

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

New England States Committee on)
Electricity, Inc.)
)
Petitioner)
v.)
)
Federal Energy Regulatory Commission,)
)
Respondent.)

Case No. 20-1361

PETITION FOR REVIEW

Pursuant to Section 313(b) of the Federal Power Act, 16 U.S.C. §8251(b), Rule 15(a) of the Federal Rules of Appellate Procedure, and Circuit Rule 15 of the United States Court of Appeals for the District of Columbia Circuit, the New England States Committee on Electricity, Inc. (“NESCOE”) petitions the Court for review of the following orders of the Federal Energy Regulatory Commission (“FERC”):

1. *Constellation Mystic Power, LLC*, Order Accepting Agreement, Subject to Condition, and Directing Briefs, Docket No. ER18-1639-000, 165 FERC ¶ 61,267 (Dec. 20, 2018) (“Initial Order”); and
2. *Constellation Mystic Power, LLC*, Order on Clarification, Directing Compliance, and Addressing Arguments Raised On Rehearing, Docket No. ER18-1639-002, 172 FERC ¶ 61,044 (July 17, 2020) (“Rehearing Order”).

NESCOE intervened and was actively involved in the FERC proceedings that led to the rulings under review.

The Court should note that on August 17, 2020, NESCOE timely filed with FERC a request for rehearing of the Rehearing Order. In clarifying the Initial Order, FERC issued new rulings and modified the Initial Order in certain respects, and NESCOE requested rehearing of discrete new rulings. NESCOE recognizes that this Court's precedent provides that its request for rehearing of the Rehearing Order—which remains pending before FERC—may render this petition for review premature and subject to dismissal without prejudice.¹

Heeding this Court's previous guidance,² however, this Petition is filed out of an abundance of caution.

In light of the Court's recent opinion in *Allegheny Defense Project v. FERC*,³ NESCOE anticipates either that FERC will rule on its rehearing request or

¹ See, e.g., *Clifton Power Corp. v. FERC*, 294 F.3d 108 (D.C. Cir. 2002); *Tenn. Gas Pipeline Co. v. FERC*, 9 F.3d 980 (D.C. Cir. 1993) (per curiam).

² *American Rivers v. FERC*, 895 F.3d 32, 43 n.1 (D.C. Cir. 2018) (“We have advised parties that are unsure whether a rehearing order has made a significant change to an underlying license to follow the ‘safer course’ by filing a protective petition for review.”); *Eagle-Picher Indus. v. EPA*, 759 F.2d 905, 909 (D.C. Cir. 1985) (“[P]etitioners who delay filing requests for review on their own assessment of when an issue is ripe for review do so at the risk of finding their claims time-barred.”); *Miss. Valley Gas Co. v. FERC*, 68 F.3d 503, 510 (D.C. Cir. 1995) (where FERC reaches its decisions incrementally, the parties before it “face[] a terrible dilemma in having to decide when to seek review of the FERC orders,” making it “prudent” to file a petition even though it may be dismissed as unripe).

that NESCOE's rehearing request will be denied by operation of law on September 16, 2020. NESCOE anticipates coordinating with Respondent FERC to the extent this is not the case in seeking an abeyance from the Court.

Respectfully submitted,

/s/ Jason Marshall

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Dated: September 15, 2020

³ 964 F.3d 1, 3-4 (D.C. Cir. 2020) (en banc) (finding that FERC's longstanding practice of issuing "tolling orders are not the kind of action on a rehearing application that can fend off a deemed denial and the opportunity for judicial review.").

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**CORPORATE DISCLOSURE STATEMENT OF
NEW ENGLAND STATES COMMITTEE ON ELECTRICITY, INC.**

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure, the New England States Committee on Electricity, Inc. (“NESCOE”) hereby files its Corporate Disclosure Statement in the above-captioned case.

NESCOE is a non-profit entity governed by a board of managers appointed by the Governors of Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont. Its general purpose is to represent the collective perspective of the six New England states in regional electricity matters. NESCOE has no parent company, is not a publicly held corporation, and there is no publicly held company that has any ownership interest in NESCOE.

Respectfully submitted,

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CERTIFICATE OF SERVICE

In accordance with Rules 15(c) and 25(d) of the Federal Rules of Appellate Procedure and Rule 25(f) of the Circuit Rules for United States Court of Appeals for the District of Columbia Circuit, I hereby certify that on this date, I have served by e-mail the foregoing Petition for Review and Corporate Disclosure Statement on each participant designated on the official service list maintained by the Secretary of the Federal Energy Regulatory Commission in Docket No. ER18-1639, listed below. I further certify that, in compliance with 18 C.F.R. § 385.2012, an electronically date-stamped copy of this Petition for Review and Corporate Disclosure Statement will be electronically served on Respondent at the following addresses via FERC's electronic filing system and by e-mail:

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