

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

Delaware Riverkeeper Network, <i>et al.</i> ,)	
)	
<i>Petitioners,</i>)	
)	
v.)	Nos. 18-1128, <i>et al.</i>
)	
Federal Energy Regulatory Commission,)	
)	
<i>Respondent.</i>)	

**UNOPPOSED MOTION TO DISMISS
AND REMAND RECORD TO AGENCY**

Respondent Federal Energy Regulatory Commission (“FERC” or the “Commission”) respectfully moves the Court to dismiss the petitions in these consolidated cases, and remand the record to the Commission with leave for the Commission’s vacatur order of December 16, 2021 to go into effect. *See* Order Vacating Authorizations, 177 FERC ¶ 61,197 (2021) (attached). The Commission has conferred with counsel for petitioners and is authorized to state that petitioners do not oppose this motion. Intervenor PennEast Pipeline Co., LLC (“PennEast”) and Consolidated Edison Co. of New York, Inc. take no position on the motion.

As described in the Commission’s December 16 order, PennEast has informed the Commission that it has “ceased all further development of the Project.” 177 FERC ¶ 61,197, P 4. Accordingly, subject to leave of Court, the Commission’s December 16 order: (1) vacates the certificate authorization for the

PennEast Pipeline Project issued in FERC Docket No. CP15-558, (2) vacates the authorization of an amendment in FERC Docket No. CP19-78, and (3) dismisses the pending certificate amendment application in FERC Docket No. CP20-47.

Dismissal should be granted with leave for the Commission's December 16 order to go into effect.

January 28, 2022

Respectfully submitted,

Robert H. Solomon
Solicitor

/s/ Susanna Y. Chu
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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g), I certify that this motion complies with the type-volume limitation of Fed. R. App. P. 27(d)(2)(A) because this motion contains 190 words.

I further certify, pursuant to Fed. R. App. P. 27(d)(1)(E), that this motion complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6) because this motion has been prepared in Times New Roman 14-point font using Microsoft Word for Office 365.

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January 28, 2022

CERTIFICATE OF SERVICE

In accordance with Fed. R. App. P. 25(d) and the Court's Administrative Order Regarding Electronic Case Filing, I hereby certify that, on January 28, 2022, I served the foregoing on all parties to this proceeding through the Court's CM/ECF system.

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Attachment

177 FERC ¶ 61,197
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Richard Glick, Chairman;
James P. Danly, Allison Clements,
and Mark C. Christie.

PennEast Pipeline Company, LLC

Docket Nos. CP15-558-000
CP19-78-000
CP20-47-000

ORDER VACATING AUTHORIZATIONS AND DISMISSING APPLICATION

(Issued December 16, 2021)

1. On January 19, 2018, the Commission issued a Certificate Order authorizing PennEast Pipeline Company (PennEast) to construct and operate the PennEast Project, comprising a 116-mile-long, 36-inch-diameter mainline pipeline; three lateral pipelines; one compressor station; and various associated facilities.¹ The Project was designed to provide up to 1,107,000 dekatherms per day of firm natural gas transportation service from receipt points in the eastern Marcellus Shale region to delivery points in New Jersey and Pennsylvania.
2. On February 20, 2020, the Commission granted PennEast a two-year extension of time to complete project construction and operation, to January 19, 2022.² On March 19, 2020, the Commission issued an Order Amending Certificate, authorizing PennEast's request for several route realignments and workspace modifications to the project.³ On January 30, 2019, PennEast filed an application to amend its certificate to

¹ *PennEast Pipeline Co., LLC*, 162 FERC ¶ 61,053 (2018) (Certificate Order), *order on reh'g*, 164 FERC ¶ 61,098 (2018) (Rehearing Order).

² *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138 (2020).

³ *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,198 (2020) (2019 Amendment), *order on reh'g*, 171 FERC ¶ 61,229 (2020).

construct and operate the project in two phases.⁴ This application is pending before the Commission.

3. Petitions were filed seeking review of the Certificate and Rehearing Orders in the U.S. Court of Appeals for the District of Columbia (D.C. Circuit), which appeal is currently pending before the court.⁵

4. On November 23, 2021, staff sent a letter to PennEast requesting a status update regarding the project, noting the Commission's extension of time to January 19, 2022, and that staff was aware of recent conflicting statements in press reports and court filings regarding whether PennEast still planned to develop the project.⁶ In its November 30, 2021 response, PennEast informed the Commission that it determined the Project "is no longer supported given the challenges in acquiring certain permits needed to construct the Project..." and that "PennEast has ceased all further development of the Project."⁷

5. In view of the above considerations, and subject to leave of court in the pending proceeding before the D.C. Circuit, we will vacate the certificate authorization granted to PennEast for the PennEast Project, including the 2019 Amendment, and will dismiss PennEast's 2020 Amendment Application.

The Commission Orders:

(A) Subject to leave of court, the certificate authorization for the PennEast Pipeline Project issued in Docket No. CP15-558-000 is vacated.

⁴ Docket No. CP20-47-000 (Amendment Application).

⁵ *Delaware Riverkeeper Network v. FERC* (D.C. Cir. Nos. 18-1128, et al.). This proceeding was held in abeyance pending litigation related to eminent domain rights as to state lands. On June 29, 2021, the U.S. Supreme Court issue an opinion which resolved the litigation. *See PennEast Pipeline Co., LLC v. New Jersey*, 141 S. Ct. 2244 (2021). On September 13, 2021, the D.C. Circuit issued an order directing supplemental briefing with respect to its review of the Certificate and Rehearing Orders in the pending litigation. The court suspended these supplemental briefing deadlines in a November 12 order, so the appeal remains in abeyance at this time.

⁶ Letter from Rich McGuire, Director, Division of Gas-Environment and Engineering, Accession no. 20211123-3035.

⁷ Letter from Jeffrey D. England, PennEast Pipeline Company, LLC, Accession No. 20211130-5187.

(B) Subject to leave of court, the authorization for an amendment in Docket No. CP19-78-000 is vacated.

(C) The amendment application in Docket No. CP20-47-000 is dismissed.

By the Commission. Commissioner Phillips is not participating.

(S E A L)

Kimberly D. Bose,
Secretary.