No. 25-438

IN THE

Supreme Court of the United States

PACIFIC GAS AND ELECTRIC COMPANY,
SOUTHERN CALIFORNIA EDISON COMPANY, AND
SAN DIEGO GAS & ELECTRIC COMPANY,
Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION, ET AL.,
Respondents.

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

REPLY BRIEF FOR PETITIONERS

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INTRODUCTION

The Court should grant review of both questions presented. First, the government gets nowhere with its attempts to dodge the jurisdictional split. It insists that the Ninth Circuit was correct to hold that states may mandate membership in regional transmission organizations ("RTOs"), on the theory that such mandates "primarily regulate[] intrastate transmission." Opp. 13 (quotation marks omitted). But a slew of other circuits have disagreed with the holdings of the Sixth and Ninth Circuits and recognize two points. First, FERC's jurisdiction over interstate transmission is exclusive. And second, facilities like those here—connected to the interstate transmission grid (and indeed, crossing into other states)—constitute interstate transmission, not intrastate transmission. Those holdings cannot be squared with the decision below or the government's defense of it.

Meanwhile, the government concedes that a core aspect of the Ninth Circuit's reasoning "was incorrect." Opp. 13. When the government will not defend the *actual reasoning* of the decision under review, it is a strong signal that it merits careful attention. And in fact, the Ninth Circuit's conclusion was entirely incorrect, refuted by—among other things—the straightforward text of the Federal Power Act ("FPA"). The FPA preserves state jurisdiction over facilities used "only for" intrastate transmission. 16 U.S.C. § 824(b)(1). The government does not (and cannot) claim that the facilities here are used only for intrastate transmission, or defend rewriting "only" into "primarily."

Nor can the government deny that the damage from that conflict-exacerbating error is all the greater because of how the Ninth Circuit answered the second question presented—rewriting Congress's command to promulgate a "rule [that] provide[s] for incentives *to each … utility that joins*" an RTO to add a voluntariness requirement. 16 U.S.C. § 824s(c). These holdings license states to intervene in the federal sphere—regulating service, adjusting rates, and picking winners and losers. Indeed, just before this brief went to press, Maryland seems poised to do just that, with the Governor introducing legislation to "eliminate the 0.5% incentive that" Congress provided by "requir[ing] [utilities] to join" an RTO. Hannah Gaskill, *Moore Aims to Boost MD Energy Capacity, Aid Utility Customers*, Maryland Daily Record (Jan. 27, 2026), https://thedailyrecord.com/2026/01/27/maryland-electric-grid-upgrade-utility-rebates-moore/. The Court should grant certiorari to restore uniformity to Congress's jurisdictional scheme and to remedy the government's blue-penciling of a critical statute.

ARGUMENT

I. THE COURT SHOULD REVIEW THE NINTH CIRCUIT'S PREEMPTION HOLDING.

The government builds its cursory opposition on the claim that "[n]either the Ninth Circuit below nor the Sixth Circuit in *Dayton Power & Light* has committed itself 'to the view that States may directly regulate the interstate market for electric energy.'" Opp. 14 (quoting Fed. Resp'ts Br. in Opp. at 26-27, *FirstEnergy Serv. Co. v. FERC*, No. 24-1304, and *Am. Elec. Power Serv. Corp.*

v. FERC, No. 24-1318 (U.S. Sept. 22, 2025) ("*FirstEnergy/AEP* Opp.")). But on the page just before, the government admits that both FERC and the Sixth and Ninth Circuits *have* committed themselves to the view that states may dictate RTO membership on the theory that such mandates "primarily regulate[] … intrastate transmission," which is supposedly "an area explicitly reserved to the states by the FPA." *Id.* at 13 (quoting *San Diego Gas & Elec. Co.*, 192 FERC ¶ 61,015, ¶ 36 (2025) and citing *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1129-30 (6th Cir.), *cert. denied*, 146 S. Ct. 397 (2025))). And that proposition, which the government concedes was essential to the decision below, is what yields the split-creating error that the Sixth and Ninth Circuits—and FERC itself—have now reached.

That split rests on two points that the government ignores but does not dispute. First, before the decisions of the Sixth and Ninth Circuits, the law was clear and uniform: The federal government had "exclusive" jurisdiction over operation of "all facilities" for "transmission of electric energy in interstate commerce" (as the FPA provides, 16 U.S.C. § 824(b)(1)). That is what the Third, Fifth, Eighth, and D.C. Circuits have all recognized. Pet. 16-18. Second, before these decisions, everyone understood that "facilities used … only for the transmission of electric energy in intrastate commerce" existed only in Alaska, Hawaii, and part of Texas, Pet. 7, 20-21 (quoting 16 U.S.C. § 824(b)(1)).

Under that law, this case should have been easy: As the government has conceded, "the facilities at issue here are engaged in the interstate transmission of electricity insofar as they are serving the interconnected nationwide electric grid." *FirstEnergy/AEP* Opp. 27. Indeed, the facilities at issue here cross state borders, including into Arizona and Nevada. California's statute, as interpreted by the Ninth Circuit, commands utilities to *turn over* operational control of these facilities to someone else, via its CAISO membership requirement. That plainly *regulates* the operation of those facilities. So it should have followed that California's law is preempted.

The Ninth Circuit disagreed only by adopting different rules of jurisdiction, rejecting the rules prevailing in other circuits. Principally, the Ninth Circuit averred that the "FPA grants FERC jurisdiction over interstate wholesale rates but leaves regulation of intrastate wholesale markets and retail sales of electricity to the states." Pet. App. 11a. The government now concedes this statement "was incorrect." Opp. 13 n.*. And even leaving aside how striking it is that the government refuses to defend the Ninth Circuit's decision on its own terms, that leaves only the theory that California "regulat[ed] within the domain Congress assigned to the states," Pet. App. 11a, because it supposedly targeted "intrastate transmission." Opp. 13 n.*.

That theory yields the conflict and error just described: Because the facilities at issue here are connected to the interstate electrical grid, they do not constitute "intrastate transmission"—as the Third, Eighth, and D.C. Circuits (not to mention this Court)—have all held. Pet. 17-18. Indeed, the positions of the Ninth Circuit and the government are particularly untenable because, as the government again ignores, Petitioners' transmission facilities literally cross state lines, going from California to Arizona and Nevada. Pet. 3, 18. Under no conceivable definition is that "intrastate transmission." And if states can regulate interstate transmission simply because some of the facilities are (by necessity) *physically located* in a particular state, that will be the end of the Commission's exclusive jurisdiction over interstate transmission, repeatedly recognized by other Circuits and this Court.

The government does not refute the conflicting rule of federal jurisdiction the recent decisions embrace. Nor does this conflict become less significant or acute because the other circuits have not addressed the precise *facts* of a "state-law [RTO] membership requirement." Opp. 14 (quotation marks omitted). The twin principles set forth above—that the Commission has exclusive jurisdiction over interstate transmission, and that facilities connected to the interstate grid constitute interstate transmission—would compel the rejection of the Ninth Circuit's theory in the Third, Fifth, Eighth, and D.C. Circuits.

For two reasons, the need for review is more apparent today than when the *FirstEnergy* and *AEP* petitions were filed. First, FERC in its orders has now also endorsed the theory of the Sixth and Ninth Circuits, authorizing states to directly regulate interstate transmission if "legislative findings" recite a concern with intrastate reliability, rates, or services. *San Diego Gas & Elec. Co.*, 192 FERC ¶ 61,015 at P 36 (2025). Hence, the decisions of the Sixth and Ninth Circuits can no longer be shrugged off as aberrations and limited to their facts. They have launched a revolution in the jurisprudence concerning FPA jurisdiction, and one FERC itself has now embraced.

Second, the government's briefs in this Court have now twice declined to defend critical aspects of the decisions that launched this revolution. Here, as just explained, the government concedes that the Ninth Circuit's key starting point "was incorrect." Opp. 13 n.*. In *FirstEnergy* and *AEP*, the government averred that the "Sixth Circuit's opinion need not be read to suggest" that facilities "serving the interconnected nationwide electrical grid" constituted *intra*state, rather than *inter*state, transmission, *FirstEnergy*/*AEP* Opp. 27. But the Sixth Circuit plainly *did* hold that the facilities at issue were engaged in intrastate transmission. *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1129-30 (6th Cir.) ("Ohio's law fits within this scheme because it primarily regulates intrastate transmission."), *cert. denied*, 146 S. Ct. 397 (2025). Where there's smoke, there's fire: When the government urges this Court to deny review, but repeatedly refuses to defend the actual reasoning of the decisions below, it is an important signal that lower courts are getting it wrong and this Court's intervention is warranted.

The government also ignores more specific ways that the decisions of the Sixth and Ninth Circuits, and FERC's embrace of those decisions, conflict with decisions of other appellate courts. In *PPL Energyplus, LLC v. Solomon*, 766 F.3d 241 (3d Cir. 2014), the Third Circuit rejected New Jersey's argument that it could regulate matters within FERC's exclusive jurisdiction—there, interstate wholesale rates—on the ground that New Jersey professed to act "for local purposes" and its "policy goals" included "promot[ing] new generation resources." *Id.* at 253-54; *see* 16 U.S.C. § 824(b)(1). "New Jersey's reasons for regulating in the federal field," the Third Circuit explained, "cannot save its effort," 766 F.3d at 253-54—rejecting the argument now accepted by FERC with its emphasis on "legislative findings." *San Diego Gas & Elec. Co.*, 192 FERC ¶ 61,015 at P 36.

The Third Circuit was correct, and the Sixth and Ninth Circuits—and FERC—are wrong. Preemption analysis turns on "what the state law in fact does, not how the litigant" or court "might choose to describe it." *Wos v. E.M.A. ex rel. Johnson*, 568 U.S. 627, 636–37 (2013); *accord Nat'l Meat Ass'n v. Harris*, 565 U.S. 452, 464-65 (2012). Indeed, *Hughes* addressed the same argument in a near-identical context: "That Maryland was attempting to encourage construction of new in-state generation," an issue generally within states' domain, did "not save its program"—because "States may not seek to achieve ends, however legitimate, through regulatory means that intrude on FERC's authority." *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 (2016).

The government fares no better with its observation that states may generally regulate within their sphere despite "indirect" effects on the federal domain. Opp. 13. California, if it commands utilities to hand over control of their interstate facilities by mandating CAISO membership, is regulating those facilities (including, again, facilities that themselves cross state lines). That is a direct regulation, not indirect effects.

Nor does the government have any answer to how RTO mandates conflict with Congress's directive that FERC provide for "regional districts for the *voluntary* interconnection and coordination of facilities." 16 U.S.C. § 824a(a) (emphasis added). The government does not address that statute's text at all. But Congress's text governs, and here underscores why California's law is preempted. If states mandate RTO membership, FERC cannot "encourage" "voluntary interconnection" as Congress envisioned. *Id.* If states say their utilities must remain in particular RTOs, FERC cannot make sure that RTOs "embrace an area which, *in the judgment of the Commission*," is appropriate; states instead decide. *Id.* (emphasis added). And if states become deciders, they exceed the merely consultative role that Congress gave them—a "reasonable opportunity to present … views." *Id.* Moreover, with Congress having expressly barred even its designated federal regulator from dictating this aspect of interstate transmission, it makes zero sense to say that Congress silently authorized states to leap beyond their sphere.

The government does not dispute that this case is a sound vehicle. Nor does it deny the consequences that are poised to follow from the revolution launched by the Sixth and Ninth Circuits. Now, under the guise of regulating supposedly intrastate transmission, states could try to leap beyond their FPA-designed sphere (siting, permitting, and construction) to impose onerous obligations on the interstate transmission of electricity itself. States could seek to add their own terms and conditions or to alter rates for what the Sixth and Ninth Circuits have deemed "intrastate" transmission.

Meanwhile, if states can decide who operates transmission facilities within their borders, and even facilities that cross borders, states could seek to mandate that utilities join or leave *particular* RTOs, join or form other sorts of organizations for the interstate transmission of electricity, or simply hand over control of parts of the interstate transmission grid to another party selected by the state. Absent this Court's intervention, the decision below offers states huge leverage to interfere in the federal sphere by threatening to require the transfer of control over federally regulated facilities to whomever the state directs. Pet. 30-31. Those consequences would militate in favor of review even absent a split—and as the government does not deny, this Court has often reviewed important FPA jurisdictional issues absent a split, Pet. 29-30—and do so with even greater force given the disagreement among circuit courts.

II. THE COURT SHOULD REVIEW WHETHER THE NINTH CIRCUIT CORRECTLY ADDED A NONTEXTUAL VOLUNTARINESS REQUIREMENT TO SECTION 219(c).

On Section 219(c), the government ignores the reasons why review of that issue is essential. Pet. 24-25, 31-33. It rests its opposition entirely on the claim that the reading adopted by FERC and now the Ninth Circuit reflects the "best reading" of the statute. Opp. 11. But the unpersuasiveness of the government's merits arguments only shows why review is needed. The government's only argument is that "the term 'incentive[]' … connote[s] an inducement to voluntary [conduct]." Opp. 11 (quoting *FirstEnergy/AEP* Opp. 16-

17). The government, however, does not engage with the obvious textual problem: What Section 219(c) requires is a "rule" that provides "incentives." And such a rule continues to provide inducements to voluntary conduct even if some *individual utilities* face state RTO mandates. Pet. 26-27. Meanwhile, the government does not and cannot explain how its interpretation gives meaning to the text commanding that FERC "*shall*" issue a "rule" to provide an incentive "to *each*" utility "*that* joins" an RTO. 16 U.S.C. § 824s(c). FERC's interpretation renders the critical commands—"shall," "to each" utility, and "that joins"—superfluous.

"[S]tatutory context," Opp. 11-12, again only reinforces the decision below's error. The government suggests that the reference to "incentive-based rate treatments" in Section 219(a), and certain directives in Section 219(b), presuppose a voluntariness requirement. Opp. 4. But even accepting that reading of the rest of Section 219, Congress in Section 219(c) omitted any similar requirement. And when "Congress has enacted a comprehensive scheme and has deliberately targeted specific problems with specific solutions," the "specific governs the general." *RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) (quotation marks omitted). If anything, Congress's decision to limit *other* parts of Section 219 to payments inducing particular conduct, *see* 16 U.S.C. § 824s(b)(2), makes it *more* telling that Congress omitted any similar requirement from Section 219(c).

The government also has no answer to another piece of context: When Congress enacted Section 219(c), several states already purported to impose RTO mandates. *See* 220 ILCS 5/16-126(a) (1997); Ohio Rev. Code Ann. § 4928.12(A) (1999). "We generally presume that Congress is knowledgeable about existing law pertinent to the legislation it enacts"—an observation this Court made about state law *specifically*. *Goodyear Atomic Corp. v. Miller*, 486 U.S. 174, 184-85 (1988). Against that backdrop, it is inconceivable that the Congress that commanded FERC to adopt rules granting incentives "to each" utility "that joins" *really* meant to allow FERC to grant incentives to only some utilities. Either Congress understood that those mandates were preempted, or Congress understood that utilities would continue to receive the adder despite such mandates. That is why FERC for a decade routinely granted the adder to RTO members, as the statute contemplates, and changed course only after it (incorrectly) concluded that a Ninth Circuit decision compelled a different result—a reality that the government downplays but cannot deny. Opp. 6.

Review of FERC's atextual reading is essential. The point is not just that two FERC Chairmen have disagreed with the Sixth Circuit's reading of Section 219(c). Nor is the point only that FERC's rewriting is particularly pernicious given a national energy emergency, when the country needs to encourage all the transmission development possible. The point is that, in the midst of this emergency, the decision below invites states to seize control of federal transmission rates and manipulate those rates to serve the states' own ends. If states believe transmission rates should be lower, they now know they can simply enact RTO mandates that have the effect of reducing returns on equity. Some states may do so because they disagree with Congress's policy choice in Section 219(c) to encourage transmission investment by RTO members, preferring instead lower rates even at the cost of needed investment. Or states may simply use the decision below to pick winners and losers for the states' own reasons, enacting RTO mandates that target only the returns of certain disfavored utilities, while leaving other utilities untouched.

This case shows the danger, in real time: As Petitioners have explained, but the government simply ignores, California's statute targets only the state's largest investor-owned utilities, and California enacted the statute in direct response to the Ninth Circuit's prior decision holding that these utilities are entitled to the adder. Now, these disfavored utilities do not receive the adder, even as other favored utilities within California continue to do so. In *Horizon West Transmission, LLC*, 192 FERC ¶ 61,093 at P 25 (2025), for example, FERC granted the adder to another utility that California has not (yet) deigned to order into an RTO. If the decision below is allowed to stand, this maneuver will only proliferate—as, indeed, is reflected in Maryland's hot-off-the-presses move to take up the invitation left by the Sixth and Ninth Circuits. Section 219(c) will become simply a tool that states can use to induce desired behavior. That is the very opposite of what Congress sought to achieve when it told FERC, categorically and in no uncertain terms, to grant an incentive "to each" utility "that joins" an RTO.

CONCLUSION

The petition should be granted on both questions presented.

Respectfully submitted,

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