UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Removal of Regulations Limiting Authorizations to Proceed With Construction Activities Pending Rehearing	)	Docket No. RM25-9-000

COMMENTS OF THE INTERSTATE NATURAL GAS ASSOCIATION OF AMERICA, THE AMERICAN PETROLEUM INSTITUTE, AND GPA MIDSTREAM ASSOCIATION

The Interstate Natural Gas Association of America ("INGAA"), the American Petroleum Institute ("API"), and GPA Midstream Association ("GPA Midstream") (collectively, "the Associations") submit these comments in response to the Federal Energy Regulatory Commission's ("FERC" or "Commission") June 24, 2025 Notice of Proposed Rulemaking ("NOPR"),[1] which invited comments on the Commission's proposal to rescind 18 C.F.R. § 157.23 and make conforming revisions to 18 C.F.R. § 153.4. The Commission's NOPR was issued in response to INGAA's petition for rulemaking,[2] and the Associations strongly support the proposal. The Associations welcome this opportunity to submit comments to expand upon the reasons provided in INGAA's petition for rescinding Order No. 871, to address the topics on which the Commission specifically invited comment, and to assist the Commission in developing a final decision in this proceeding that fully remedies the harms Order No. 871, as modified by Order No. 871-B, has brought about.

[1] Removal of Regulations Limiting Authorizations to Proceed With Construction Activities Pending Rehearing, 90 Fed. Reg. 26,771 (June 24, 2025) ("NOPR").

[2] INGAA Petition for Rulemaking to Rescind Commission Order No. 871, FERC Docket No. RM25-9-000 (Apr. 14, 2025) ("INGAA Petition").

INGAA is a trade association that advocates regulatory and legislative positions of importance to the interstate natural gas pipeline industry in the United States. INGAA's 29 members represent the majority of interstate natural gas transmission pipeline companies in the United States. INGAA's members, which operate approximately 200,000 miles of interstate natural gas pipelines, serve as an indispensable link between natural gas producers and consumers. Its members' interstate natural gas pipelines are regulated by the Commission pursuant to the Natural Gas Act ("NGA").[3]

API is a nationwide, non-profit trade association that represents all facets of the natural gas and oil industry, which supports 10.3 million U.S. jobs and nearly 8 percent of the U.S. economy. API's more than 600 member companies include large integrated companies, as well as exploration and production, refining, marketing, pipeline and marine businesses, and service and supply firms. API was formed in 1919 as a standards-setting organization, and API has developed more than 700 standards to enhance operational and environmental safety, efficiency, and sustainability. API and its members are committed to the safe transportation of natural gas, crude oil and petroleum products, and support sound science and risk-based regulations, legislation, and industry practices that have demonstrated safety benefits. API members engage in exploration, production, and construction projects and will continue to be affected by Order No. 871.

GPA Midstream is composed of over 50 corporate members that directly employ over 57,000 employees that are engaged in the gathering, transportation, processing, treating, storage and marketing of natural gas, natural gas liquids ("NGLs"), crude oil, and refined products, commonly referred to in the industry as "midstream activities." In 2023,

[3] 15 U.S.C. §§ 717-717w.

GPA Midstream members operated over 506,000 miles of pipelines, gathered over 91 billion cubic feet per day, and produced over 5.3 million barrels per day of NGLs from over 365 natural gas processing facilities.

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EXECUTIVE SUMMARY

INGAA, API, and GPA Midstream ("the Associations") agree with the Commission's proposal to remove 18 C.F.R. § 157.23 from its regulations. The Associations also request that the Commission clarify or rescind its policy of "presumptively staying" NGA certificate orders for a period of time where landowners subject to eminent domain have protested. The Commission should treat orders authorizing projects under NGA sections 3 and 7 as fully effective when issued, unless a party applies for a stay and makes a sufficiently strong evidentiary showing under the rigorous standards traditionally applicable to requests for such case-specific relief. That is what Congress intended, and that is what sound policy dictates.

The Associations submit the following comments to expand upon INGAA's previous request, to address the topics on which the Commission has specifically sought comment, and to provide additional context that may assist the Commission in reaching a final decision that advances the NGA's purposes and promotes the stable, predictable, and pro-development regulatory environment that is necessary to "encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices."[4]

Order No. 871 is a legal and historical anomaly. Congress intended Commission orders to be effective when issued. Although Congress permitted the Commission or reviewing courts to issue stays where particular circumstances warrant such relief, it plainly envisioned such stays as unusual case-specific exceptions to the norm. Nor is there anything unusual about Congress's choice to make Commission orders effective when issued. Orders approving projects under sections 3 and 7 represent the considered

[4] *NAACP v. Fed. Power Comm'n*, 425 U.S. 662, 670 (1976).

judgment of the Commission, after extensive proceedings, that a project meets the statutory criteria for approval—in the case of section 7 orders, that the public convenience and necessity *require* the project to be built.[5] Judicial review, if it occurs, is meant to be a postscript—not a process that should presumptively hold up the development of projects that the Commission, in its sound judgment, has decided should move forward. Order No. 871 is inconsistent with this congressional design because where a qualifying rehearing request is filed, Order No. 871 effectively *presumes* that a Commission order is wrong, at least until a court has made a preliminary assessment that the order should be allowed to take effect. That is inconsistent with how administrative law generally works, inconsistent with the purposes and structure of the NGA, and inconsistent with the Supreme Court's guidance regarding the circumstances in which a decision should be stayed pending review.

Order No. 871 is also bad policy for at least three reasons. *First*, the concerns that originally motivated it were mooted by the D.C. Circuit's en banc decision in *Allegheny Defense Project v. FERC*.[6] Under *Allegheny Defense*, parties may seek and receive a judicial stay as soon as 30 days after a request for rehearing has been filed. They can also seek a case-specific stay from the Commission even sooner, if they are able to make a sufficiently strong showing. In the wake of *Allegheny Defense* and under the Commission's usual post-*Allegheny Defense* practices (under which rehearing requests are generally deemed denied by operation of law 30 days after they are filed), Order No. 871 is a solution in search of a problem.

[5] 15 U.S.C. § 717f(e).

[6] 964 F.3d 1 (D.C. Cir. 2020) (en banc).

Second, Order No. 871 imposes major costs on pipelines, their customers, and ultimately the millions of American households and businesses that depend on reliable, abundant, and affordable natural gas. Because of the logistical and operational realities of pipeline construction—e.g., difficulties in amending construction schedules, reliance on just-in-time deliveries, advance planning to secure construction crews and equipment—§ 157.23 can create a nearly half-year delay in each case-specific NGA section 7 project authorization, regardless of whether any eligible request for rehearing is ultimately filed in response to a certificate order. Order No. 871 has demonstrably played into the hands of organized anti-infrastructure groups by allowing them to trigger automatic delays simply by filing a rehearing request.

Third, Order No. 871 is misaligned with the consensus view that additional pipeline development is urgently required to reliably serve growing electric load and the build-out of the data centers necessary for U.S. advancement and dominance in artificial intelligence. Order No. 871 frustrates the public interest by delaying this critical infrastructure development.

The Commission should fully rescind § 157.23, rather than adopting half-measure revisions. For example, limiting § 157.23 only to situations where landowners file rehearing requests would not remedy the uncertainty to which the regulation subjects pipeline developers. Pipeline developers would still need to plan project timelines around the possibility of a 150-day delay, because they cannot know in advance, when purchasing and scheduling equipment deliveries and scheduling construction crews, whether a qualifying landowner rehearing request may be filed. Nor would it make sense to leave § 157.23 in place but limit its duration. Under *Allegheny Defense*, parties can seek a stay

from the Commission immediately after a certificate order issues, and judicial superintendence is available as soon as 30 days thereafter, so long as parties file rehearing requests promptly. There is no reason to tinker at the margins when a better and simpler approach exists: Repeal the regulation, treat Commission orders as fully effective when issued, and rely on the availability of case-specific stay relief—under appropriately high standards for relief—as a backstop for exceptional circumstances.

The Associations also request that the Commission clarify or rescind its presumptive stay policy for instances where landowners potentially subject to eminent domain proceedings protest. The NOPR states that the Commission is not proposing to modify this policy, albeit while emphasizing that the policy will be applied in a "case-by-case" manner. The Associations request that the Commission clarify that, moving forward, it will impose such a stay only where (1) a landowner files a stay motion after issuance of the certificate order, and (2) the Commission's standards for issuing a case-specific stay are met. If that is not the Commission's understanding of how it will apply this policy on a prospective basis, the Associations request that the Commission rescind its presumptive-stay policy as well. As it stands, that policy is inherently confusing, creates unwarranted regulatory uncertainty, and is not necessary to protect landowner rights and interests given the protections afforded by the NGA. In fact, to the extent the presumptive stay policy is intended to deviate from the Commission's traditional case-by-case exercise of its stay authority—under which the Commission has demanded a strong showing from the stay applicant—it detracts from the entire purpose of the NGA's eminent-domain provisions, which are intended to ensure that an individual landowner along a pipeline route cannot unilaterally stand in the way of a project that is required by the general public interest.

COMMENTS

I. The Commission Should Rescind § 157.23.

A. Order No. 871, Including § 157.23, Is Inconsistent with Congressional Intent, Standard Agency Practice, and the Typical Norms Governing Relief Pending Review.

Before explaining the policy reasons for rescinding Order No. 871, it is important to note that Order No. 871's core characteristic—treating Commission project-approval orders as less than fully effective when issued—is contrary to both statutorily expressed congressional intent and with historical norms.[7]

The NGA's plain statutory text demonstrates that Congress intended Commission orders to be fully effective when issued. That is clear from NGA section 19(c), which states that the pendency of rehearing "shall not . . . operate as a stay of the Commission's order."[8] Judicial review does not alter the effectiveness of the Commission's order.[9] While rehearing and judicial review are available *post*-decision processes, they do *not* prevent Commission orders from going into effect while such post-decision review processes are ongoing. Congress did provide for case-specific stay relief (as it generally has done as a matter of standard administrative law), at least once a request for rehearing is filed.[10] It recognized that reviewing courts would be able to issue stays, pursuant to their traditional equitable powers, upon taking jurisdiction pursuant to a timely petition for review.[11] Case-

[7] The Associations generally use the phrase "Order No. 871" herein as a shorthand for Order No. 871 itself and the follow-on orders addressing arguments raised on rehearing and clarification. *See* Order No. 871, 171 FERC ¶ 61,201 (2020); Order No. 871-B, 175 FERC ¶ 61,098 (2021); Order No. 871-C, 176 FERC ¶ 61,062 (2021).

[8] 15 U.S.C. § 717r(c).

[9] *See id.* ("The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order.").

[10] *Id.*

[11] *Id.*

specific relief was not intended to be the norm; if it were, Congress would not have gone out of its way to affirmatively codify a default rule that Commission orders are immediately effective in section 19(c).[12]

Order No. 871 is inconsistent with Congress's overall purposes in enacting the NGA. As the Commission's NOPR observes, the "Commission's principal statutory mission under the Natural Gas Act [is] 'to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices.'"[13] The NGA's legislative history evinces extensive concern regarding affordability and access, as well as concerns about the misuse of market power.[14] Order No. 871 does not advance those purposes or address those concerns. Rather, it primarily serves the interests of project opponents at the *expense* of the public interest in access to reliable and reasonably priced natural gas. Order No. 871 affirmatively strains against the clear statutory design of NGA section 19 in order to prioritize the preferences of project opponents, and especially organized anti-infrastructure groups, over the broad public interest in plentiful and affordable natural gas that the NGA was primarily enacted to safeguard.[15]

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[12] The Associations recognize that § 157.23 does not "stay" certificate orders, strictly speaking, inasmuch as it merely bars authorizations to proceed with construction. And the Associations recognize that the Commission's case-specific "presumptive" stay policy during the pendency of landowner rehearing requests is at least ostensibly intended to fit the strict text of section 19(c) by not imposing a rigid, automatic stay policy. *See* Order No. 871-C, 176 FERC ¶ 61,062, at P 38. Be that as it may—and whatever the merits of the Commission's efforts to reconcile Order No. 871 with the statutory text—there can be no doubt that Order No. 871 is in serious tension with Congress's broader intent. *Cf. generally* INGAA Request for Clarification and Rehearing at 29-39, FERC Docket No. RM20-15-001 (June 3, 2021) ("INGAA Order No. 871-B Rehearing Request").

[13] NOPR at P 1 (quoting *NAACP*, 425 U.S. at 669-70).

[14] *See generally* Fed. Trade Comm'n, *Utility Corporations: Final Report to the Senate of the United States Pursuant to Senate Resolution No. 83, 70th Congress, 1st Session on Economic, Corporate, Operating, and Financial Phases of the Natural-Gas-Producing, Pipe-Line, and Utility Industries, with Conclusions and Recommendations*, S. Doc. No. 70-92, pt. 84-A, at 615-16 (1936).

[15] *NAACP*, 425 U.S. at 669-70 (differentiating between the "principal" purpose of the NGA to "encourage the orderly development of plentiful supplies of … natural gas at reasonable prices" and "other subsidiary purposes contained" in the NGA).

Congress plainly intended the Commission's project-approval orders to be effective when issued, and there is no basis to depart from that intent, particularly where doing so runs contrary to the statute's basic purpose. There is absolutely nothing unusual or unreasonable about Congress's choice to make Commission orders effective when issued. Those orders represent the considered judgment of the Commission, after extensive proceedings, that the statutory criteria for project approval are satisfied. Congress entrusted the Commission, not courts, with determining whether projects should move forward; courts do "not substitute [their] judgment for that of the Commission" on matters of project need,[16] and judicial review is accordingly meant to be a postscript to a legally effective project approval. Had Congress intended the statute to work otherwise—e.g., providing that Commission orders would be ineffective until a reviewing court has given its tacit or explicit blessing—it easily could have done so. It chose not to, and its decision must be respected.

Order No. 871 conflicts with this congressional design. Where a qualifying rehearing request is filed, Order No. 871 effectively presumes that the Commission's project-approval order is wrong, at least until a court has made a preliminary assessment that the order should be allowed to take effect. Tellingly, this aspect of Order No. 871 seemingly conflicts with NGA section 19(a), which makes the opposite presumption: absent Commission action, a rehearing request is "deemed . . . denied" by operation of law, strongly indicating that the Commission order should presumptively be viewed as correct from the start.[17]

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[16] *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1308 (D.C. Cir. 2015) (internal quotation marks omitted).

[17] 15 U.S.C. § 717r(a).

Order No. 871 is also inconsistent with how administrative law generally works. The Associations are not aware of, nor has the Commission ever identified, any other federal agencies that automatically stay an agency's order even after the agency denies requests for rehearing as a matter of law. Order No. 871 ignores the Supreme Court's admonition that a "stay [pending appeal] is an intrusion into the ordinary processes of administration and judicial review, and accordingly is not a matter of right, even if irreparable injury might otherwise result"—because "[t]he parties and the public, while entitled to both careful review and a meaningful decision, are also generally entitled to the *prompt execution of orders that the legislature has made final.*"[18] Congress unambiguously "has made final"[19] the Commission's project-approval orders.[20] It is abnormal to automatically postpone their "prompt execution," at the expense of both the "parties"—notably, the developer who has already gone through years of administrative proceedings to secure the Commission's approval—and the "public,"[21] whose interest in reliable and affordable natural gas supplies is undermined by delays in project development.

B. Order No. 871 Is Bad Policy.

1. Order No. 871 Was Motivated by Legal and Practical Concerns That No Longer Exist After Allegheny Defense.

The Commission issued Order No. 871 against the backdrop of then-extant Commission practices that commonly delayed the availability of judicial review, including

[18] *Nken v. Holder*, 556 U.S. 418, 427 (2009) (emphasis added) (internal quotation marks and citations omitted).

[19] *Id.*

[20] *See* 15 U.S.C. § 717r(c).

[21] *Nken*, 556 U.S. at 427.

judicially issued stays pending review, for lengthy periods of time—often the better part of a year—following the issuance of a certificate order. This situation arose from the interaction between the mandatory rehearing provisions of NGA section 19 and the Commission's practices (at the time, upheld by D.C. Circuit precedent) for resolving rehearing requests.

A party dissatisfied with a Commission certificate order must apply for rehearing, and "set forth specifically" the grounds for rehearing, before it may seek judicial review.[22] "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied,"[23] and judicial review may commence. Under pre-*Allegheny Defense* precedent, however, the Commission had a practice of "tolling" rehearing requests—that is, "acting" upon them solely to provide additional time for consideration—so as "to allow . . . the Commission to provide thoughtful, well-considered attention to the issues raised on rehearing."[24] These pre-*Allegheny Defense* tolling orders had the practical effect of pushing back the date when a rehearing request would otherwise have been deemed denied by statute, thereby pushing back the date when the party requesting rehearing could seek judicial review.[25] Because the Commission commonly took more than half a year to render a substantive decision on

[22] 15 U.S.C. § 717r(a) ("No proceeding to review any order of the Commission shall be brought by any person unless such person shall have made application to the Commission for a rehearing thereon.").

[23] *Id.*

[24] Order No. 871, 171 FERC ¶ 61,201, at P 8.

[25] *Allegheny Def.*, 964 F.3d at 10, 15 (observing that tolling orders "can prevent aggrieved parties from obtaining timely judicial review of the Commission's decision" and that "until [the Commission] chooses to act, the applicant is trapped, unable to obtain judicial review").

rehearing after the issuance of a tolling order,[26] this created "serious concerns" about the availability of effective judicial superintendence until project construction was far underway, potentially delaying judicial review until the impacts to affected parties were already a *fait accompli*.[27] Amidst concerns that the Commission was effectively nullifying the time constraints Congress had built into the statute, the D.C. Circuit granted en banc rehearing in *Allegheny Defense* to reconsider whether this tolling-order practice was lawful under the NGA.

Against this context—and with the D.C. Circuit's en banc proceedings in *Allegheny Defense* pending—the Commission issued Order No. 871 as means to limit the impact of its tolling-order practice on the interests of affected parties who might wish to pursue judicial review.[28] The Commission specifically cited the statutory requirement to seek rehearing as a prerequisite for judicial review and the Commission's pre-*Allegheny Defense* tolling-order practice.[29] Just weeks later, the en banc D.C. Circuit issued its decision in *Allegheny Defense*, holding that the Commission's tolling-order practice exceeded its statutory authority.[30]

Allegheny Defense moots the central motivations behind Order No. 871. Under *Allegheny Defense*, the Commission can no longer use tolling orders to effectively "override" the NGA's 30-day deemed-denial clock.[31] A party may file a petition for review

[26] *Id.* at 15 (noting that "[o]ver the last twelve years, the Commission has taken 212 days on average—about seven months—from tolling order to actual rehearing decision on landowners' applications in pipeline cases").

[27] Order No. 871, 171 FERC ¶ 61,201, at P 11; *see also Allegheny Def.*, 964 F.3d at 10-11 (observing same).

[28] Order No. 871, 171 FERC ¶ 61,201, at P 11.

[29] *Id.* at PP 8-11.

[30] *Allegheny Def.*, 964 F.3d at 3-4, 11.

[31] *Id.* at 12.

as soon as 30 days after a request for rehearing has been filed,[32] assuming the Commission has not acted on the rehearing request before then, and may pursue a judicial stay pending appeal, assuming it can make the requisite case-specific showing.[33] The party can also seek a case-specific stay from the Commission even sooner, assuming it can make a sufficiently strong showing.[34]

As a result of *Allegheny Defense*, parties now have a quick pathway to judicial review, including the opportunity to seek a stay pending review—rendering it unnecessary to impose rules that deviate from Congress's design and slow down project construction in order to ensure the availability of effective judicial review. If a party truly believes that it faces imminent and irreparable harm from a Commission certificate order, it can file a request for rehearing and a stay from the Commission shortly after the certificate order issues, wait at most 30 days for the request to be deemed denied (assuming the Commission does not proactively deny it earlier), then immediately file a petition for review and a stay request in court.[35] Post-*Allegheny Defense*, the substantial temporal gap between the issuance of the certificate order and the availability of judicial review—commonly extending for the better part of a year—no longer exists.

The only temporal gap that remains before judicial review may commence is the 30-day period between the filing of a rehearing request and the point at which the request

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[32] *Id.* at 18-19.

[33] *See* Fed. R. App. P. 18(a); *see also generally Va. Petroleum Jobbers Ass'n v. Fed. Power Comm'n*, 259 F.2d 921 (D.C. Cir. 1958) (per curiam).

[34] *See* 15 U.S.C. § 717r(c); *Millennium Pipeline Co.*, 141 FERC ¶ 61,022, at PP 13-14 (2012).

[35] Although the statute permits parties to take up to 30 days to file a rehearing request, *see* 15 U.S.C. § 717r(a), nothing requires them to wait that long. Similarly, there is no requirement for parties to take the entire 60-day period afforded under section 19(b) before petitioning for review, *see id.* § 717r(b), and it is common for parties to file much faster than that—particularly given that petitions for review are relatively short and ministerial documents.

is deemed denied by operation of law. The existence of that modest gap, however, is a product of unambiguous statutory law and reflective of Congress's clear authority to fashion the contours of judicial review.[36] Nor can it credibly be argued that such a modest delay—which merely provides the Commission a brief period to consider rehearing requests before they are deemed denied by operation of law—imposes unreasonable burdens on project opponents. Not only is a period of 30 days unlikely to be long enough for severe irreparable harm to occur to would-be petitioners even where construction activities can commence immediately, "it is rare that construction can begin immediately on all but the smallest scope projects" anyway.[37]

Given the availability of interim relief from the Commission, as well as the accelerated post-*Allegheny Defense* timeline for judicial superintendence, the rescission of § 157.23—or, for that matter, Order No. 871 in its entirety[38]—would have no meaningful negative impact on the procedural protections already afforded to landowners and other certificate opponents. Order No. 871 now stands as a solution in search of a problem—and one that comes at a major cost to pipeline developers and their customers and serves as a major boon for organized anti-infrastructure groups.

2. Order No. 871 Imposes Unnecessary and Costly Burdens on All Pipeline Projects.

Although Order No. 871 no longer serves a meaningful need, it imposes huge costs on industry and, ultimately, the Nation's ability to build the energy infrastructure it

[36] *See* 15 U.S.C. § 717r(a); *see also Tenn. Gas Pipeline Co. v. FERC*, 871 F.2d 1099, 1107 (D.C. Cir. 1989) ("The[] rehearing requirements" of 15 U.S.C. § 717r "are express statutory limitations on the jurisdiction of the courts and neither we nor the Commission have authority to relax them.").

[37] NOPR at P 20; *see* INGAA Petition at 14-15.

[38] *See infra* Part III (discussing Commission's presumptive stay policy imposed in Order No. 871-B).

requires. Order No. 871—specifically § 157.23 and § 153.4, which incorporates § 157.23 by cross reference—affects all infrastructure projects subject to case-specific NGA section 3 authorization or section 7 certification,[39] and can create an almost half-year delay in each NGA section 7 certificate project—*regardless of whether any eligible rehearing request is actually filed in response to a certificate order*.

Under § 157.23, construction authorization can be precluded for up to 150 days—an initial 30-day period in which parties may seek rehearing, a subsequent 30-day period before rehearing may be deemed denied by operation of law, and a final 90-day period following the deemed denial.[40] The regulation not only delays construction of projects that the Commission deems required by the public interest, but also generally drives up construction costs.[41] And, while the period during which construction is legally forbidden under § 157.23 may turn out to be shorter than 150 days—for example, if no eligible rehearing request is filed—pipelines often must assume that the full 150-day delay will apply, and adjust their construction timelines accordingly.

This is true for several reasons stemming from the logistical and economic realities of pipeline construction. Because it can be logistically infeasible or cost-prohibitive to store construction equipment and pipeline components on-site or nearby, pipeline developers carefully coordinate just-in-time delivery schedules to ensure that major

[39] *See* Order No. 871, 171 FERC ¶ 61,201, at P 1; 18 C.F.R. § 157.23 (applying to "orders issued pursuant to 15 U.S.C. § 717b or 15 U.S.C. § 717f(c) authorizing the construction of new natural gas transportation, export, or import facilities"); *id.* § § 153.4 (applying § 157.23 to NGA section 3 authorizations subject to 18 C.F.R. part 153, subpart B).

[40] *See* Order No. 871-B, 175 FERC ¶ 61,098, at P 49 & n.102.

[41] *Cf. Earth Res. Co. of Alaska v. FERC*, 617 F.2d 775, 781 (D.C. Cir. 1980) (explaining that "to require a separate [environmental impact statement] for the pipeline pressure issue would delay eventual construction by months and perhaps years"; "a delay in deciding on pipeline pressure can have ripple effects that upset planning certainty for financing purposes").

equipment deliveries coincide as closely as possible with the commencement of construction. These delivery schedules leave little margin for error, and because the Commission presumes any eligible rehearing request warrants a delay in construction authorization rather than evaluating each request on a case-by-case basis using its standards for a stay, a pipeline developer cannot be caught flat-footed. If a developer schedules deliveries on the optimistic assumption that an eligible rehearing request will not be filed, and that assumption proves wrong, the lack of a notice to proceed with construction would impede the developer's ability to access project pipeline and contractor yards near the project construction workspaces to store the delivered equipment. This means that the developer would likely need to coordinate the costly transportation, storage, and warehousing of pipeline and compression equipment at other available sites, which may not even be located near the construction workspaces. The added costs of assuming a worst-case delay under § 157.23 can be less than the added costs of last-minute changes to equipment delivery schedules. Developers therefore generally must build a 150-day delay into their project schedules, regardless of whether a qualifying rehearing request is ultimately filed.

Similar considerations apply to scheduling construction crews. Construction crews for some certificate projects can number in the thousands, and the mobilization and coordination of those crews (along with all necessary construction equipment) can take months of planning. Importantly, industry-standard contracts provide for liquidated damages in the event of construction delays, even those caused by regulatory, permitting, or litigation delays. This is because there is an economic cost when a construction crew stands idle, unable to begin or complete one construction project, and cannot move on to

begin work on a different project. The costs of holding construction crews can quickly add up.[42] The added costs of assuming a 150-day construction delay are often less than the added costs of last-minute changes, meaning that developers generally must build a 150-day delay into their project schedules, even if a qualifying rehearing request is not ultimately filed.

Many construction timelines must accommodate narrow construction windows due to seasonal weather patterns and/or anticipate environmental or seasonal constraints on certain activities (e.g., tree felling and clearing, crossing waterbodies).[43] Construction schedules are often developed in consultation with (and typically pursuant to the strong recommendations of) regulatory bodies, and the negotiated limitations on construction windows are often reflected in permits and other authorizations issued by those regulatory bodies. Many construction windows are difficult to modify once incorporated into permits and other authorizations. The pipeline developer also must develop construction schedules to minimize outages and maintain adequate levels of service, so that it can meet existing commitments to shippers during the construction and installation of project facilities. With so many competing considerations in play, project schedules are developed years in advance of project construction and now must assume a 150-day time period after certificate order issuance before project construction may begin.

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[42] *See, e.g.*, *All. Pipeline L.P. v. 4.360 Acres of Land*, No. 12-cv-140, 2012 WL 6963313, at *3 (D.N.D. Nov. 26, 2012) (explaining how impairing a pipeline construction project's ability to proceed sequentially "would significantly increase the costs of construction," approximately by $540,000 per day in stand-by costs, "and would significantly delay completion"), *aff'd*, 746 F.3d 362 (8th Cir. 2014).

[43] *See, e.g.*, *Guardian Pipeline, L.L.C. v. 295.49 Acres of Land*, No. 08-C-0028, 2008 WL 1751358, at *22 (E.D. Wis. Apr. 11, 2008) (observing that "[g]iven Wisconsin's relatively short construction season, any significant delays could require work to continue on into the winter when the cost of construction will increase and the pace slow because of cold weather, snow and ice").

There is a common theme to these issues: The practical realities of pipeline construction do not allow for "turning on a dime" to adjust to sudden delays that depend on factors like whether a party files a rehearing request. The net effect of Order No. 871, then, is that all certificate projects face built-in delays and higher costs.

The ability to trigger a 150-day bar on construction authorization has also played into the hands of organized anti-infrastructure groups, who can leverage Order No. 871 to drive up project costs and the time to complete construction. The rate at which rehearing is sought following issuance of a certificate order has been far higher since the issuance of Order No. 871 than it was before. Between 1999 and 2020, the Commission issued 1,021 certificates, and of those orders, parties sought rehearing in 240 cases—or about 24 percent of the time.[44] Based on a review of the Commission's eLibrary system, the Commission has issued 50 certificate orders since Order No. 871 went into effect. Of those orders, parties sought rehearing in 23 cases—approximately 46 percent of the time. The rate has nearly *doubled* since Order No. 871 was issued. In those instances where rehearing was sought, anti-infrastructure groups filed rehearing requests in 18 of those 23 proceedings. In 14 of those proceedings, it was only an anti-infrastructure group that requested rehearing.[45] To the Associations' knowledge, there was only one proceeding during this period in which the *only* party to seek rehearing was a potentially affected landowner.

In the aggregate, this data strongly suggests that Order No. 871 has become a tool for organized opposition to delay necessary projects that have been held by the

[44] *See* Respondent's Fed. R. App. P. 28(j) Suppl. Submission at 3, 111, 494, *Allegheny Def. Project v. FERC*, No. 17-1098 (D.C. Cir. May 4, 2020).

[45] *See generally* INGAA Petition at 13. In the remaining proceedings, no anti-infrastructure group filed a rehearing request or other parties (such as shippers or governmental agencies) also filed rehearing requests in addition to those filed by an anti-infrastructure group.

Commission to be in the public interest, regardless of the merit of any particular objection or request for rehearing. Order No. 871 has decidedly tipped the balance in favor of opposition to infrastructure development and is now comfortably positioned as an impediment to "promot[ing] and expedit[ing] efficient energy development and reduc[ing] construction delays."[46]

3. Order No. 871 Is Misaligned with the Growing Consensus that Procedural and Litigation-Driven Delays Are Impeding Needed Infrastructure Development, Especially for Energy Projects.

Beyond misalignment with congressional design and the post-*Allegheny Defense* legal landscape, Order No. 871 is inconsistent with the growing consensus that procedural and litigation-driven delays are strangling the Nation's ability to develop urgently needed infrastructure, and in particular, energy infrastructure.

The current Administration has prioritized energy infrastructure development, free from unnecessary regulatory delay, as one of the Nation's foremost policy objectives. Rescinding Order No. 871 would bring the Commission closer into alignment with these policies, specifically recent directives to streamline energy infrastructure permitting;[47] to prioritize the expansion of energy infrastructure as a matter of national and economic security and "expedite the completion of all authorized and appropriated infrastructure, energy, environmental, and natural resources projects";[48] and establishing a National

[46] NOPR at P 18.

[47] Exec. Order No. 14,154, "Unleashing American Energy," 90 Fed. Reg. 8353 (Jan. 20, 2025).

[48] Exec. Order No. 14,156, "Declaring a National Energy Emergency," 90 Fed. Reg. 8433, 8434 (Jan. 20, 2025); *accord The Fiscal Year 2025 Federal Energy Regulatory Commission Budget: Hearing Before the Subcomm. on Energy, Climate, & Grid Sec. of the H. Comm. of Energy &Commerce*, 118th Cong. (July 24, 2024) (Opening Statement of Mark Christie, Comm'r, Fed. Energy Regul. Comm'n), https://tinyurl.com/2svz73ds (recognizing an emergency due to a shortage of interstate natural gas pipeline capacity, and warning that "the United States is heading for potentially catastrophic consequences in terms of the reliability of our electric power system," in part due to "the national campaign of legal warfare" that "has delayed or prevented the construction of vitally needed natural gas transportation infrastructure").

Energy Dominance Council to explore and recommend deregulatory measures to improve energy permitting and eliminate unnecessary regulation.[49] The Commission has responded to the policy priorities of a sitting Administration in the past and enacted policies that were, at least in part, justified by policies set forth in Executive Orders.[50] It should so here as well.

Courts also have recognized, and begun to pare back, the weaponization of procedural delays by opponents of infrastructure projects. In *Seven County Infrastructure Coalition v. Eagle County*, the Supreme Court recognized how the National Environmental Policy Act ("NEPA") has, over the decades, grown into a major roadblock that hinders infrastructure development "under the guise of just a little more process," and called for a "course correction."[51] Although the specific topic *Seven County* addressed was agency obligations under NEPA, the fundamental point is broader: Procedural rules that delay infrastructure permitting—each of which, individually, may seem like a reasonable imposition of "just a little more process," nominally intended to serve a laudable purpose—have added up to create an intolerable drag on infrastructure development. Order No. 871 fits precisely that mold, adding "just a little" bit of additional delay to practically every new natural gas project. It does so in the interest of protecting project opponents from

[49] Exec. Order No. 14,213, "Establishing the National Energy Dominance Council," 90 Fed. Reg. 9945 (Feb. 14, 2025).

[50] *See, e.g.*, *Applications for Permits to Site Interstate Electric Transmission Facilities*, Notice of Proposed Rulemaking, 181 FERC ¶ 61,205, at P 30 (2022) (noting that the proposed rule "would be consistent" with at least three Executive Orders and another Federal agency's guidance documents); *accord Applications for Permits to Site Interstate Electric Transmission Facilities*, Order No. 1977, 187 FERC ¶ 61,069, at P 111 (2024) (reiterating that certain provisions of Order No. 1977 are "consistent with" certain Executive Orders).

[51] 145 S. Ct. 1497, 1514 (2025) (internal quotation marks omitted); *see also id.* at 1513-14 (observing that because of NEPA, "[f]ewer projects make it to the finish line," and "[t]hose that survive often end up costing much more than is anticipated or necessary"); *accord Citizens Against Burlington, Inc. v. Busey*, 938 F.2d 190, 196 (D.C. Cir. 1991) (recognizing that each successive environmental review "take[s] time and cost[s] money").

impediments to swift judicial review that *Allegheny Defense* eliminated. It is a textbook example of the procedure-over-progress outlook the Supreme Court has emphatically decried.

Nor is the Supreme Court alone in recognizing the need for a "course correction" to remedy procedural and litigation-driven delays in infrastructure permitting. As one D.C. Circuit judge recently put it in the context of a Commission-certificated project, "delay is the coin of the realm" for organized anti-infrastructure litigants, whose core strategy is to impose as many additive procedural delays and roadblocks as possible.[52] Not only does this death-by-delay strategy inflict potentially enormous cost increases even for projects that are successfully built and put into operation,[53] but "[d]evelopers—overwhelmed by the torrent of [legal] challenges" sometimes even "abandon their projects rather than weather the storm" or "are cowed from even entering the market" in the first place.[54] Order No. 871 plays directly into that delay strategy.[55]

Legislatures have joined the permitting-reform chorus as well, recognizing and taking action to break down barriers to infrastructure development. In 2023, Congress enacted the Fiscal Responsibility Act, which incorporated amendments to NEPA as part of the "BUILDER Act" and was meant to streamline environmental reviews and reduce

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[52] *Appalachian Voices v. FERC*, 139 F.4th 903, 917 (D.C. Cir. 2025) (Henderson, J., concurring).

[53] Notably, Judge Henderson was describing the history of litigation challenging the Mountain Valley Pipeline. *See id.* at 917. That project's costs grew from $3.5 billion to *$7.5 billion* thanks to a scorched-earth litigation campaign, in which repeated stays pending review were one of the primary sources of cost and delay. *See, e.g.*, Scott Disavino, *Equitrans Delays WV-VA Mountain Valley Natgas Pipe Again, Boosts Cost*, Reuters (Feb. 20, 2024), https://tinyurl.com/3jwn3zxn.

[54] *Appalachian Voices*, 139 F.4th at 917 (Henderson, J., concurring); *see id.* at 920 (characterizing the project under discussion as "facing death by a thousand cuts" before congressional intervention); *see also Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 235 (D.C. Cir. 2025) ("As night follows day, an environmental challenge follows the [Commission's] approval of a natural gas pipeline.").

[55] *Accord supra* Part I.B.2.

burdens on agencies and project applicants.[56] Likewise, California recently enacted significant revisions to the California Environmental Quality Act ("CEQA"), the State's parallel of NEPA, with the intent of streamlining environmental review processes in myriad ways—e.g., expanding exemptions, making it easier to mitigate certain environmental consequences, and streamlining CEQA litigation by narrowing the scope of the administrative record.[57] Stripping away the additive procedural barriers that stand in the way of timely and cost-effective infrastructure developments is now a matter of broad bipartisan agreement.

This growing consensus is emerging in parallel with, and in response to, demonstrated and pressing real-world needs. The North American Electric Reliability Corporation ("NERC") has concluded that "additional [natural gas] pipeline infrastructure is needed to reliably serve electric load."[58] Several Regional Transmission Organizations ("RTO") and Independent System Operators ("ISO") have reached similar conclusions, finding it "essential to emphasize that in certain RTO regions, it remains critically

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[56] Pub. L. No. 118-5, § 321, 137 Stat. 10, 38-46 (2023); *see also* Press Release, S. Comm. on Env't & Pub. Works, Capito, EPW Colleagues to White House: Reverse Course on Permitting Rules, Follow Intent of Reforms in Fiscal Responsibility Act (Sept. 29, 2023) (Letter from S. Comm. on Env't & Pub. Works to Brenda Mallory, Chairman, Council on Env't Quality), https://tinyurl.com/3jn5wmkf (characterizing the Builder Act amendments in the Fiscal Responsibility Act as meant "to simplify what has become an overcomplicated, needlessly burdensome, and seemingly endless federal environmental review process"); National Environmental Policy Act Implementing Regulations Revisions Phase 2, 89 Fed. Reg. 35,442, 35,443 (May 1, 2024) (final rule) (recognizing that the Fiscal Responsibility Act, among other things, "provide[d] additional direction to improve the efficiency and effectiveness of the NEPA process").

[57] *See generally* Assem. B. No. 130, 2025-26 Reg. Sess. (Cal., chaptered June 30, 2025), https://tinyurl.com/adnhtzk9; S.B. No. 131, 2025-26 Reg. Sess. (Cal., chaptered June 30, 2025), https://tinyurl.com/y5dkhm5e; *cf. also* Ben Christopher, *One of the Biggest Obstacles to Building New CA Housing Has Now Vanished*, CalMatters, https://tinyurl.com/pveb7ujj (updated July 1, 2025).

[58] NERC, *2022 Long-Term Reliability Assessment* 18 (Dec. 2022), https://tinyurl.com/53x97nkt; *see also* NERC, *2024 Long-Term Reliability Assessment* 8, 29, https://tinyurl.com/y5572r53 (concluding that "[n]atural gas pipeline capacity additions over the past seven years are trending downward, and some areas could experience insufficient pipeline capacity for electric generation during peak periods"; several geographic regions "are set to see an insufficient increase in gas pipeline capacity") (updated July 2025).

important to expand the existing natural gas infrastructure" because, "[f]or those regions, infrastructure expansion is integral to an overarching, comprehensive plan at improving gas-electric coordination and bolstering the natural gas pipeline infrastructure so critical to this nation's energy security needs."[59] These needs are only becoming more acute with the build-out of data centers necessary for U.S. advancements in artificial intelligence—facilities that currently can be constructed at a rate much faster than the time it takes to add new generation capacity.[60]

Order No. 871 reflects an outdated and harmful approach under which additional procedural protections for project opponents trump the public interest in infrastructure development, practically without regard to the countervailing harms caused by the cumulative delay and risk caused by lengthy permitting and litigation timelines. Prevailing policy priorities—across the political and government spectrum—support Order No. 871's rescission.

II. Full Rescission, Not "Revision," Is Necessary.

The Commission requested comment "on whether it should instead revise § 157.23 to (1) limit its scope while maintaining some protections for certain types of stakeholders or (2) reduce the time period on the limitation for issuing authorizations to proceed with construction."[61]

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[59] MISO, ISO-NE, PJM, SPP, *Strategies for Enhanced Gas-Electric Coordination: A Blueprint for National Progress* 5 n.1 (Feb. 21, 2024), https://tinyurl.com/mhuvu3w8.

[60] *See* U.S. Dep't of Energy, *Resource Adequacy Report: Evaluating the Reliability and Security of the United States Electric Grid* 2, 15-18 (July 2025), https://tinyurl.com/ynf74ysh (identifying "data centers, particularly those supporting AI workloads, as a key driver of electricity demand growth" through 2030). Similar resource adequacy concerns were raised by NERC leadership during the Commission's June 5th technical conference. *See* Sonal Patel, *Nation's Power Operations Warn Congress Coming Reliability Shortfall*, Power (Apr. 3, 2025), https://tinyurl.com/3v9ypad4 (reporting on similar comments made before the House Energy and Commerce Subcommittee on Energy).

[61] NOPR at P 23.

Only a full rescission of Order No. 871, including § 157.23, would adequately remedy its legal and policy-related flaws. Simply revising § 157.23 in the ways mentioned in the NOPR would do little to "promote and expedite efficient energy development and reduce construction delays."[62] The Associations reiterate that full rescission of § 157.23 is the best path forward.

A. Revising § 157.23 to Limit Its Application to Certain Stakeholders Would Not Remedy the Regulation's Deleterious Effects.

In its request for comment, the Commission does not specify the "certain types of stakeholders" that might be covered under a revised version of § 157.23. The Associations surmise that the most likely possibility under consideration would be to limit § 157.23 to situations where rehearing is requested by a landowner subject to, or potentially subject to, eminent domain proceedings, as those are the stakeholders whose interests were of primary concern under Order No. 871 (and subsequent clarifications). This approach would be unnecessary, unworkable, and fail to remedy the deleterious effects of § 157.23.

First, landowners have opportunities to challenge Commission certificate orders, including the ability to intervene and participate in the Commission's certificate proceedings, as well as post-certification rehearing and judicial stay applications (which, as a practical matter, will often occur before any taking, or at least before any irreparable impacts to their property interests). Even without § 157.23, landowners also may seek a case-specific stay from the Commission,[63] or upon filing a petition for review, a court,[64] which undercuts the need for a default regulatory presumption that project construction

[62] *Id.* at P 18.

[63] *See* 15 U.S.C. § 717r(c).

[64] *See* Fed. R. App. P. 18(a); *see also generally Va. Petroleum Jobbers*, 259 F.2d 921.

should be halted pending a landowner's request for rehearing. Case-specific relief provides backstop protections for truly exceptional cases in which postponing an order's effectiveness is warranted, while properly assuming a *status quo* in which the Commission's certificate order is presumed legally valid, such that the movant bears the burden to demonstrate that a stay is warranted.[65]

Second, limiting § 157.23 to only certain categories of stakeholders would do little to remedy the uncertainty to which the regulation subjects pipeline developers. Because a developer cannot know in advance whether a qualifying rehearing request would be filed, the developer typically must plan project timelines around the possibility of a 150-day delay. Much of the harm inflicted by § 157.23 comes from the sheer threat that a qualifying rehearing request will be filed and trigger delays. Even if limiting the scope of qualifying requests could in principle lessen the probability of a full 150-day delay, it would not come close to eliminating the possibility of such an outcome, or the practical need to plan construction schedules and timelines around the risk that the regulation will be triggered to its fullest temporal extent.

[65] *See Allegheny Def.*, 964 F.3d at 17 (noting that even if NGA prohibits FERC from issuing tolling orders, applicant seeking temporary relief must still satisfy "the ordinary standards for a stay"); Order No. 871-B, 175 FERC ¶ 61,098, at P 12 n.32 (Danly, Comm'r, dissenting) ("Since at least 1965, the Commission (and the Federal Power Commission) have placed the burden on movants for stays to show they will be irreparably injured in the absence of a stay." (collecting cases)); *Millennium Pipeline*, 141 FERC ¶ 61,022, at P 14 (recognizing that irreparable harm requires, among other things, "that the injury . . . be both certain and great," "actual and not theoretical," and "proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future" (citing *Wis. Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985))).

B. Revising § 157.23 to Limit Its Temporal Effect Would Also Be Inferior to Full Rescission.

The Commission also requests comment on whether to "reduce the time period on the limitation for issuing authorizations to proceed with construction."[66] Again, the answer is "no."

An arbitrary temporal limitation on an authorization to proceed with construction is unwarranted, particularly post-*Allegheny Defense*, *see supra* Parts I.A and I.B.1, and a party is free to seek a case-specific stay from the Commission immediately after the certificate order is issued. Judicial superintendence is available as soon as 30 days thereafter, so long as the party files its rehearing request promptly. Given these procedural protections, there simply is no reason to leave § 157.23 on the books—in any form. Further, any automatic limitation on construction, no matter the duration, likely imposes material consequences on the project developer, which counsels against any automatically triggered restrictions on the availability of a notice to proceed with construction.

III. The Commission Should Also Clarify or Rescind Its Presumptive Stay Policy.

The Associations ask the Commission to clarify or rescind its "presumptive stay policy" for instances "where a landowner who is potentially subject to eminent domain proceedings protests the proposal" and "the applicant has not acquired the necessary property interests."[67] The NOPR states that the Commission is not proposing to modify this policy, but emphasizes that the policy will be applied in a "case-by-case" manner based on "the circumstances presented in each particular certificate proceeding."[68] The

[66] *Id.* at P 23.

[67] *Id.* at P 21.

[68] *Id.* at PP 4 & n.10, 21.

Associations request that the Commission clarify that it will apply such a stay only where (1) a landowner makes a request for a stay in a motion filed after issuance of the certificate order, and (2) the traditional standards for a case-specific stay are met. If that is not the Commission's intent, the Associations request that the Commission rescind its presumptive-stay policy.[69]

The presumptive stay policy is inherently confusing and creates uncertainty. Pipeline developers do not have clear guidance on when the policy will be applied and when it will not be applied; the Commission has stated that the policy is "presumptive,"[70] yet applied on a "case-by-case basis,"[71] and without a "burden" on the pipeline to show that a stay is not warranted.[72] This is not a recipe for regulatory certainty because pipeline developers cannot predict whether a landowner will protest the project or whether the Commission will then issue a stay under these vague standards. This policy will thus inflict much the same harm as § 157.23, even if the Commission rescinds the latter regulation. Mere *uncertainty* about whether a certificate will be given full effectiveness when issued can, as a practical matter, force project developers to alter their construction schedules

[69] Consistent with the Commission's previous determination that the presumptive stay policy is a "[g]eneral statement of policy . . . exempted from the APA's notice and comment procedures," *see* Order No. 871-C, 176 FERC ¶ 61,062, at P 46 & n.98 (citing 5 U.S.C. § 553(b)(A)), it would be unnecessary to provide a new notice and comment period to clarify or rescind the same policy, notwithstanding the fact that the NOPR proposed only to remove § 157.23. Indeed, the presumptive stay policy was originally imposed in Order No. 871-B without advance notice that the Commission was proposing to put that policy into place. *See id.* However, should the Commission wish to provide advance notice of a proposal to rescind the presumptive stay policy and invite additional comment on the subject, the Commission could do so without unduly delaying a decision to rescind § 157.23—particularly given that it has already issued a one-year waiver of § 157.23. *See* Order Granting Temporary Waiver, *Interstate Nat. Gas Ass'n of Am.*, 191 FERC ¶ 61,209 (2025).

[70] NOPR at P 4 & n.10.

[71] *Id.*

[72] Order No. 871-C, 176 FERC ¶ 61,062, at P 45.

significantly.[73] A presumptive stay policy with the effect of preventing certificate holders from exercising their eminent domain authority is particularly deleterious because pipelines often must initiate eminent domain proceedings to acquire survey access, and to make progress on other permits that may be required before proceeding to construction.[74] It has the potential to distort the ordinary eminent domain process by allowing landowners to use the threat of a rehearing request to force concessions or higher payments from pipelines in exchange for easement rights.

To the extent the presumptive stay policy is intended to deviate from the Commission's traditional case-by-case exercise of its stay authority, under which the Commission has demanded a strong showing from the stay applicant,[75] the policy is also misaligned with congressional intent,[76] administrative and judicial custom,[77] presidential policy,[78] and the growing consensus that litigation delays are unduly interfering with infrastructure development.[79] Giving Commission orders full effect upon issuance—at least *presumptively*, i.e., absent a party seeking a stay and meeting the traditional demanding requirements for such relief—was Congress's clear intent under the NGA. A presumptive policy of staying certificate orders where landowners potentially subject to

[73] *See supra* Part I.B.2.

[74] INGAA discussed this dynamic at greater length in its initial brief submitted in response to Order No. 871-A. INGAA Brief at 19-20, FERC Docket No. RM20-15-000 (Feb. 16, 2021); *cf.* Order No. 871-A, 174 FERC ¶ 61,050 (2021) (calling for further briefing in response to INGAA's and other parties' requests for rehearing of Order No. 871). It is worth noting, in this connection, that pipeline opponents frequently encourage landowners to deny project developers any survey access as a means to delay or prevent pipeline applicants from meeting a 100% survey requirement for a complete application for federal permits before certain agencies.

[75] *See supra* note 65.

[76] *See supra* Part I.A.

[77] *See id.*

[78] *See supra* Part I.B.3.

[79] *See id.*

eminent domain have protested is just as contrary to that sound and traditional approach as § 157.23's similar delay on construction authorization.[80] And it is also bad policy.

A presumptive stay gives landowners the unilateral power to trigger a "presumption" in favor of a potentially lengthy delay of the construction timeline for a needed project, imposing asymmetric costs not just on pipeline developers but on their customers and, ultimately, the general public. The better approach is to require landowners potentially subject to eminent domain to meet the same stringent case-by-case standards that apply to any other party that seeks a stay of crucial infrastructure development, without any presumption or thumb on the scale in favor of a stay.

Landowners are provided procedural protections under the NGA, including the ability to participate in Commission proceedings, to seek rehearing, to seek a stay from the Commission, and to seek judicial review on the prompt timelines available post-*Allegheny Defense*.[81] The Commission can grant a stay if (but only if) the traditional factors are affirmatively satisfied—most particularly, a case-specific, individualized showing of irreparable harm and a demonstration that the balance of harms to other parties and the public warrants a stay.[82] Absent such a showing, the Commission's order should be given full effect.[83]

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[80] As INGAA previously argued in response to Order No. 871-B, a policy of presumptively staying certificates is unlawful and inconsistent with the NGA. *See, e.g.*, INGAA Order No. 871-B Rehearing Request at 29-33. Of course, in order to rescind the policy, the Commission need not consider whether it lawfully could impose the policy in the first place. The fact that the Commission *should* no longer adhere to such a policy is reason enough to rescind it.

[81] *See supra* Part II.A.

[82] *See supra* note 65.

[83] It is particularly discordant for the Commission to apply a "presumption" in favor of a stay—largely to provide additional time for parties to seek a further stay in court—given that *reviewing courts themselves* apply no such presumption, even in cases where landowners subject to eminent domain are involved. *See, e.g.*, Order, *Appalachian Voices v. FERC*, No. 17-1271 (D.C. Cir. Aug. 30, 2018) (denying stay motion

CONCLUSION

The Associations respectfully request that the Commission finalize its proposal to remove 18 C.F.R. § 157.23 from its regulations and modify § 153.4 to remove the reference to § 157.23. The Associations further request that the Commission clarify or rescind the presumptive stay policy introduced in Order No. 871-B.

Respectfully submitted,

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asserting harms to landowners along pipeline route because "[p]etitioners have not satisfied the stringent requirements for a stay pending court review," and citing *Nken*, 556 U.S. at 434). The Commission should not presumptively impose stays of its own orders even where parties—including affected landowners—very rarely can make the kind of case-specific, rigorous showing that would be required to pass muster in court. *Cf.* Opp'n of Respondent FERC to Motion for Stay at 3-4 & n.1, *City of Port Isabel v. FERC*, No. 23-1174 (D.C. Cir. Feb. 12, 2024) (Commission filing explaining that "in the past dozen years, courts have denied all requests (whether labeled an 'emergency' or not) for stays of the effectiveness of Commission natural gas certificate or authorization orders," and providing list of denials); *cf. also* Order, *City of Port Isabel v. FERC*, No. 23-1174 (D.C. Cir. Mar. 1, 2024) (denying stay).

CERTIFICATE OF SERVICE

I hereby certify that I have this 24th day of July, 2025, served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

/s/ Joan Dreskin
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