly erroneous ... that full briefing and argument would be a waste of time.” Stephen M. Shapiro et al., *Supreme Court Practice* § 5.12(a), at 5-36 (11th ed. 2019); *see* Pet. 33 (conceding summary reversal requires “demonstrably erroneous application of federal law” (quotation marks omitted)). Here, the Third Circuit’s order is fully consistent with *Cameron*’s general standard governing appellate intervention. And on its facts, this case is far from *Cameron* (and *Berger*).

**A. Unlike in *Cameron* and *Berger*, there is a dispute over whether state law authorized the Attorney General’s intervention.**

This case differs from *Cameron* and *Berger*, first, because it involves difficult and contested predicate questions as to whether state law even authorizes the Attorney General’s intervention. As Petitioners acknowledge, federal courts must “respect [a] State’s ‘plan for the distribution of governmental powers.’” Pet. 16 (quoting *Berger*, 597 U.S. at 192). In *Cameron*, the Attorney General’s authority to intervene was undisputed, and the respondents in that case made no argument that permitting intervention would undermine Kentucky’s distribution of powers set forth in state law. *E.g.*, 595 U.S. at 278. Likewise in *Berger*,

no one claimed that North Carolina’s legislative leaders lacked authority to intervene *at all*; the sole arguments concerned *whose interests* they could represent—and even on that issue, the answer was clear: “express statutory language” specified that the “leaders may defend state laws ‘as agents of the State’” and, indeed, were “necessary parties.” 597 U.S. at 193.<sup>2</sup>

Here, however, Pennsylvania has distributed powers very differently with respect to the PUC, and the Third Circuit’s order correctly respected those differences. The *very statute* governing the Attorney General’s intervention authority makes plain that the PUC is differently situated than nearly every other agency in the Commonwealth. The statute says:

[1] The Attorney General shall represent the Commonwealth and all Commonwealth agencies and [2] *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 [3] may intervene in any *other* action, including those involving charitable bequests and trusts or the constitutionality of any statute.

71 P.S. § 732-204(c) (emphases added).

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<sup>2</sup> *Accord* Br. for State Resp’ts at 49, *Berger*, 597 U.S. 179 (2022), 2022 WL 468987 (making the narrow argument that “any intervention could only lawfully be grounded in Petitioners’ right to represent the General Assembly’s interests—not the interests of the entire State”).

This unusual provision limits the Attorney General's authority twice over. First, unlike a typical Commonwealth agency, for which the Attorney General "shall represent" the agency, the statute identifies the PUC as one of only three entities that the Attorney General represents "upon request." *Id.*; see *Corman v. NCAA*, 74 A.3d 1149, 1156 (Pa. Commw. Ct. 2013) (interpreting § 732-204(c) in the context of the State Treasury and concluding that the provision "clearly states that the Attorney General is to represent the Commonwealth and Commonwealth agencies" and "specifically excludes from that directive, *inter alia*, the State Treasury" (bold omitted)). Indeed, the petition concedes that the PUC is "[e]xcepted from th[e] default representation rule" set forth in the intervention statute. Pet. 18.

Second, and especially relevant, the Attorney General's intervention authority is limited to "any *other* action." *Id.* (emphasis added). The natural reading of that second provision is that the Attorney General *may not* intervene in actions brought by or against the PUC. That conclusion is clear from the provision's tripartite structure, which shows that the Attorney General [1] generally *must* serve as the lawyer for state agencies (*i.e.*, "represent" them); [2] *may* serve as the PUC's lawyer (if the PUC "request[s]"); and [3] "may intervene" (*i.e.*, proceed as a party) "in any *other* action—that is, any action *not* "brought by or against" the state or its agencies. See *Other*, *Merriam-Webster*, <http://www.merriam-webster.com/dictionary/other> (last visited Apr. 28, 2026) (defining "other" as "distinct from that or those first mentioned").

That conclusion also follows from the canon against surplusage. On Petitioners' reading, the word "other" would do no work, and the third clause would mean the same thing had it said "any ~~other~~ action." *See, e.g., Brown v. Gaydos*, 351 A.3d 669, 680 (Pa. 2026) ("We cannot endorse this reading of the statute, as it clearly does not give effect to all the words in [the statute] and renders [certain] language superfluous.").

Thus, *Cameron* in fact *supports* the Third Circuit's denial of intervention here. Just as this Court must "take 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 must take into account a state structure that denies its officials the authority to defend certain interests. 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." *Berger*, 597 U.S. at 191 (internal quotation marks omitted) (alteration in original). This "choice belongs to [the state]," and a state actor's "argument that it has authority to represent the State's interests" can be "foreclosed by the State's contrary decision." *Va. House of Delegates v. Bethune-Hill*, 587 U.S. 658, 664 (2019).

Petitioners read Pennsylvania law differently. Those arguments are unpersuasive, as explained below. But the mere fact that the petition must labor to explain away disputed questions of state law underscores that this case is nothing like *Cameron* and *Berger*, and

reinforces that it is utterly unsuitable for this Court's summary docket.

First, Petitioners point to the Attorney General's general "duty ... to uphold and defend the constitutionality of all statutes." 71 P.S. § 732-204(a). But to begin, this provision by its terms just imposes a *duty*. It does not provide an *authority*; authorities are addressed elsewhere. Here, the Attorney General complied with this duty by representing the PUC "upon request." *Id.* § 732-204(c). Perhaps, too, the Attorney General could have filed an amicus brief. But this duty cannot create a power where there is none.

More important, the legislature in all events addressed the relevant authority—intervention—in the provision described above (§ 732-204(c)), and it withheld from the Attorney General authority to intervene in PUC suits. As this Court has explained, the "general/specific canon" has "full application" to statutes "in which a general authorization and a more limited, specific authorization exist side-by-side." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012). So here, the legislature's intervention-specific rule controls over the Attorney General's hortatory duty.

Second, Petitioners observe that the intervention provision contains the words "any" and "including." Pet. 17-20; *see* 71 P.S. § 732-204(c) (stating that the Attorney General "may intervene in any other action, including..."). True, but irrelevant. The words modify the phrase "other action." And try though they might,

Petitioners cannot blue-pencil the word “other” from the statute and rewrite the statute to say the Attorney General may intervene in “any action.”<sup>3</sup>

Third, Petitioners fall back on generalities. They rely on 20-year-old dicta that does not address intervention at all and merely paraphrases the Attorney General’s general duty to defend state statutes against constitutional challenges—a duty that is anyway irrelevant here. Pet. 20-21 (quoting *City of Phila. v. Commonwealth*, 838 A.2d 566, 583 (Pa. 2003)). Meanwhile, Petitioners tellingly fail to mention the Pennsylvania Supreme Court’s most on-point holding: Decades ago, it denied the Attorney General intervention in a PUC case—precisely because the motion would undermine the PUC’s independent authority. It explained that “within their respective fields[,] ... boards and commissions are given authority to make decisions which involve not only findings of fact, but also conclusions of law,” and that the “legislature did not intend that the attorney general should examine each case before these quasi-judicial bodies to determine

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<sup>3</sup> The statute in *Ali v. Federal Bureau of Prisons*, 552 U.S. 214 (2008), which Petitioners invoke, differed in a critical way. *Ali* paired a single operative provision (conferring immunity for “the detention of any goods”) with a phrase that indeed functioned as a catch-all residual (“by any officer of customs or excise or *any other law enforcement officer*”). *Ali* held that the residual indeed covered all “law enforcement officers,” not just customs-type officers. *Id.* at 216, 219-20. Here, by contrast, the Pennsylvania statute conveys *different* types of authority, with the first two clauses addressing when the Attorney General must or may *represent* Commonwealth agencies, and the third serving not as a residual but addressing an entirely separate issue—when the Attorney General may *intervene*.

how he thinks the board or commission should decide them.” *City of York v. Pa. Pub. Util. Comm’n*, 295 A.2d 825, 831-32 (Pa. 1972) (citation omitted). So too here, the Third Circuit reasonably rejected the Attorney General’s attempt to usurp the PUC’s judgments on how to defend its authority.

Petitioners fare even worse with their foray into legislative history. Pet. 18-19 (citing *Final Report of the Joint State Government Commission Task Force on the Office of the Elected Attorney General*, at 10 (Sept. 1, 1978), <https://tinyurl.com/muv387pz> (“Final Report”)). Even leaving aside that “legislative history is not the law,” *Azar v. Allina Health Services*, 587 U.S. 566, 579 (2019) (citation omitted), this “legislative history” concerned a task force’s proposed version of the bill that omitted the key limitation—that the Attorney General would represent the PUC only “upon request.” See Final Report at 25-26 (reproducing the proposed bill text without the “upon request” language). That version instead placed the Attorney General in the driver’s seat, specifying that the Attorney General “shall represent ... all Commonwealth agencies” without any limitation, and vesting in the Attorney General the decision whether to “authorize ... counsel for an independent agency to initiate, conduct or defend any particular litigation ... in his stead.” *Id.* (quoting proposed § 204(c)). So if the Final Report’s description of the Attorney General’s powers seems broader, that is because it was talking about *different statutory language*. And again, this Court’s summary docket is in all events not the place to hash out competing inferences from state legislative history.

**B. Unlike in *Cameron* and *Berger*, this case is about the lawfulness of a single order of an independent agency, which Petitioners lack any legal interest in vindicating.**

In three more ways, too, Petitioners' legal interests differ from those in *Cameron* and *Berger*.

First, *Cameron* and *Berger* involved no similar attempt to seize the powers of a state independent agency. Pennsylvania's legislature by statute created the PUC as an "independent administrative commission." 66 Pa.C.S. § 301(a). And the legislature then delegated to the PUC the exclusive authority to determine whether to issue orders approving siting applications—authority that the PUC has implemented via regulations governing the siting process. 66 Pa.C.S. §§ 1103(a), 1501; *see* 52 Pa. Code § 57.76(a) (setting forth agency criteria for assessing siting applications). The legislature did not empower Petitioners to issue siting decisions or interfere in the PUC's exercise of its authorities. Yet Petitioners via intervention sought, in substance, to dictate how the PUC exercised and defended its own exclusive authorities. The Pennsylvania Supreme Court's decision in the *City of York* case, described above, strongly supports the Third Circuit's decision to reject Petitioners' attempt to dictate "how [they] think[] the ... commission should" defend the PUC's authorities. 295 A.2d at 831-32. And certainly, those agency-independence considerations were absent in *Cameron* and *Berger*.

Second, *Cameron* and *Berger* both involved facial challenges to state statutes, and their analysis rested on

a state’s “legitimate interest in the continued enforceability of its own statutes.” *Cameron*, 595 U.S. at 277 (quoting *Maine v. Taylor*, 477 U.S. 131, 137 (1986)); see also *Berger*, 597 U.S. at 191. The Third Circuit here did not call into question the “continued enforceability” of any state statute. The Third Circuit deemed preempted only a *single order* denying siting approval for a *single* project based on “second-guessing” of a federally-approved benefit-cost methodology. Pet. App. 48a. Indeed, the Third Circuit emphasized again and again that the statutory and regulatory framework governing siting remained valid. Pet. App. 54a-56a. This, too, is very different from *Cameron* and *Berger*, and Petitioners cannot invoke those cases’ reliance on the “weighty” sovereign and constitutional interest in vindicating the facial validity of state laws.

Third, the movants in *Cameron* and *Berger* had a role in enforcing the challenged state law (as the Kentucky Attorney General did as to the criminal prohibition in *Cameron*) or in enacting the law (as the legislative leaders did in *Berger*). The Attorney General’s broad enforcement authority in *Cameron* was why the district court opinion in turn broadly “enjoined *the Commonwealth* from enforcing the Act.” *EMW Women’s Surgical Ctr., P.S.C. v. Meier*, 373 F. Supp. 3d 807, 826 (W.D. Ky. 2019) (emphasis added), *aff’d sub nom. EMW Women’s Surgical Ctr., P.S.C. v. Friedlander*, 960 F.3d 785 (6th Cir. 2020), *rev’d sub nom. Cameron v. EMW Women’s Surgical Ctr., P.S.C.*, 595 U.S. 267 (2022). And *Berger* recognized that “North Carolina has expressly authorized the legislative leaders

to defend the State's practical interests in litigation of this sort." 597 U.S. at 193.

This case is again different. Petitioners do not enforce the underlying statute and regulations governing siting. And Federal Rule of Civil Procedure 24 recognizes that this distinction matters, allowing permissive intervention by government officers or agencies when a case involves a "statute or executive order administered by the" movant or "any regulation, order, requirement, or agreement issued or made under the statute or executive order." Fed. R. Civ. P. 24(b)(2); *see International Union, United Automobile, Aerospace & Agricultural Implement Workers of America AFL-CIO, Local 283 v. Scofield*, 382 U.S. 205, 216-17, 217 n.10 (1965) (assessing appellate intervention by looking to Rule 24(b)(2)). Here, state law delegates siting authority to the PUC, which in turn has implemented regulations governing its exercise of that authority. 66 Pa.C.S. §§ 1103(a), 1501; *see* 52 Pa. Code § 57.76(a). Unlike the Kentucky Attorney General's enforcement role as to the broad prohibition in *Cameron*, Petitioners have no role to play with respect to the PUC's authority.

This lack of any plausible interest in vindicating state law is especially true of the Consumer Advocate. The Consumer Advocate is nothing like a state Attorney General tasked with enforcing state law or a legislative leader tasked with enacting it. The Consumer Advocate exists only to serve a particular, narrow interest within Pennsylvania. Thus, while state law authorizes the Consumer Advocate to appear "as a party[] ... before any court or agency[] ... in connection with any matter

involving regulation by the commission,” that authority is limited only to “represent[ing] *the interest of consumers.*” 71 P.S. § 309-4(a) (emphasis added). Such an entity cannot invoke the significant sovereign interests that *Cameron* and *Berger* deemed so important. Indeed, FERC recently rejected just such an attempt by the Consumer Advocate to stand in for the state. *See Constellation Energy Corp.*, 192 FERC ¶ 61,074, at P 191 (2025) (“The Pennsylvania Consumer Advocate is not a state commission.”).

Petitioners otherwise have little to say in response. They say nothing about the PUC’s role as an independent state agency. They say nothing about the distinction between a single agency order and the facial invalidation of a state statute. And for all Petitioners’ rhetoric about “as-applied constitutional attack[s],” Pet. 19, both the district court’s opinion and the Third Circuit’s opinion are clear that Transource challenged only a single PUC order on narrow grounds—and that Pennsylvania can continue to enforce its siting law *in full* aside from the specific defect they found.<sup>4</sup>

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<sup>4</sup> *See, e.g.*, Pet. App. 33a (recognizing that “Transource’s complaint asserted that *the PUC decision* violated the Supremacy Clause and the dormant Commerce Clause”); Pet. App. 8a (recognizing that the “District Court held that *the PUC order* was invalid under the Supremacy Clause”); Pet. App. 40a (again referencing the “PUC order”); Pet. App. 43a (“To determine whether the PUC order stands as an obstacle to federal objectives...”); Pet. App. 47a (“The conflict between the *PUC order* at issue here and the foregoing federal objectives is clear.”); Pet. App. 52a (“The *PUC order* raises an obstacle to accomplishing federal objectives in a manner the Supremacy Clause does not permit.”); Pet. App. 66a (holding that

Petitioners' legal interest in these circumstances is nothing like the weighty state interests in *Cameron* and *Berger*—and certainly, Petitioners cannot remotely show the type of clear conflict with those cases that could possibly justify summary reversal.

**C. Unlike in *Cameron* and *Berger*, Petitioners' intervention motion was untimely and prejudices Transource.**

Finally, *Cameron's* other considerations provide additional, independent reasons why the Third Circuit acted well within its discretion and summary reversal is not warranted.

1. *Timeliness*. In *Cameron*, this Court recognized that “[t]imeliness is an important consideration in deciding whether intervention should be allowed.” 595 U.S. at 279. The Court concluded that the “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’ by the parties in the case.” 595 U.S. at 279-80 (quoting *United Airlines, Inc. v. McDonald*, 432 U.S. 385, 394 (1977)); *see also id.* at 280 (examining whether the motion “was filed soon after the movant *learned* that the” litigating party “would not appeal” (citing *McDonald*, 432 U.S. at 390) (emphasis added)). Here, however, Petitioners’ motion to

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“the court finds that the *PUC's* decision violated the Supremacy Clause and the dormant Commerce Clause”).

intervene came after far more delay than the two days at issue in *Cameron*.

By their own account, Petitioners delayed filing their intervention motion for weeks after the Office of the Attorney General “learned”—their word—of the PUC’s decision to abandon an appeal on September 29, 2025. Pet. 29. Petitioners’ only justification is to argue that the timeliness clock should run from the October 16, 2025 letter in which the PUC Chairman memorialized his rationale for not proceeding. *Cf.* Pet. 11. But that letter is a red herring. What matters, *Cameron* emphasized, is when it “became clear” that the PUC would not continue. 595 U.S. at 279-80 (citation omitted). The PUC had no obligation to *ever* explain its decision, let alone to do so publicly and in writing. And especially given how heavily Petitioners rely on claims that the Attorney General has an unflagging duty to defend state law, *e.g.*, Pet. 3, 4, 11, 18, 20, 21, they cannot seriously claim that they “could not properly determine whether to intervene until they could evaluate the PUC’s rationale.” Pet. 29.

Even this implausible excuse in any event would not excuse the Consumer Advocate’s extreme delay. The Consumer Advocate could have moved to intervene years ago, including before the PUC, the district court, or the Third Circuit (prior to the merits decision). The Petition admits as much, conceding that the Consumer Advocate “could have intervened in this matter when it was before the PUC or once in the District Court.” Pet. 21. Petitioners claim only that the Consumer Advocate “declined to do so because the PUC was then adequately

representing the interests of consumers.” Pet. 21-22. But the PUC is no stand-in for the Consumer Advocate, and certainly not in this context. Unlike the Consumer Advocate’s role, the PUC’s very different task—as stated in its mission statement—is to balance consumer and utility concerns. See *About the PUC: Our Mission*, Pa. PUC, [www.puc.pa.gov/about-the-puc](http://www.puc.pa.gov/about-the-puc) (last visited Apr. 28, 2026) (PUC’s “mission ... is to *balance* the needs of consumers and utilities” (emphasis added)). And the need to balance these competing concerns is only heightened in the siting context, where the PUC by regulation must also weigh a wide variety of environmental, health, and safety concerns beyond simply consumer interests. See 52 Pa. Code § 57.76(a). Given these differing interests, the Consumer Advocate could have and should have intervened years before the PUC Chairman’s October 16, 2025 letter. The Consumer Advocate’s choice to seek intervention only after the Third Circuit rendered its merits decision was plainly untimely.

2. *Prejudice.* Finally, permitting Petitioners’ intervention would prejudice Transource in ways that differ from *Cameron*. While in *Cameron* the plaintiffs had “no legally cognizable expectation” that Kentucky officials would give up their defense of Kentucky law until “all available forms of review had been exhausted,” 595 U.S. at 282, here Transource did have a reasonable expectation of finality. A single PUC order as to a single electric transmission project does not create the same kind of “all hands on deck” expectation that previously uninvolved state officials will rush to the state law’s defense. Here, the expert agency exclusively charged

with administering the siting statute assessed the Third Circuit's reasoning and accepted its decision. Transource is entitled to view that outcome as providing finality. In such circumstances—again wholly unlike *Cameron*—the Third Circuit reasonably concluded that it should not grant intervention and further delay resolution of this matter.

## **II. THE PETITION DOES NOT OTHERWISE PRESENT ANY QUESTION WARRANTING THIS COURT'S REVIEW.**

Aside from seeking summary reversal, Petitioners have not tried to show that the Court's criteria for certiorari are satisfied here or that this case warrants plenary review. *See* Sup. Ct. R. 10(a). Nor can they. Petitioners allege no split; the question presented is not important; and the case is a poor vehicle to address that splitless, unimportant question.

### **A. The intervention issue does not warrant review, and this case is a bad vehicle.**

The intervention issue plainly does not warrant this Court's review. Petitioners do not even allege a split as to the question presented. Petitioners do not, for instance, point to a disagreement in the courts of appeals as to when appellate intervention is appropriate in the context of independent state agencies that issue one-off orders held to be preempted and that then acquiesce in an appellate decision. Nor is any meaningful split likely to emerge as to that fact-dependent sub-sub-subgenre of appellate intervention jurisprudence.

This case is also a poor vehicle. To the extent Petitioners would have this Court explore the outer boundaries of which state entities have a “weighty interest” in defending state law, *Cameron*, 595 U.S. at 278, that question here is bound up with antecedent questions of state law and is not cleanly presented given Petitioners’ extreme untimeliness. And more broadly, this case does not present a good vehicle to further elaborate on *Cameron* and *Berger* because no lower court opinion exists to provide a focus for this Court’s review. The Third Circuit instead reasonably concluded that no opinion was warranted given the *many* reasons for denying intervention (detailed above) and appropriately declined to elaborate on contested questions of Pennsylvania law in this posture. That is in sharp contrast to both *Cameron*, where the Sixth Circuit had issued a split decision explaining its rationale, *see EMW Women’s Surgical Ctr., P.S.C.*, 831 F. App’x at 749-53, and *Berger*, where the *en banc* Fourth Circuit split 9-5 in a published opinion on intervention, *see N.C. State Conf. of the NAACP v. Berger*, 999 F.3d 915 (4th Cir. 2021), *rev’d* 597 U.S. 179 (2022). Unless this Court intends to become the roving enforcer of summary case-management decisions by the appellate courts, it should deny the petition.

**B. Denial is especially straightforward because the underlying merits question does not warrant review.**

Perhaps recognizing that the intervention issue is so plainly unworthy of further review, Petitioners spend much of their brief complaining about the merits. But the merits are not before the Court and—in all events—

only underscore why the Court should deny the Petition. The merits, too, plainly do not warrant review.

Petitioners, to begin, do not and cannot contend that the Third Circuit’s merits decision implicates any split. Petitioners claim that the Third Circuit’s decision is at odds with states’ “historical[] reject[ion]” of “proposed interstate electric transmission lines that provide no in-state benefits.” Pet. 22. But they cite only a Mississippi Supreme Court case from 40 years ago and a Florida lower court case from 60 years ago. *See* Pet. 22-23 (citing *Miss. Power & Light Co. v. Conerly*, 460 So. 2d 107, 112 (Miss. 1984) and *Clark v. Gulf Power Co.*, 198 So. 2d 368, 371-72 (Fla. 1st DCA 1967)). Those cases have nothing to do with the legal issue the Third Circuit decided—that after Pennsylvania had permitted its utilities to join a regional transmission organization, the PUC could not “second-guess” the benefit-cost methodology set forth in that organization’s FERC-approved tariff.

Nor is this issue of broad importance or significance. This case, again, concerns the specific rationale in a single PUC order concerning a single transmission line approved under a specific provision of PJM’s tariff. Petitioners fill their brief with overheated rhetoric about how the decision below supposedly “stripped Pennsylvania of its sovereign right to regulate land use.” Pet. 1; *see generally* Pet. 22-28, 31-33. But the decision below plainly does not do that or, indeed, present any “important federal question” warranting review. Sup. Ct. R. 10(a).

To the contrary, the Third Circuit’s opinion emphasizes that Pennsylvania’s siting scheme remains undisturbed: “To be clear, the PUC may, consistent with our opinion today, ‘grant[] or deny[]’ a siting application for reasons other than a disagreement with PJM’s FERC-approved basis for selecting the project.” Pet. App. 55a (citation omitted). “[S]uch reasons,” the court explained, “may include public safety and environmental concerns.” *Id.* And the PUC also retains broad leeway to undertake “state ‘need’ inquiries,” so long as the PUC does not rely on its “state siting authority ... to reject a federal project on the same basis that the federally authorized RTO selected the project.” Pet. App. 54a-55a.

The Third Circuit also expressly preserved Pennsylvania’s authority over eminent domain, contrary to Petitioners’ hyperbolic warnings. Pet. 26-28. The Third Circuit—almost as if it had this petition for certiorari in mind—emphasized that its “opinion ... cannot reasonably be read to suggest that the PUC is required to rubber-stamp either a siting application or an eminent-domain application related to a project that PJM has approved.” Pet. App. 61a.

Proof positive is that the PUC has publicly explained the Third Circuit’s decision to state legislators in the same way—emphasizing that the Commission declined to seek further review precisely because it understood the Third Circuit’s decision as narrow and as leaving undisturbed the PUC’s core authority. That decision, the PUC explained, “[r]etains Pennsylvania’s authority to approve construction in a particular place, preserving public safety and environmental rights,” and

“[p]reserves Pennsylvania’s ability to evaluate the need for a transmission project that does not originate with regional planning.” 3d.Cir.Dkt. 92, at 18. These observations, by the party that lost below, underscore just how strained is Petitioners’ suggestion that the Third Circuit has somehow “usurp[ed] the Commonwealth of the most ‘quintessential’ state power.” Pet. 22 (citation omitted).

That is especially true because circuit courts continue to give states extensive room to regulate even when their utilities join RTOs—including by dictating RTO membership itself. *See Dayton Power & Light*, 126 F.4th at 1113; *PG&E*, 2025 WL 1912363, at \*1. And it is even more true because if Petitioners are dissatisfied with the decision below, they have other avenues to address it. Petitioners may, for example, ask FERC to require changes to PJM’s tariff to specify that states may reject a federal determination of need. Or Petitioners can rely on the just-cited cases to argue that they can compel their utilities to leave PJM. These administrative and political remedies thus underscore what was already obvious: Even were the merits before this Court, this case would not belong on the merits docket.<sup>5</sup>

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<sup>5</sup> This same point addresses Petitioners’ heavy reliance on separate statements by former FERC Chairman Mark Christie, who has also filed an amicus brief in this Court. *See* Pet. 2, 10, 24, 25, 27, 32. Those statements are separate precisely *because* the Commission as a whole has not endorsed them. And again, Petitioners have every ability to ask FERC to change its mind.

**CONCLUSION**

The petition for certiorari should be denied.

Respectfully submitted,

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