

ORAL ARGUMENT NOT YET SCHEDULED
Nos. 23-1064, 23-1074, 23-1077, 23-1129, 23-1130, 23-1137 (consolidated)

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

NEW JERSEY CONSERVATION FOUNDATION, *et al.*,
Petitioners,
NEW JERSEY DIVISION OF RATE COUNSEL,
Intervenor,

v.

FEDERAL ENERGY REGULATORY COMMISSION,
Respondent,
TRANSCONTINENTAL GAS PIPELINE COMPANY, LLC, *et al.*,
Intervenors.

ON APPEAL FROM THE
FEDERAL ENERGY REGULATORY COMMISSION
No. CP21-94-000; CP21-94-001

**AMICUS CURIAE BRIEF OF NEW JERSEY, WASHINGTON,
CONNECTICUT, MARYLAND, MASSACHUSETTS, NEW YORK,
OREGON, AND VERMONT IN SUPPORT OF PETITIONERS AND
REVERSAL**

MATTHEW J. PLATKIN
Attorney General of New Jersey

Paul Youchak
Deputy Attorney General
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
(609) 815-2278
Paul.youchak@law.njoag.gov

ROBERT W. FERGUSON
Attorney General of Washington

Megan Sallomi
Aurora Janke
Assistant Attorneys General
800 Fifth Avenue, Suite 2000
Seattle, WA 98104
(206) 389-2437
Megan.sallomi@atg.wa.gov

STATEMENT AS TO PARTIES, RULINGS, & RELATED CASES

As required by Circuit Rule 28(a)(1), counsel for the States of New Jersey, Washington, Connecticut, Maryland, Massachusetts, New York, Oregon, and Vermont certify as follows:

- (1) Except for the Amici States of New Jersey, Washington, Connecticut, Maryland, Massachusetts, New York, Oregon, and Vermont, all parties, *amici*, and intervenors appearing in this case are listed in the Petitioners' opening brief.
- (2) References to the final agency action under review appear in Petitioners' opening brief.
- (3) There are no related cases within the meaning of Circuit Rule 28(a)(1)(C).

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2020 Implementation Order	State of New Jersey, Board of Public Utilities, Order Directing the Utilities to Establish Energy Efficiency and Peak Demand Reduction Programs, BPU Docket Nos. QO19010040, QO19060748, and QO117091004, (June 10, 2020), https://tinyurl.com/2xek75xx .
Board	New Jersey Board of Public Utilities
Expansion	Regional Energy Access Expansion
FEIS	Final Environmental Impact Statement, <i>Transcontinental Gas Pipe Line Co.</i> , FERC Docket No. CP21-94 (July 29, 2022), JA __ - __
FERC	Federal Energy Regulatory Commission
NAACP	Nat’l Ass’n for Advancement of Colored People
New Jersey Study	London Econ. Int’l, <u>Final Report: Analysis of Natural Gas Capacity to Serve New Jersey Firm Customers</u> , (Nov. 5, 2021), https://tinyurl.com/7je4dwcc , JA __ - __
Order	Order Issuing Certificate, 182 FERC ¶ 61,006 (Jan. 11, 2023), JA __ - __
Ratepayer Impact Study	Sanem Sergici, et al., <i>New Jersey Energy Master Plan Ratepayer Impact Study</i> (2022), https://tinyurl.com/pf4tufuf .
Rehearing Order	Order on Rehearing, 182 FERC ¶ 61,148 (Mar. 17, 2023), JA __ - __

INTEREST OF AMICI CURIAE

The Amici States of New Jersey, Washington, Connecticut, Maryland, Massachusetts, New York, Oregon, and Vermont file this brief under Rule 29(a)(2) in support of petitioners. The Federal Energy Regulatory Commission’s (“FERC”) decision threatens core state interests in protecting our environment, economies, and ability to make effective energy policy in our borders.

The Amici States have a critical interest in reducing greenhouse gas pollution from natural gas, otherwise known as methane gas. This pollution harms our residents, natural resources, infrastructure, and economies. Each year, we experience increasingly severe weather events linked to climate change, such as heatwaves, flooding, drought, wildfires, and hurricanes. These events cause large human and economic tolls. In 2022 alone, extreme weather disasters cost the country an estimated 165 billion dollars.¹

Many Amici States have found that reducing methane consumption via energy efficiency and development of renewable energy will mitigate these harms and simultaneously reduce air pollution, diversify the energy supply,

¹ Smith, Adam B., *2022 U.S. Billion-dollar weather and climate disasters in historical context*, NOAA (January 10, 2023), <https://tinyurl.com/yuc2uxxz>.

foster local economic development, and create jobs.² To protect our citizens, natural resources, economies, and environment, the Amici States have established laws, regulations, and policies to reduce greenhouse gas emissions and transition to renewable energy.³

The Amici States have a strong interest in ensuring that FERC fully considers these clean energy laws and policies because it is necessary for effective and complementary regulation in a dual federal-state system. In such a system, FERC must consider the States' choices as sovereigns to adopt these

² See, e.g., **Maryland**: Md. Code Ann., Env't § 2-1201 (finding that reducing greenhouse gas emissions is necessary to protect the health and welfare of the people of Maryland and can have a net economic benefit for Maryland); **New Jersey**: N.J.S.A. 48:3-87.3(a)(4) (finding that reducing greenhouse gas emissions and developing zero-emission electricity "are critical to improving air quality for New Jersey residents"); **New York**: Ch. 106 of the Laws of 2019 § 1(3) (finding that "[Action undertaken by New York to reduce greenhouse emissions] will also advance the development of green technologies and sustainable practices within the private sector, which can . . . [create] jobs and tax revenues"); **Washington**: Rev. Code Wash. 19.405.010(4) (finding that transitioning to 100 percent clean electricity will promote energy independence, create high-quality jobs, and protect clean air and water).

³ See, e.g., **Maryland**: Climate Solutions Now Act of 2022, 2022 Md. Laws Ch. 38 (S.B. 528); **Massachusetts**: Reducing CO₂ Emissions from Electricity Generating Facilities, 310 Mass. Code Regs. § 7.74 (2017); Mass. Clean Energy Standard, 310 Mass. Code Regs. § 7.75 (2017); **New York**: Climate Leadership and Community Protection Act, Chapter 106 of the Laws of New York of 2019; New York All-Electric Building Act, Chapter 56 (Part RR) of the Laws of New York of 2023; **Washington**: Climate Commitment Act, ch. 316, 2021 Wash. Sess. Laws 2606 (codified as amended in scattered sections of Wash. Rev. Code tits. 43, 70A).

policies. Considering state policy is also necessary to protect consumers from unreasonable rates—an interest the Amici States and FERC share. As Congress recognized nearly a century ago when it passed the Natural Gas Act, effective energy policy requires a harmonious balance between state and federal regulation. *See infra* § III; *Fed. Power Comm’n v. Louisiana Power and Light*, 406 U.S. 621, 631 (1972). In this case, however, FERC’s disregard of state law and policy not only abrogates its duty to guard against overbuilding and to protect consumers, it infringes on the Amici States’ sovereign interests in executing their laws, achieving their policy goals, and protecting public welfare.

INTRODUCTION

FERC unlawfully approved the Regional Energy Access Expansion (the “Expansion”), a nearly billion-dollar investment to pump more methane gas into New Jersey for at least the next fifty years⁴ despite record evidence demonstrating that the Expansion is not needed and does not serve the public interest. In doing so, FERC irrationally substituted its judgment for New

⁴ *See* Final Environmental Impact Statement (“FEIS”) 4-1, *Transcontinental Gas Pipe Line Co.*, FERC Docket No. CP21-94 (July 29, 2022), JA __ (stating the Expansion is “expected to [last] a minimum of 50 years”).

Jersey's regarding how New Jersey's Clean Energy Act will operate and the Act's likely effect on New Jersey's future need for methane gas. FERC also overlooked the predictable impacts on need for methane gas in other affected States based on those States' laws. Nor did FERC consider the Expansion's likely impacts on consumer rates or state climate laws in its public interest analysis. Because FERC failed to consider the impact of state clean energy and climate laws in its analysis of need and public interest, its decision violates the Administrative Procedure and Natural Gas Acts and must be set aside.

SUMMARY OF ARGUMENT

The Natural Gas Act mandates that FERC authorize only those projects that serve the public's need and interest. *See* 15 U.S.C. § 717f(c). In making that decision, both the Natural Gas and the Administrative Procedure Acts direct FERC to consider all relevant factors and evidence. State laws that affect future demand for methane gas, and a project's impact on States' abilities to implement their laws and policy, are relevant factors. FERC cannot, therefore, close its eyes to the nature and effect of state laws on a proposed project, or the consequences of its actions on consumers or state regulation. Because that is what FERC did here, the Court should set aside the decision as arbitrary and

capricious under the Administrative Procedure Act and unlawful under the Natural Gas Act. *See id.*; 5 U.S.C. § 706(2).

First, FERC erroneously concluded the Expansion served a public need, reasoning that private contracts to buy the pipeline’s capacity outweighed evidence submitted by New Jersey and other parties showing that the Expansion is not needed. *See* Order on Rehearing, 182 FERC ¶ 61,148 (Mar. 17, 2023) at 20-21, 39-40, JA ___-___; ___-___ (“Rehearing Order”). New Jersey, like many Amici States, has enacted laws and promulgated regulations to transition to cheaper and safer energy without unduly burdening ratepayers or jeopardizing reliability. These laws and regulations include New Jersey’s Clean Energy Act, which requires utilities to reduce gas demand annually and to provide renewable electricity. The New Jersey Board of Public Utilities (the “Board”) enforces these requirements and engages in long-term planning to comply with New Jersey law while ensuring reliability and affordability. Based on this statutorily mandated planning process, the Board determined that New Jersey did not need more interstate pipeline capacity to serve firm demand. The Board intervened before FERC to present this evidence showing a lack of need for the Expansion.

FERC irrationally accorded the Board’s evidence little weight. FERC erroneously dismissed New Jersey’s energy efficiency requirements as “lacking mandated [implementation] mechanisms” despite record evidence showing the opposite. *Id.* at 17, 39-40, JA __ - __. FERC further opined that shifting buildings from gas to electricity will simply shift demand from gas utilities to gas power plants, but without recognizing that New Jersey law will move the market toward renewable energy generation and away from gas. *See id.* at 21, JA __. FERC also claimed the Expansion was needed to serve Maryland, Delaware, New York, and Pennsylvania, *see* Order Issuing Certificate, 182 FERC ¶ 61,006 (Jan. 11, 2023) at 19, JA __ (“Order”), but did not consider the effect of those States’ laws on the need for methane gas in those States.

Second, in its public interest analysis, FERC neglected the Natural Gas Act’s directive to protect consumers when it ignored the risk that the billion-dollar Expansion, to be largely paid for by consumers in New Jersey and other States transitioning off methane, could become stranded and ultimately harm consumers. FERC erroneously determined that the Expansion serves the public interest, but failed to consider relevant and significant factors. FERC did not consider the risk that the Expansion would pose to consumers in light of New

Jersey's laws—a particularly egregious error given the Natural Gas Act's directive to protect consumers and ensure reasonable rates when approving new infrastructure. Contrary to the U.S. Environmental Protection Agency's recommendation,⁵ FERC also failed to evaluate whether the Expansion was consistent with state laws aiming to reduce greenhouse gas pollution and, if inconsistent, how that inconsistency affects FERC's public interest analysis. Notably, FERC calculated that the Expansion will singlehandedly comprise 47.8 percent of the greenhouse gasses New Jersey can emit while still meeting its 2050 goal, but did not evaluate this impact in its public interest analysis. *See* FEIS at 4-176, JA ___.

The Natural Gas Act's text and prior judicial precedents confirm that FERC must consider state law and policy in its public need and interest analysis. When viewed in light of the Natural Gas Act's purpose and intent to complement, not contradict, state regulation and to protect consumer interests over gas company profits, FERC's decision lacks rational support and ignores key evidence. For all of these reasons, FERC's decision must be set aside.

⁵ *See* U.S. Environmental Protection Agency Comment at 8-9, *Transcontinental Gas Pipe Line Co.*, FERC Docket No. CP21-94 (April 25, 2022), JA ___-_____.

ARGUMENT

I. FERC Violated the Administrative Procedure and Natural Gas Acts When it Misconstrued New Jersey Laws and Ignored Their Impact on Project Need

FERC based its decision on an incorrect and incomplete analysis of State law. Its flawed reasoning violates the Administrative Procedure and Natural Gas Acts. In deciding whether a project “is or will be required by the present or future public convenience and necessity,” 15 U.S.C. § 717f(e), FERC must “evaluate *all* factors bearing on the public interest.” *Env’t Def. Fund v. FERC*, 2 F.4th 953 (D.C. Cir. 2021). FERC’s policy for reviewing the public need for, and interest in, new pipelines incorporates this requirement. *See id.* at 959 (quoting *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (Sept. 15, 1999), *clarified*, 90 FERC ¶ 61,128 (Feb. 9, 2000), *further clarified*, 92 FERC ¶ 61,094 (July 28, 2000), at 61,747).

The obligation to “evaluate all factors” necessarily includes considering how state laws are likely to affect need for the Expansion in the near and long-term. After all, as this Court observed nearly seventy years ago, “[t]he public convenience and necessity for which regulatory agencies issue certificates are the convenience and necessity of the future. The needs of yesterday require no fulfillment if they be not the needs of tomorrow.” *City of*

Pittsburgh v. Federal Power Comm'n, 237 F.2d 741, 752 (D.C. Cir. 1956).

Similarly, the Administrative Procedure Act requires FERC to sufficiently evaluate all the evidence to reach “a reasoned and principled decision.” *Env't Def. Fund*, 2 F.4th at 975. Agencies must also consider evidence that contradicts the agency's conclusion. *See Butte Cty., Cal. v. Hogen*, 613 F.3d 190, 194 (D.C. Cir. 2010).

FERC made two significant errors in its reasoning. First, FERC erroneously concluded that the New Jersey law requiring gas utilities to reduce demand for gas lacked mandatory implementation mechanisms, despite undisputed evidence of those mandatory mechanisms. Second, FERC arbitrarily concluded that any reduction in demand from gas utilities due to electrifying buildings would simply shift demand from gas utilities to gas power plants to generate more electricity. Thus, FERC overlooked New Jersey law and incentives to replace gas power plants with renewable electricity resources.

A. FERC erroneously concluded that New Jersey's requirement to reduce gas demand lacks mandated implementation mechanisms

FERC's decision to approve the Expansion rests on a fundamental misunderstanding of New Jersey's Clean Energy Act and the Board's expert analysis of the impact of that law on New Jersey's future energy needs. New

Jersey's Clean Energy Act requires gas utilities to annually reduce gas consumption in their service territories by at least 0.75 percent per year based on "the average annual usage in the prior three years." *See* N.J.S.A. 48:3-87.9(a). Based on that requirement and a robust expert analysis, the Board concluded that New Jersey had sufficient existing pipeline capacity to meet its future firm gas needs. *See* Motion to Intervene Out-of-Time and to Lodge of the New Jersey Parties, *Transcontinental Gas Pipe Line Co.*, FERC Docket No. CP21-94 (July 11, 2022) at 4-5, JA ___, and the attached Order, *In the Matter of the Exploration of Gas Capacity and Related Issues*, at 3, JA__.

FERC wrongly dismissed the Board's conclusion based on an incorrect understanding of New Jersey's demand reduction requirement. On rehearing, FERC explained that the Board's study concluding New Jersey had sufficient pipelines was "dependent on" assumptions that New Jersey's gas utilities would achieve their targets to reduce demand through energy efficiency. *See* Rehearing Order 23, JA___. FERC discounted this assumption because, according to FERC, New Jersey had no "mandated mechanisms to implement" its demand reduction requirement. Rehearing Order 17, JA__; *see also id.* at 39-40, JA__ - __ (stating New Jersey's demand reduction requirements and other state laws did not "undercut the Commission's finding of need" because there

were no “prescribed methods for achieving those targets”). This determination cannot be squared with FERC’s analysis or the record.

The record evidence and FERC’s own admission demonstrate that New Jersey’s state-law requirement to reduce gas demand is mandatory. *See* Rehearing Order 17, 23 n.122, JA __, __. As FERC acknowledged, New Jersey’s Clean Energy Act imposes a statutory requirement for gas utilities to reduce demand. *See* Rehearing Order 17, JA __. FERC also cited the Board Order implementing the statutory requirement. *See* Rehearing Order 23, n.122, JA __ (citing New Jersey Board of Public Utilities, *Order Directing the Utilities to Establish Energy Efficiency and Peak Demand Reduction Programs* (June 10, 2020), <https://tinyurl.com/2xek75xx> (“2020 Implementation Order”). FERC’s conclusion that, despite these authorities, there are no mandated implementation mechanisms is incorrect: the 2020 Implementation Order establishes those mechanisms.

The 2020 Implementation Order directs utilities to “administer a suite of core programs,” with “common program elements.” *See* 2020 Implementation Order at 37, *see also id.* at 10-12. Utilities had to submit their programs for approval by May 1, 2021, and implementation began on July 1, 2021. *See id.* at 38. The 2020 Implementation Order also established cost guidelines and

funding mechanisms. *See id.* at 37-38. Utilities receive performance incentives for achieving their targets, and penalties if they do not. *See id.* at 27-28, 40. Utilities must file progress reports with the Board demonstrating compliance. *See id.* at 42. The Board’s expert analysis also described these requirements by including a table of the annual percentage reductions required and the mechanisms utilities would use to achieve them. *See* London Econ. Int’l, Analysis of Natural Gas Capacity to Serve New Jersey Firm Customers (Nov. 5, 2021) (“New Jersey Study”) at 11, 48-50, 72, JA ___, ___-___, ___. These are not empty requirements: New Jersey utilities are each committing an average of \$175 million to achieve them. *See id.* at 72, JA ___.

In short, FERC had before it both mandatory statutory language and the 2020 Implementation Order establishing program elements, compliance monitoring, and penalties. FERC also had evidence showing that New Jersey had committed hundreds of millions of dollars to ensure the program’s success. *See id.* at 72, JA ___. FERC’s conclusion, without explanation, that these provisions are not “mandated mechanisms to implement” New Jersey’s demand reduction requirement, Rehearing Order 17, JA ___, was arbitrary and capricious.

To the extent FERC had questions about whether the 2020 Implementation Order was mandatory or how it was being implemented, it should have held an evidentiary hearing or requested supplementary briefing. *See* Rehearing Order 13-14, ___ - ___ (denying hearing on how New Jersey law affects project need); *see also* *City of Pittsburgh*, 237 F.2d at 753 (holding failure to evaluate the impact of future market developments on project need was erroneous). Alternatively, FERC could have requested additional information from the Board, given that implementation of the program began on July 1, 2021. *See* 2020 Implementation Order at 23. Had FERC taken either approach, it would have discovered that, in the years following the Board’s 2020 Implementation Order, the Board has approved programs, authorized over one billion dollars in investment,⁶ and verified that the first round of demand reductions were achieved⁷. Any of these steps would have filled in

⁶ *See* Board, Order, *In re the Petition of Public Service Electric and Gas Company for Approval of its Clean Energy Future Energy Efficiency Program on a Regulated Basis*, Docket Nos. GO18101112 and EO18101113 (September 23, 2020) at 9-10, 13, 22, available at <https://tinyurl.com/mv3rhtfz>, (last visited Aug. 7, 2023).

⁷ *See* Board, Order, *In re the Implementation of P.L. 2018, C. 17, The New Jersey Clean Energy Act of 2018, Regarding the Establishment of Energy Efficiency and Peak Demand Reduction Programs*, Docket Nos. QO19010040, QO23030150, and QO17091004 (May 24, 2023) at 10 (citing *Financial & Energy Savings Reports*, N.J. Clean Energy Program, <https://tinyurl.com/3apj4vdy>).

FERC’s perceived gaps in the record as to the “timeline for, and likely efficacy of” New Jersey’s laws to reduce reliance on gas. *See* Order, Clements, Comm’r, concurring at 4, JA___. But even without this additional information, the record shows that FERC lacked a rational basis to assume that New Jersey’s laws lacked a mandatory mechanism for implementation and thus could be ignored in FERC’s determination of public need.

By basing its decision on an incorrect factual premise—that the demand reductions had not been implemented—FERC’s decision was arbitrary and capricious. *See Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021) (“Where the Commission rests a decision, at least in part, on an infirm ground, we will find the decision arbitrary and capricious.”) (citing *Williams Gas Processing Gulf Coast Co. v. FERC*, 475 F.3d 319, 330 (D.C. Cir. 2006)).

B. FERC’s conclusion that building electrification will shift gas demand from gas utilities to power plants arbitrarily ignores New Jersey law mandating clean electricity

FERC’s finding of public need for the Expansion also mistakenly assumes that building electrification will shift gas demand to power plants. In reaching this conclusion, FERC entirely failed to consider how New Jersey law mandating renewable electricity will affect future demand from power plants.

An agency violates the Administrative Procedure Act when it fails “to articulate a satisfactory explanation” for its conclusions and “ignore[s] evidence contradicting its position.” *Butte Cty.*, 613 F.3d at 194 (cleaned up); *see also Nat’l Ass’n of Clean Water Agencies v. EPA*, 734 F.3d 1115, 1136-38 (D.C. Cir. 2013) (rejecting agency rule where a group had presented credible evidence contrary to agency findings and agency offered only “mere assertion” that rule accounted for contrary evidence in reply). Failing “to engage with . . . arguments and the underlying evidence” contradicting FERC’s conclusions similarly violates the Natural Gas Act. *Env’t Def. Fund*, 2 F.4th at 975.

Here, FERC unlawfully presumed that building electrification would lead to greater demand from gas power plants, but it based that assumption entirely on past patterns and a projection for the 2022-2023 winter. Rehearing Order 22, n.119, JA ___. In essence, FERC looked to one year in the past to determine the outlook for the next fifty years. *See* FEIS at 4-1, JA ___ (acknowledging the Expansion will be used for “at minimum” fifty years). Commissioner Clements acknowledged this reasoning was unsatisfactory, noting that FERC “has performed no analysis of the magnitude of this assumed transfer in demand [from gas utilities to power plants], nor has it asked the parties to provide it.” Rehearing Order, Clements Comm’r, concurring at 2,

JA ___. At the same time, FERC did not account for a sea change in state energy laws and policy, particularly New Jersey’s Clean Energy Act. N.J.S.A. §§ 48:3-87(d)(2), 48:3-51; *see also* Order, Clements, Comm’r, concurring at 2, n.8, JA ___ (acknowledging that the failure to engage with the New Jersey Board of Public Utilities’ findings in light of New Jersey’s clean energy laws was a “glaring omission” in FERC’s analysis).⁸

In assessing the future demand from gas power plants, FERC should have considered relevant record evidence showing that New Jersey law and incentives intended to replace methane with renewable electricity in the coming years. New Jersey’s Clean Energy Act requires 35% of electricity sold in the state to be from renewable sources by 2025, and 50% of electricity to be renewable by 2050. N.J.S.A. §§ 48:3-87(d)(2), 48:3-51. The Clean Energy Act also directs the Board of Public Utilities to “establish a process and mechanism for achieving the goal of . . . 2,000 megawatts of energy storage by 2030.” § 48:3-87.8(d). The Clean Energy Act further creates various credits and programs to increase production of renewable energy in New Jersey. *See* § 48:3-87.8(e). Following the Clean Energy Act, New Jersey has

⁸ *See also supra* nn. 2-3 (citing clean energy laws in New York, Maryland, and other States).

passed additional laws to rapidly develop offshore wind and solar energy resources.⁹ As a result of these efforts, the portion of New Jersey’s electricity mix supplied by fossil fuels such as methane gas is projected to decrease by over 50% by 2030. *See* Sanem Sergici, et al., *New Jersey Energy Master Plan Ratepayer Impact Study* at 52 (2022), <https://tinyurl.com/pf4tufuf> (“Ratepayer Impact Study”); *see also* Motion for Clarification of the New Jersey Board and Division of Rate Counsel, *Transcontinental Gas Pipe Line Co.*, FERC Dkt No. CP21-94 (Feb. 10, 2023) at 8, n.18, JA __ (discussing the Ratepayer Impact Study). Had FERC evaluated the likely impact of New Jersey law on future gas demand, it would have considered the New Jersey Clean Energy Act’s renewable electricity requirements and the evidence submitted from the Board, which contradicted FERC’s conclusion that additional gas power generation would be needed to electrify buildings.

Nor did FERC explain why the existence or development of renewable energy sources was irrelevant to its analysis of need for more gas. *See* Alexandra B. Klass, *Evaluating Project Need for Natural Gas Pipelines in an Age of Climate Change: A Spotlight on FERC and the Courts*, 39 *Yale J. on*

⁹ *See, e.g.*, Offshore Wind Development Act, codified at N.J.S.A. 48:3-87 *et seq.* (as amended); Solar Act of 2021, codified at N.J.S.A. 48:3-114 *et seq.*

Reg. 658, 690 (2022) (discussing how “new natural gas infrastructure . . . is often competing with or displacing new wind, solar, and battery storage. . . [M]arket trends show that these renewable energy resources either are currently or will soon be cheaper than natural gas.”). Almost a century ago, the Supreme Court found the likelihood of competition from other energy sources to be so obvious that it took “judicial notice of the fact that gas is in competition with other forms of fuel.” *W. Ohio Gas Co. v. Pub. Utilities Comm’n of Ohio*, 294 U.S. 63, 72 (1935). FERC, on the other hand, unlawfully refused to consider any energy alternative that was not a gas pipeline. *See* FEIS at 3-2, JA ___ (refusing to consider renewable energy alternatives); Rehearing Order at 44-48, JA ___ - ___ (same). Yet, as Commissioner Clements noted, FERC’s failure to assess “the increasingly complex factors bearing on the need for new pipeline capacity, including the effect of relevant state laws, programs, and utility regulatory agency determinations” led to “shortcomings in the Commission’s need analysis.” Rehearing Order, Clements, Comm’r, concurring at 3, JA ___.

In assuming that New Jersey’s buildings must be served by gas or electricity created by gas, FERC ignored relevant evidence that indicates otherwise: New Jersey is moving towards replacing future electric generation from methane with safer, cleaner, and cheaper renewable energy sources.

FERC's failure to consider this evidence therefore violated the Administrative Procedure and Natural Gas Acts. *See Env't Def. Fund*, 2 F.4th at 975.

II. FERC Overlooked Important Aspects of the Public Interest When it Ignored Impacts on Consumers or on State Laws Limiting Greenhouse Gas Emissions

The Natural Gas Act "requires the Commission to evaluate all factors bearing on the public interest." *Atl. Ref. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959). Yet, as with its assessment of public need, FERC failed to meaningfully analyze how state climate and energy laws affected the public's interest in the Expansion. First, FERC failed to consider how the Expansion may affect consumer rates in light of state law aiming to reduce gas consumption. Second, FERC did not assess whether the Expansion was consistent with state laws limiting greenhouse gas pollution and, if not, whether that adversely affected the public interest.

A. FERC arbitrarily failed to consider how the Expansion could affect gas consumers in light of state law

The Natural Gas Act is, in part, a "legislative command" to FERC to protect consumers from exploitation by gas companies. *Nat'l Ass'n for Advancement of Colored People ("NAACP") v. Fed. Power Comm'n*, 425 U.S. 662, 666-68 (1976). As the Supreme Court recognized, this duty "can be alternately described as the task of seeing that no unnecessary or illegitimate

costs are passed along to that consumer.” *Id.* (quoting appellate court opinion, *NAACP v. Fed. Power Comm’n*, 520 F.2d 432, 444 (D.C. Cir. 1975), *aff’d*, 425 U.S. 662). FERC’s duty “to see that [unnecessary costs] are not borne by the consumer could arise in . . . certificate proceedings.” *NAACP*, 425 U.S. at 667. Indeed, the Supreme Court has described FERC’s authority to approve new pipelines as the “heart” of the Natural Gas Act’s overall aim to protect consumers from excessive rates. *Atl. Ref. Co.*, 360 U.S. at 388; *see also Fed. Power Comm’n v. Hope Nat. Gas Co.*, 320 U.S. 591, 612 (1944) (finding the certificate authority was “plainly designed to protect consumer interests against exploitation at the hands of private natural gas companies”).

In this case, FERC abdicated its duty to protect consumers from unnecessary costs and stranded assets. FERC approved a nearly one billion-dollar project, with costs to be borne in large part by consumers, without considering how the Expansion may affect consumer rates in light of state laws to reduce reliance on methane. In other words, FERC approved the 50-year Expansion without considering whether sufficient consumer demand would exist over that period to pay for it. In this regard, FERC also violated the Administrative Procedure Act because it “entirely failed to consider an important aspect of the problem” when it found that the Expansion is needed

and would serve the public interest. *See Motor Vehicle Mfrs. Ass'n of U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983).

New Jersey, like other States, is well aware of the need for “thorough analysis and planning across the state and regional energy system” to ensure the success of its clean energy transition and minimize unnecessary costs on gas consumers. *See* State of New Jersey, 2019 Energy Master Plan, available at <https://tinyurl.com/vwxn2khw>, at 32 (“Crucial to the success of this transition is thorough analysis and planning across the state and regional energy system”); 189-91 (discussing need to avoid unnecessary infrastructure expansions that could burden ratepayers). As part of that effort, the New Jersey Board of Public Utilities recently completed a “rigorous stakeholder process that involved reviewing substantial public comment” and conflicting market studies on New Jersey’s future need for gas pipelines. *See* Motion to Intervene Out-of-Time and to Lodge of the New Jersey Parties (July 11, 2022) at 5, JA ___, and attached Order, *In the Matter of the Exploration of Gas Capacity and Related Issues*, at 1-2, JA ___ - ___. After concluding new gas pipelines were not needed to serve firm demand, the Board lodged its findings with FERC to protect consumers from unnecessary cost burdens. *See id.* Yet, as described above, FERC irrationally discounted this study. *See supra* § I(A)-(B).

On rehearing, the New Jersey Board of Public Utilities provided FERC with additional evidence and explanation about the risks to New Jersey consumers that may result from failure to properly plan for its energy transition away from fossil fuels like methane gas. *See* Motion for Clarification (Feb. 10, 2023) at 8, JA __.

First, the Board explained that New Jersey’s current policies are expected to lead to declining demand for methane gas in the state, i.e., current gas consumers will use less due to New Jersey’s energy efficiency programs, other gas consumers are expected to switch to electricity that will increasingly be generated from renewable energy. *See id.* at 8 n.18, JA __ (citing Ratepayer Impact Study at 8). Second, “declining demand for natural gas will force the same amount of fixed costs to be spread over fewer volumetric sales, putting upward pressure on natural gas rates.” *See id.* at 11 n.29, JA __. In support, the Board’s filing described a Board-commissioned study assessing the ratepayer impacts of New Jersey’s current policies, which projected “that natural gas retail rates will be 14% higher in 2030.” *Id.* Third, rising gas rates will lead more consumers to electrify, causing gas costs to rise even higher for the remaining users who are unable to switch from gas to electricity, including low-income people. *See* Ratepayer Impact Study 25-26. Due to these concerns,

the New Jersey Board of Public Utilities requested “greater [FERC] scrutiny of pipeline certificate applications.” Motion for Clarification (Feb. 10, 2023) at 3, JA __.

Nor was the Board alone in urging FERC to consider how State efforts to reduce emissions and transition to clean energy will affect future need for the Expansion. *See, e.g.*, Rehearing Order at 13, 82, JA __, __ (acknowledging arguments that FERC failed to consider effect of state law on project need and impacts to consumers); Food and Water Watch Comments, *Transcontinental Gas Pipe Line Co.*, FERC Docket No. CP21-94 (Apr. 22, 2022) at 16-17, JA __-__ (describing in detail how Delaware, Maryland, New Jersey, and Pennsylvania laws and policies create a risk the pipeline will become a stranded asset); Petition for Rehearing by Food and Water Watch and Sierra Club, *Transcontinental Gas Pipe Line Co.*, FERC Docket No. CP21-94 (Feb. 10, 2023) at 5, JA __ (quoting New Jersey’s report stating “[r]educing demand for natural gas is critical to meeting New Jersey’s climate goals”).

Yet FERC did not consider any of these risks when it approved the Expansion. FERC arbitrarily decided that it need not consider the intent or projected effect of New Jersey’s policy path, unless it was “mandatory.” *See* Order, Clements, Comm’r, concurring at 4, JA __ (stating “the Commission

essentially dismisses the totality of New Jersey’s efforts with the observation that the non-pipeline alternatives addressed in the [Board’s] order are not mandatory”). FERC then compounded this error by mischaracterizing legally binding requirements as non-mandatory to justify ignoring them as well. In doing so, FERC arbitrarily substituted its judgment on the operation and effect of New Jersey law for that of New Jersey’s expert state agency (the New Jersey Board of Public Utilities). Irrespective of whether state policies are mandatory, however, FERC still must assess how the Expansion might affect consumer rates and state energy policies (and, as Commissioner Clements noted, understanding the “timeline for and likely efficacy” of those policies could help, *see id.*). FERC neglected this analysis.

Without analyzing the potential transition risks to consumers from declining gas demand in light of New Jersey laws and policies, FERC has no basis to support its conclusion that it simply had a different “risk tolerance” than state regulators. *See* Order at 18, JA __ (claiming contradicting views of project need “may reflect differences in risk tolerance”). In fact, FERC was not being more risk-averse than state regulators. Rather, FERC simply was ignoring another, major category of risk—the risk of stranded assets and consumer impacts due to conflicts with state energy laws. This more accurately

describes why the Board urged FERC to ensure that investments to achieve system reliability beyond what is necessary to meet minimum reliability thresholds “should be consistent with New Jersey’s long-term clean energy and decarbonization goals.” Motion for Clarification (Feb. 10, 2023) at 8, JA __.

Because FERC ignored the economic risks to consumers from the Expansion in light of New Jersey’s current and planned policies, FERC’s analysis was inadequate and in violation of the Natural Gas and Administrative Procedure Acts.

B. FERC unlawfully ignored conflicts with state climate laws in determining the public’s interest

FERC did not consider the public interest in achieving the emission reductions enshrined in state laws when it determined the public interest supported the Expansion. *See* Order at 39-40, JA __ - __; Rehearing Order 39-40, JA __ - __. This was error.

The Natural Gas and Administrative Procedure Acts require FERC to consider environmental factors in determining the public interest. *See Sierra Club v. FERC*, 867 F.3d 1357, 1373 (D.C. Cir. 2017) (affirming FERC may deny a certificate because of environmental harms, such as greenhouse gas emissions); *Vecinos*, 6 F.4th at 1331 (holding FERC’s public interest finding was deficient because it did not fully consider impacts on climate change and

environmental justice). Here, FERC’s analysis did not consider the Expansion’s inconsistency with state climate laws as a factor in its analysis.

FERC acknowledged that all five States the Expansion would serve (Delaware, Maryland, New Jersey, New York, and Pennsylvania) have set statutory limits on emissions. FEIS at 4-176, JA ___. These laws represent a strong public interest to reduce, not increase, emissions. *See, e.g.*, N.J.S.A. 48:3-87.3(a)(1); N.Y. Env’tl. Conserv. Law § 75-0107; Md. Code Ann., Env’t § 2-1204.2.

Nonetheless, the Expansion will increase emissions in all five States. *See* FEIS at 4-176, JA ___. In New Jersey, the Expansion will singlehandedly consume 47.8 percent of New Jersey’s 2050 greenhouse gas emissions limit for the entire state. *See id.* New Jersey now must achieve significantly greater reductions from every other source (e.g., vehicles, buildings, or power plants) than it would have had to do without the Expansion. The U.S. Environmental Protection Agency noted this “increasing conflict” between emissions from FERC projects and state emissions limits. *See* U.S. Environmental Protection Agency, Comment (Apr. 25, 2022) at 8-9, JA __-___. For this reason, the Environmental Protection Agency recommended FERC “evaluate and disclose whether a project that increases fossil fuel consumption can be consistent with

the energy use changes necessary to achieve [state and federal emission reduction] goals.” *Id.*

FERC neither evaluated nor disclosed whether the Expansion was consistent with planned energy use changes or emission reductions in New Jersey or any other State. Instead, FERC claimed it was “unable to determine how individual projects will affect international, national, or state-wide GHG emission targets or whether a project’s [greenhouse gas] emissions comply with those goals or laws.” Rehearing Order at 64, JA ___. FERC could have acknowledged that the Expansion will substantially impede the affected States’ abilities to achieve their goals to reduce emissions. FERC also could have answered this question by evaluating how the Expansion would interfere with the affected States’ plans to achieve their emission reduction targets.¹⁰ *See Env’t Def. Fund*, 2 F.4th at 974 (holding FERC violated the Natural Gas and Administrative Procedure Acts by failing to engage with evidence). At minimum, FERC should have considered this inconsistency as a factor adversely affecting the public interest.

¹⁰ For example, New York’s plan provides a series of recommendations to achieve the State’s emission limits. *See* N.Y. Envtl. Conservation Law § 75-0103; N.Y. Climate Action Council, Scoping Plan: Full Report, Dec. 2022, available at <https://tinyurl.com/3dv8hj4m>; *see also* State of New Jersey, 2019 Energy Master Plan.

Because FERC failed to consider factors related to the Expansion's impact on gas consumers in light of state laws and the Expansion's impact on States' abilities to achieve their statutory directives to reduce emissions, FERC's public interest analysis violates the Administrative Procedure and Natural Gas Acts.

III. The Natural Gas Act's Text and Judicial Interpretations Confirm that FERC Must Consider State Clean Energy Laws and Policies

In passing the Natural Gas Act, Congress established a regulatory system wherein FERC regulated interstate transportation of methane gas and States maintained authority over intra-state sales, consumption, and transportation.

See 15 U.S.C. § 717(b). Congress intended the Act “to create a comprehensive and effective regulatory scheme ... of dual state and federal authority.

Although federal jurisdiction was not to be exclusive, [FERC's] regulation was to be broadly complementary to that reserved to the States, so that there would be no ‘gaps’ for private interests to subvert the public welfare.” *Louisiana Power & Light*, 406 U.S. at 631 (cleaned up).

This “congressional blueprint has guided judicial interpretation” of the Natural Gas Act. *See id.*; *see also Distrigas Corp. v. Fed. Power Comm'n*, 495 F.2d 1057, 1064 (D.C. Cir. 1974) (stating the Act's “purpose [to protect consumers through complementary regulation to that of the States'] must be

the determinative guide in construction of the Act’s regulatory scheme”). For example, in *Louisiana Power and Light*, the Supreme Court justified federal authority only after considering where and how regulation could be most effective to protect consumers and the relative competencies of state and federal regulators. *See* 406 U.S. at 632-39; *see also Fed. Power Comm’n v. Transcontinental*, 365 U.S. 1, 19-23 (1961).

Here, FERC did not claim it lacked authority to analyze the impact of state law, it simply did not do so. *See* Rehearing Order at 39-40, JA ___ - ___. FERC’s failure unreasonably departs from Congress’s directive to protect consumers through a harmonious and complementary system of federal and state regulation.

FERC cannot ensure its regulation of pipelines is complementary to the States’ regulation where it does not adequately analyze the impact of state requirements on the need for and public interest in a project. As described above, FERC incorrectly claimed a New Jersey law mandating demand reduction measures “lack[ed] mandated mechanisms” to implement it. Rehearing Order at 17, JA ___. FERC then irrationally “dismiss[ed] the totality of New Jersey’s efforts” based on one (incorrect) understanding of one aspect of New Jersey law. Order, Clements, Comm’r, concurring at 4. Finally, FERC

claimed New Jersey’s efforts were inconclusive because the Expansion would also serve other States, but neglected to discuss similar efforts in those other States that could undermine need for the Expansion. *See* Order at 19, JA __.

Nor can FERC feasibly ensure its actions complement state efforts when it dismisses potential inconsistencies with state goals by claiming, without support, that it is “unable to determine” how its action may affect them.

Rehearing Order at 64, JA __. The record belies FERC’s conclusion: the Expansion will comprise 47.8 percent of New Jersey’s total target for greenhouse gas emissions in 2050 and significant percentages of the emission targets for Delaware, Maryland, New York, and Pennsylvania. *See* FEIS at 4-176, JA __. Yet, as Commissioner Clements acknowledged, FERC did not inform itself of the “timeline for, and likely efficacy of” relevant state policies. *See* Order, Clements, Comm’r, concurring at 4, JA __. FERC’s decision abdicates the role Congress intended for it: to harmonize federal regulations with those of the States with the ultimate goal of protecting consumers.

CONCLUSION

For the foregoing reasons, the Court should grant the petitions and vacate the Commission’s Order and Rehearing Order.

RESPECTFULLY SUBMITTED this 9th day of August, 2023.

For the STATE OF NEW JERSEY

MATTHEW J. PLATKIN
Attorney General of New Jersey

/s/ Paul Youchak

Paul Youchak
Deputy Attorney General
25 Market Street, P.O. Box 112
Trenton, N.J. 08625
(609) 815-2278
Paul.youchak@law.njoag.gov

FOR THE STATE OF WASHINGTON

ROBERT W. FERGUSON
Attorney General

/s/ Megan Sallomi

Megan Sallomi
Aurora Janke
Assistant Attorneys General
800 5th Ave, Suite 2000
Seattle, WA 98104
(206) 389-2437
Megan.Sallomi@atg.wa.gov
Aurora.Janke@atg.wa.gov

Attorneys for Amici Curiae

For the STATE OF CONNECTICUT

WILLIAM TONG
Attorney General
165 Capitol Avenue
Hartford, CT 06106

For the STATE OF MARYLAND

ANTHONY G. BROWN
Attorney General of Maryland
200 Saint Paul Place
Baltimore, Maryland 21202

For the COMMONWEALTH OF
MASSACHUSETTS

ANDREA JOY CAMPBELL
Attorney General
One Ashburton Place, 18th Floor

Boston, MA 02108

For the STATE OF NEW YORK

LETITIA JAMES
Attorney General
State of New York
28 Liberty Street
New York, NY 10005

For the STATE OF OREGON

ELLEN F. ROSENBLUM
Attorney General
Oregon Department of Justice
100 SW Market
Portland, OR 97201

For the STATE OF VERMONT

CHARITY R. CLARK
Attorney General
Office of the Attorney General
109 State Street
Montpelier, VT 05609

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/s/ Megan Sallomi
Megan Sallomi
Assistant Attorney General