

**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and DELAWARE AND RARITAN CANAL COMMISSION, Petitioners, vs. FEDERAL ENERGY REGULATORY COMMISSION, Respondent.	Case No. 18-1144
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PETITION FOR REVIEW

Pursuant to Section 19(b) of the Natural Gas Act, 15 U.S.C. §717r(b) and Rule 15(a) of the Federal Rules of Appellate Procedure (“FRAP”), petitioners New Jersey Department of Environmental Protection and the Delaware and Raritan Canal Commission (collectively “New Jersey”) hereby petition this Court to review the January 19, 2018 final order granting a certificate of public convenience and necessity (“Certificate Order”) to PennEast Pipeline Company, LLC (“PennEast”) issued by the Federal Energy Regulatory Commission (“FERC”) in Docket No. CP15-558.

This Court has jurisdiction over New Jersey's timely petition for review under 15 U.S.C. §717r(a). New Jersey was an intervenor in the FERC proceedings below and brings this action on behalf of itself and its citizens.

New Jersey filed a timely combined request for rehearing and a stay with FERC on February 20, 2018. (Accession number 20180220-5131). On February 22, 2018, FERC's Deputy Secretary signed and issued an Order Granting Rehearings for Further Consideration ("Tolling Order"), which purported to toll the time on all requests for rehearing on FERC's Certificate Order. Pursuant to FERC's own tolling order regulations, FERC's Secretary has not been delegated the authority to toll the time for action on a rehearing request when a request for rehearing is combined with "any other request for Commission action, such as a request to intervene in a proceeding or for a stay of a proceeding." Delegation of Authority to the Secretary, the Director of the Office Electric Power Regulation and the General Counsel, 60 Fed. Reg. 62,326, 62,327 (Dec. 6, 1995); see also 18 C.F.R. 375.302(v) (which grants FERC's Secretary the authority to "toll the time for action on requests for rehearing" but is silent regarding actions requesting both a rehearing and a stay). Because New Jersey's petition sought both rehearing and a stay, FERC's Deputy Secretary lacked authority to toll New Jersey's combined petition.

FERC has not acted on New Jersey's combined petition. Pursuant to 15 U.S.C. §717r(a), if FERC fails to act "upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied." Therefore, New Jersey's combined petition is deemed to have been denied by FERC on March 22, 2018 by operation of law. This petition for review is timely filed within sixty days of FERC's March 22, 2018 denial. 15 U.S.C. 717r(b) ("Any party to a proceeding under this Act aggrieved by an order issued by the Commission in such proceeding may obtain a review of such order . . . by filing in such court, within sixty days after the order of the Commission upon the application for rehearing")

As presented to FERC in New Jersey's combined rehearing and stay request, FERC's entire Certificate Order must be set aside as arbitrary and capricious because, among other reasons as more fully set forth in New Jersey's petition for rehearing filed with FERC, it relied on insufficient data about environmental resources, improperly relied on PennEast's contracts with its affiliates to demonstrate public need, improperly conflated mitigation with minimization or avoidance of environmental impacts, failed to conduct an appropriate alternatives

analysis, and improperly attempts to usurp New Jersey's delegated federal-level jurisdiction over Clean Water Act §§ 401 and 404 resources.

Respectfully submitted,

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Dated: May 21, 2018

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FOR THE DISTRICT OF COLUMBIA CIRCUIT**

<p>NEW JERSEY DEPARTMENT OF ENVIRONMENTAL PROTECTION, and DELAWARE AND RARITAN CANAL COMMISSION,</p> <p style="text-align:center">Petitioners,</p> <p style="text-align:center">vs.</p> <p>FEDERAL ENERGY REGULATORY COMMISSION,</p> <p style="text-align:center">Respondent.</p>	<p>Case No.</p> <p>CERTIFICATE OF SERVICE</p>
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I certify that on May 21, 2018 I mailed the original and four copies of the foregoing Petition for Review to the Clerk of the Court, in accordance with Circuit Rule 25(c)(3) and the Handbook of Practice and Internal Procedures for the D.C. Circuit, § III.E.1, with one copy to be served by the Clerk on Robert Solomon, Solicitor, Federal Energy Regulatory Commission, 888 First Street, NE, Washington, D.C. 20426.

I further certify that a copy of the foregoing Petition for Review was served by mail on Cynthia Richards, 84 Delevan Street, Lambertville, NJ 08530 and by email on the following parties, which includes all members of the service list in FERC Docket No. CP15-558-000:

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