

No. _____

IN THE
SUPREME COURT OF THE UNITED STATES

RDFS, LLC,
Applicant/Petitioner,

v.

UNITED STATES FEDERAL ENERGY REGULATORY COMMISSION,
Respondent,

and

COLUMBIA GAS TRANSMISSION, LLC,
Intervenor-Respondent.

On Application for an Extension of Time
to File Petition for a Writ of Certiorari to the
United States Court of Appeals for the Fourth Circuit

**APPLICATION FOR EXTENSION OF TIME
TO FILE PETITION FOR A WRIT OF CERTIORARI**

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Corporate Disclosure Statement

Pursuant to Supreme Court Rule 29.6, Applicant RDFS, LLC, states that it has no parent corporation, and no publicly held company owns 10% or more of its stock.

To the Honorable Chief Justice John Roberts, as Circuit Justice for the United States Court of Appeals for the Fourth Circuit:

Pursuant to Supreme Court Rules 13.5, 22, and 30, Applicant RDFS, LLC (“RDFS”) respectfully requests a 60-day extension of time, to and including June 6, 2025, within which to file its petition for a writ of certiorari in this matter. The Fourth Circuit issued its order and judgment on January 8, 2025 (Appendix A). The jurisdiction of this Court will be invoked under 28 U.S.C. § 1254(1), and the time to file a petition for a writ of certiorari will expire without an extension on April 8, 2025. This application is timely because it has been filed more than ten days prior to the date on which the time for filing the petition is to expire.

Background

1. This case arises from administrative regulations promulgated by the Federal Energy Regulatory Commission (“FERC”) which violate the Constitution, which are inconsistent with the Natural Gas Act (“NGA”), and which deprive the federal courts of jurisdiction to review agency actions. The Fourth Circuit deferred to FERC’s interpretation of the NGA which divests courts of jurisdiction and runs contrary to “the basic presumption of judicial review” under laws such as the NGA for parties who have been “adversely affected or aggrieved by agency action.” *Abbott Lab’s v. Gardner*, 387 U.S. 136, 140 (1967). In doing so, the Fourth Circuit failed to heed this Court’s directive that “[c]ourts must exercise their independent judgment in deciding whether an agency has acted within its statutory authority.” *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 412 (2024).

2. Congress enacted the NGA because it deemed “the business of transporting and selling natural gas for ultimate distribution to the public is affected with a public interest, and that Federal regulation in matters relating to the transportation of natural gas and the sale thereof . . . is necessary in the public interest.” 15 U.S.C. § 717(a). With this understanding, Congress delegated to private third parties the privilege of exercising a traditional governmental function—condemnation via eminent domain—and created FERC as the agency to oversee the creation of a governing regulatory framework within the scope of this delegation. *Id.* §§ 717f(h), 717. Under this scheme, only those projects “required by the present or future public convenience and necessity” would be approved by FERC and granted a certificate of public convenience and necessity. *Id.* §717f(e). Congress further authorized FERC to attach additional requirements to issuance, as well as to regulate the exercise of the rights granted under each certificate with “such reasonable terms and conditions as the public convenience and necessity may require.” *Id.* Based upon this procedure, the NGA provides that “[a]ny person, State, municipality, or State commission aggrieved by an order issued by the Commission in a proceeding under this chapter to which such person, State, municipality, or State commission is a party may apply for a rehearing within thirty days after the issuance of such order.” 15 U.S.C.A. § 717r(a). Congress clearly intended for parties who would be impacted by the granting of a Certificate under the NGA to be provided notice and the opportunity to participate in, and seek review of, the relevant proceedings related to the grant of the certificate.

3. In implementing the NGA, FERC promulgated regulations through which it issues Blanket Certificates of Public Necessity and Convenience (“Blanket Certificates”) which are unlimited in scope and can be issued without notice to impacted landowners. *See* 18 C.F.R. § 157.203. The Blanket Certificate program disregards the legislative intent set forth in the NGA—and clear constitutional requirements—that parties interested in or aggrieved by proceedings related to the issuance of a Certificate of Necessity receive due process. FERC’s Blanket Certificates serve as blank checks: certificate-holders can self-authorize the taking of private property anywhere in the country decades or centuries after the issuance of the certificate, despite the fact that such projects may impact landowners who had no notice that they would be aggrieved by the certificate at the time of its issuance—or during the thirty-days afterward.

4. FERC has refused to provide process to such aggrieved landowners. FERC will not review a certificate or the holder’s compliance with its requirements, even regarding takings which were not contemplated until decades after the issuance of the certificate. Hence, according to FERC’s regulations, landowners must petition for rehearing decades *before* they are aggrieved or even have notice that they may be aggrieved. FERC’s unconstitutional interpretation of the NGA therefore deprives citizens of the process which the NGA and the Constitution require.

5. District courts presiding over condemnation actions apply the collateral attack doctrine to refuse to consider whether any given project is actually in compliance with the NGA, instead deferring to FERC’s determinations in issuing the

certificate which purportedly authorizes a given taking. *See Columbia Gas Transmission, LLC v. RDFS, LLC*, No. 23-CV-364, 2024 WL 993093, at *2 (N.D.W. Va. Feb. 27, 2024) (“Collateral attacks on a certificate in federal district courts are improper. Courts have explained it is well established that the proper channel to challenge the FERC certificate is to seek administrative review under the Natural Gas Act and judicial review is only available in the Court of Appeals.” (cleaned up)). In cases of Blanket Certificates issued decades before the relevant project was even conceived, the assumption that the project complies with the NGA because FERC has approved it, or that administrative review is available through FERC, is an unsustainable fiction.

6. Where, as here, the district court defers to FERC and the Circuit Court, FERC refuses to provide process, and the Circuit Court of Appeals refuses to even address the merits of the appeal of FERC’s actions and instead defers to FERC’s unconstitutional statutory interpretation, the Circuit Court effectively abrogates the rights of citizens aggrieved by agency action to receive due process.

Reasons for Granting an Extension of Time

7. The time to file a Petition for a Writ of Certiorari should be extended for 60 days. The additional time sought in this application is needed for RDFS to complete consultation with external counsel and thoughtfully assess both the conflicts created by the Fourth Circuit’s decision and the importance of the issue beyond the immediate parties. Additional time is also needed, if RDFS decides to pursue a petition, to permit the preparation of the petition and printing.

8. RDFS also continues to assess the conflicts created by the Fourth Circuit’s unconstitutional deference to FERC. While this case presents an important question—particularly in the wake of the Court’s decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024) and *Corner Post, Inc. v. Bd. of Governors of Fed. Rsrv. Sys.*, 603 U.S. 799 (2024)—RDFS is assessing the conflict that the Fourth Circuit’s order creates with other circuits on this issue, including *Dayton Power & Light Co. v. FERC*, 126 F.4th 1107, 1113 (6th Cir. 2025), *Pac. Gas & Elec. Co. v. FERC*, 113 F.4th 943 (D.C. Cir. 2024), *United States Sugar Corp. v. Env’t Prot. Agency*, 113 F.4th 984 (D.C. Cir. 2024), *China Unicom (Americas) Operations Ltd. v. Fed. Commc’ns Comm’n*, 124 F.4th 1128, 1142–43 (9th Cir. 2024), and *Midship Pipeline Co., L.L.C. v. FERC*, 45 F.4th 867 (5th Cir. 2022).

9. RDFS thus seeks additional time in order to continue further research and analysis of the relevant legal issues and, if RDFS decides to pursue a petition, to prepare a petition that fully addresses the important federal issues raised by the decision below and frames those issues in a manner that will be most helpful for the Court.

10. Recently and up until the current due date of the certiorari petition, counsel have significant work obligations. Notably, this application will be filed at the earliest date possible following counsel’s admission to the Supreme Court bar.

11. RDFS's counsel contacted the office of the Solicitor General, as counsel for FERC, and counsel for Intervenor Columbia concerning this application and asked for Respondent's and Intervenor's position, but did not receive a response. Nonetheless, neither FERC nor Columbia will be prejudiced by an extension of the *certiorari* deadline.

CONCLUSION

For the foregoing reasons, RDFS respectfully requests that this Court grant a 60-day extension of time up to and including June 6, 2025, within which to petition for a writ of certiorari.

Dated: March 26, 2025

Respectfully submitted,

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CERTIFICATE OF SERVICE

A copy of the foregoing Application for Extension of Time to File Petition for a Writ of Certiorari was served by email and U.S mail upon the below counsel for Respondent and Intervenor on March 26, 2025:

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APPENDIX A

FILED: January 8, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUIT

No. 24-1530
(CP83-76-009)

RDFS, LLC

Petitioner

v.

FEDERAL ENERGY REGULATORY COMMISSION

Respondent

COLUMBIA GAS TRANSMISSION, LLC

Intervenor

O R D E R

Upon consideration of the submissions relative to respondent's motion to dismiss the appeal for lack of jurisdiction and intervenor's motion to reply to the motion to dismiss, the court grants the motions.

Entered at the direction of Judge Gregory with the concurrence of Judge Thacker and Judge Richardson.

For the Court

/s/ Nwamaka Anowi, Clerk

FILED: January 8, 2025

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Intervenor

J U D G M E N T

In accordance with the decision of this court, the petition for review is dismissed.

This judgment shall take effect upon issuance of this court's mandate in accordance with [Fed. R. App. P. 41](#).

/s/ NWAMAKA ANOWI, CLERK

FILED: January 8, 2025

UNITED STATES COURT OF APPEALS
FOR THE FOURTH CIRCUITNo. 24-1530, RDFS, LLC v. FERC
CP83-76-009

NOTICE OF JUDGMENT

Judgment was entered on this date in accordance with Fed. R. App. P. 36. Please be advised of the following time periods:

PETITION FOR WRIT OF CERTIORARI: The time to file a petition for writ of certiorari runs from the date of entry of the judgment sought to be reviewed, and not from the date of issuance of the mandate. If a petition for rehearing is timely filed in the court of appeals, the time to file the petition for writ of certiorari for all parties runs from the date of the denial of the petition for rehearing or, if the petition for rehearing is granted, the subsequent entry of judgment. See Rule 13 of the Rules of the Supreme Court of the United States; www.supremecourt.gov.

VOUCHERS FOR PAYMENT OF APPOINTED OR ASSIGNED COUNSEL: Vouchers must be submitted within 60 days of entry of judgment or denial of rehearing, whichever is later. If counsel files a petition for certiorari, the 60-day period runs from filing the certiorari petition. (Loc. R. 46(d)). If payment is being made from CJA funds, counsel should submit the CJA 20 or CJA 30 Voucher through the CJA eVoucher system. In cases not covered by the Criminal Justice Act, counsel should submit the Assigned Counsel Voucher to the clerk's office for payment from the Attorney Admission Fund. An Assigned Counsel Voucher will be sent to counsel shortly after entry of judgment. Forms and instructions are also available on the court's web site, www.ca4.uscourts.gov, or from the clerk's office.

BILL OF COSTS: A party to whom costs are allowable, who desires taxation of costs, shall file a [Bill of Costs](#) within 14 calendar days of entry of judgment. (FRAP 39, Loc. R. 39(b)).

PETITION FOR REHEARING AND PETITION FOR REHEARING EN

BANC: A petition for rehearing must be filed within 14 calendar days after entry of judgment, except that in civil cases in which the United States or its officer or agency is a party, the petition must be filed within 45 days after entry of judgment. A petition for rehearing en banc must be filed within the same time limits and in the same document as the petition for rehearing and must be clearly identified in the title. The only grounds for an extension of time to file a petition for rehearing are the death or serious illness of counsel or a family member (or of a party or family member in pro se cases) or an extraordinary circumstance wholly beyond the control of counsel or a party proceeding without counsel.

Each case number to which the petition applies must be listed on the petition and included in the docket entry to identify the cases to which the petition applies. A timely filed petition for rehearing or petition for rehearing en banc stays the mandate and tolls the running of time for filing a petition for writ of certiorari. In consolidated criminal appeals, the filing of a petition for rehearing does not stay the mandate as to co-defendants not joining in the petition for rehearing. In consolidated civil appeals arising from the same civil action, the court's mandate will issue at the same time in all appeals.

A petition for rehearing must contain an introduction stating that, in counsel's judgment, one or more of the following situations exist: (1) a material factual or legal matter was overlooked; (2) a change in the law occurred after submission of the case and was overlooked; (3) the opinion conflicts with a decision of the U.S. Supreme Court, this court, or another court of appeals, and the conflict was not addressed; or (4) the case involves one or more questions of exceptional importance. A petition for rehearing, with or without a petition for rehearing en banc, may not exceed 3900 words if prepared by computer and may not exceed 15 pages if handwritten or prepared on a typewriter. Copies are not required unless requested by the court. (FRAP 40 & 40, Loc. R. 40(c)).

MANDATE: In original proceedings before this court, there is no mandate. Unless the court shortens or extends the time, in all other cases, the mandate issues 7 days after the expiration of the time for filing a petition for rehearing. A timely petition for rehearing, petition for rehearing en banc, or motion to stay the mandate will stay issuance of the mandate. If the petition or motion is denied, the mandate will issue 7 days later. A motion to stay the mandate will ordinarily be denied, unless the motion presents a substantial question or otherwise sets forth good or probable cause for a stay. (FRAP 41, Loc. R. 41).

U.S. COURT OF APPEAL FOR THE FOURTH CIRCUIT BILL OF COSTS FORM
(Civil Cases)

Directions: Under FRAP 39(a), the costs of appeal in a civil action are generally taxed against appellant if a judgment is affirmed or the appeal is dismissed. Costs are generally taxed against appellee if a judgment is reversed. If a judgment is affirmed in part, reversed in part, modified, or vacated, costs are taxed as the court orders. A party who wants costs taxed must, within 14 days after entry of judgment, file an itemized and verified bill of costs, as follows:

- Itemize any fee paid for docketing the appeal. The fee for docketing a case in the court of appeals is \$600 (effective 12/1/2023). The \$5 fee for filing a notice of appeal is recoverable as a cost in the district court.
 - Itemize the costs (not to exceed \$.15 per page) for copying the necessary number of formal briefs and appendices. (The court typically orders 4 copies when tentatively calendared; 0 copies for service unless brief/appendix is sealed.). The court bases the cost award on the page count of the electronic brief/appendix. Costs for briefs filed under an informal briefing order are not recoverable.
 - Cite the statutory authority for an award of costs if costs are sought for or against the United States. See 28 U.S.C. § 2412 (limiting costs to civil actions); 28 U.S.C. § 1915(f)(1) (prohibiting award of costs against the United States in cases proceeding without prepayment of fees).
- Any objections to the bill of costs must be filed within 14 days of service of the bill of costs. Costs are paid directly to the prevailing party or counsel, not to the clerk's office.

Case Number & Caption: _____

Prevailing Party Requesting Taxation of Costs: _____

Appellate Docketing Fee (prevailing appellants):			Amount Requested: _____			Amount Allowed: _____	
Document	No. of Pages		No. of Copies		Page Cost (≤\$.15)	Total Cost	
	Requested	Allowed (court use only)	Requested	Allowed (court use only)		Requested	Allowed (court use only)
TOTAL BILL OF COSTS:						\$0.00	\$0.00

1. If copying was done commercially, I have attached itemized bills. If copying was done in-house, I certify that my standard billing amount is not less than \$.15 per copy or, if less, I have reduced the amount charged to the lesser rate.
2. If costs are sought for or against the United States, I further certify that 28 U.S.C. § 2412 permits an award of costs.
3. I declare under penalty of perjury that these costs are true and correct and were necessarily incurred in this action.

Signature: _____ **Date:** _____

Certificate of Service

I certify that on this date I served this document as follows:

Signature: _____ **Date:** _____