

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

**PennEast Pipeline Company, LLC )**

**Docket No. RP20-41-000**

**COMMENTS OF THE  
AMERICAN GAS ASSOCIATION**

Pursuant to the “Notice of Petition for Declaratory Order” issued by the Federal Energy Regulatory Commission (“Commission”) on October 4, 2019, in Docket No. RP20-41-000, the American Gas Association (“AGA”) respectfully submits these comments in response to the “Petition for Declaratory Order and Request for Expedited Action” (“Petition”) filed by PennEast Pipeline Company, LLC (“PennEast”) on October 4, 2019, in the above referenced proceeding.<sup>1</sup> As discussed in more detail below, AGA supports the Petition filed by PennEast.

**I. COMMUNICATIONS**

All pleadings, correspondence and other communications filed in this proceeding should be addressed to:

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<sup>1</sup> AGA filed a “doc-less” Motion to Intervene in Docket No. RP20-41-000 on October 16, 2019.

## **II. IDENTITY AND INTERESTS**

The American Gas Association, founded in 1918, represents more than 200 local energy companies that deliver clean natural gas throughout the United States. There are more than 74 million residential, commercial and industrial natural gas customers in the U.S., of which 95 percent — more than 71 million customers — receive their gas from AGA members. AGA is an advocate for natural gas utility companies and their customers and provides a broad range of programs and services for member natural gas pipelines, marketers, gatherers, international natural gas companies and industry associates. Today, natural gas meets more than one-fourth of the United States' energy needs.<sup>2</sup>

AGA's member natural gas local distribution companies ("LDCs" or "natural gas utilities") own and operate local natural gas distribution pipeline systems that typically receive natural gas supplies that have been transported on the interstate pipeline system. LDCs deliver natural gas under locally-regulated rates, terms and conditions, directly to residential, commercial, and industrial customers, including electric generators. AGA members take service from virtually every interstate natural gas pipeline regulated by the Commission under the Natural Gas Act ("NGA"). As customers of jurisdictional pipelines and providers of natural gas distribution service to all retail segments, AGA members are directly affected by the Commission's policies addressing or affecting natural gas pipeline infrastructure. AGA's goals include ensuring that the interstate natural gas transportation network provides adequate, secure, and reliable service. AGA member companies, therefore, have a direct and substantial interest in the issues raised in this proceeding.

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<sup>2</sup> For more information, please visit [www.aga.org](http://www.aga.org).

### III. COMMENTS

#### A. Introduction

AGA supports PennEast's Petition and requests that the Commission issue a declaratory order as requested by PennEast. The continued development of the interstate natural gas pipeline system, which safeguards the delivery of a reliable supply of natural gas, is of great importance to the member utilities of AGA. The recent Third Circuit Opinion<sup>3</sup> that prompted the filing of the Petition threatens LDC access to expanded natural gas supplies, and the rulings requested by the Petition would assist the industry's efforts to ensure that pipelines may continue to extend and expand the interstate natural gas transmission system to the benefit of consumers and the United States economy. Moving all energy resources safely, affordably, efficiently, and reliably to where they are needed requires a modern and highly interconnected system. Uncertainty and delays in the certification and permitting process hinders the advancement of critical infrastructure, such as natural gas infrastructure projects.

The highest priority for a natural gas utility is the ability to deliver natural gas to its customers safely, reliably, responsibly, and at just and reasonable rates. Whether an LDC has a statutory obligation to serve, and whether an LDC customer receives bundled or unbundled service, the critical goal of LDCs is to serve customers' natural gas needs. Although LDCs are not directly responsible for the construction of interstate transmission pipeline projects, these pipelines are a critical link in the delivery of natural gas to the consuming public. LDCs are obligated, in accordance with applicable state law and regulatory requirements, to distribute the natural gas transported by the interstate pipelines to retail residential, commercial, governmental, industrial,

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<sup>3</sup> *In re PennEast Pipeline Company, LLC*, 938 F.3d 96 (3<sup>rd</sup> Cir. Sept. 10, 2019), *as amended* (Sept. 11, 2019), *as amended* (Sept. 19, 2019) ("Third Circuit Opinion").

and electric generation customers. Due to this obligation to serve, LDCs develop detailed long-term supply and transportation plans to ensure that they can reliably meet the physical demand for service on peak days both today and in the future. Acquiring pipeline capacity is an integral part of this planning process.

The possibility that a single landowner could void pipeline projects threatens to undermine and casts doubt on whether the federal certification process for interstate natural gas infrastructure can be relied upon. AGA is concerned that the Third Circuit Opinion is likely to upend the ability of pipelines to plan and construct new pipeline capacity pursuant to the NGA, after decades of successful certification and construction. Under these unusual circumstances, the Commission should provide guidance for the industry and the courts on how it interprets the NGA. Furthermore, stakeholders would benefit from the Commission's interpretation of the NGA because, even in the short run, certain permitting processes have already been halted by regulators because of the Third Circuit Opinion – despite the fact that PennEast holds a valid certificate from this Commission.

## **B. Background**

In January 2018, the Commission issued a certificate of public convenience and necessity to PennEast for a pipeline project that includes, *inter alia*, a 116-mile natural gas pipeline from Luzerne County, Pennsylvania, to Mercer County, New Jersey, along with three laterals extending off the mainline, a compression station, and appurtenant above ground facilities (the “PennEast Project”).<sup>4</sup> As discussed in the Certificate Order, PennEast executed long-term precedent agreements with twelve shippers for firm transportation service amounting to approximately 90

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<sup>4</sup> *PennEast Pipeline Co.*, 162 FERC ¶ 61,053 (2018) (“Certificate Order”), *reh'g denied*, 164 FERC ¶ 61,098 (2018) (“Rehearing Order”).

percent of the project's capacity.<sup>5</sup> The twelve separate shippers consist of LDCs, marketers, and an interstate pipeline; therefore, the project will serve a variety of end-uses.<sup>6</sup> PennEast has explained that nearly 80 percent of the project's subscribed capacity is held by LDCs or other utilities in order to serve existing and expanding customer needs and to ensure a continuation of safe and reliable service in the northeast, which is one of the most constrained areas in the country.<sup>7</sup> The Commission reviewed an extensive record in the certificate proceeding, and found that construction and operation of the proposed pipeline would be in the public convenience and necessity, under Section 7(c) of the NGA.<sup>8</sup>

Following the issuance of the Certificate Order, PennEast initiated condemnation proceedings in federal court to secure easements for the portions of the pipeline route where it could not obtain voluntary agreements.<sup>9</sup> Some of the properties were owned, at least in part, by New Jersey or various arms of the state.<sup>10</sup> Specifically, of the 42 relevant parcels, New Jersey holds possessory interests in two of the properties and non-possessory interests, such as easements, requiring that the land be preserved for recreational, conservation, or agricultural use, in the rest.<sup>11</sup>

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<sup>5</sup> Certificate Order at P 6.

<sup>6</sup> *Id.* at P 28.

<sup>7</sup> Petition at 5. *See also* Petition at n.7 (discussing the need of LDCs to secure adequate supplies); Certificate Order at P 6 and P 33 (listing the entities that executed precedent agreements and discussing the service obligations of certain shippers and the percentage of subscribed project capacity). *See, e.g.*, FERC Staff Report, *2019-2020 Winter Energy Market Assessment* (Oct. 17, 2019) (explaining that during the winter, especially in the Northeast, winter demand for natural gas can exceed pipelines' capacity) available at: <https://ferc.gov/market-assessments/reports-analyses/mkt-views/2019/10-17-19-A-3.pdf> (last visited October 18, 2019); FERC Staff Report, *Winter 2018-19 Energy Market Assessment* (Oct. 18, 2018) available at: <https://ferc.gov/market-assessments/reports-analyses/mkt-views/2018/10-18-18-A-3.pdf> (last visited October 18, 2019).

<sup>8</sup> Certificate Order at Ordering Paragraph A.

<sup>9</sup> Petition at 6

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

New Jersey sought dismissal of PennEast’s condemnation suits for lack of jurisdiction, citing the Eleventh Amendment to the United States Constitution, among other reasons. The District Court granted PennEast orders of condemnation,<sup>12</sup> and New Jersey appealed.

On September 10, 2019, the United States Court of Appeals for the Third Circuit vacated the District Court’s order with respect to New Jersey’s property interests and remanded the matter for the dismissal of any claims against New Jersey.<sup>13</sup> The Third Circuit held that PennEast’s condemnation suits against New Jersey are barred by the state’s Eleventh Amendment immunity.<sup>14</sup> The court found that New Jersey’s sovereign immunity has not been abrogated by the NGA, nor has there been a delegation of the federal government’s exemption from the state’s sovereign immunity.<sup>15</sup>

The court stated that it was not insensitive to the concern that this holding will give states unconstrained veto power over interstate pipelines, causing the industry and interstate gas pipelines to grind to a halt – the outcome Congress sought to avoid in enacting the NGA.<sup>16</sup> However, the court stated that interstate gas pipelines can still proceed. The court explained that New Jersey is in effect asking for an accountable federal official to file the necessary condemnation actions and then transfer the property to the natural gas company.<sup>17</sup> The court further found that whether, from a policy standpoint, that is or is not the best solution is not a call the court felt it could make.<sup>18</sup> The

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<sup>12</sup> *In re. PennEast Pipeline Company, LLC*, No. 18-1585, 2018 WL 6584893, at \*1 (D.N.J. Dec. 14, 2018).

<sup>13</sup> Third Circuit Opinion at 99.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 113.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

court simply noted the suggested “workaround.”<sup>19</sup> Further, the court stated that even if the federal government needs a different statutory authorization to condemn property for pipelines, it is an issue for Congress.<sup>20</sup> The court stated that such a change would alter how the natural gas industry has operated for some time, but the court posited that it is what the Eleventh Amendment demands. Petitions for rehearing *en banc* of the Third Circuit Opinion are due in late October 2019.

On October 4, 2019, PennEast filed its Petition requesting that the Commission issue an expedited order, no later than November 1, 2019, interpreting the NGA’s eminent domain authority in Section 7(h),<sup>21</sup> and concluding that:

- 1) Under NGA Section 7(h), a certificate holder’s authority to condemn “the necessary right-of-way to construct, operate, and maintain a [natural gas] pipeline” and the “necessary land or other property, in addition to right-of-way, for the location of compressor stations [and other associated equipment],” applies to property in which a state holds an interest;
- 2) In NGA Section 7(h), Congress delegated the federal government’s eminent domain authority to certificate holders; and
- 3) In delegating the federal government’s eminent domain authority in NGA Section 7(h), Congress necessarily delegated to certificate holders the federal government’s exemption from claims of state sovereign immunity.

The Commission, also on October 4, 2019, issued a notice seeking comments on the Petition.

**C. The Commission Should Issue a Declaratory Order Interpreting the NGA’s Eminent Domain Authority as Requested by PennEast**

AGA supports the Petition and requests that the Commission issue a declaratory order as requested by PennEast in this docket.<sup>22</sup> AGA submits that the Petition provides a sound legal basis

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<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 15 U.S.C. § 717f(h).

<sup>22</sup> AGA also supports the comments of the Interstate Natural Gas Association of America filed concurrently in this docket.

and rationale as to why the Commission’s interpretation of the NGA is important, and the Petition further provides detailed support for the requested determinations.

The Commission has jurisdiction over the construction and siting of natural gas pipelines a under Section 7 the NGA<sup>23</sup> and “[t]he power of eminent domain conferred by NGA Section 7(h) is a necessary part of the statutory scheme to regulate the transportation and sale of natural gas in interstate commerce.”<sup>24</sup> Congress, through the NGA, gave natural gas companies condemnation power to insure that consumers have access to an adequate supply of natural gas at reasonable prices.<sup>25</sup> Furthermore, “[t]he basic purpose of the Natural Gas Act is protection of the public interest.”<sup>26</sup> The Commission has determined that the PennEast Project is in the public interest by issuing a certificate pursuant to Section 7 of the NGA and finding that the “public convenience and necessity requires approval” of the project.<sup>27</sup> However, although the public interest determination has been made, the Third Circuit Opinion undermines the Commission’s authority under the NGA to ensure that consumers have access to an adequate supply of natural gas, by allowing an individual landowner to have effective veto power over the construction of interstate natural gas pipeline infrastructure.

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<sup>23</sup> See 15 U.S.C. § 717f; see also Certificate Order at P 42.

<sup>24</sup> Rehearing Order at P 29 (2018) (citing *Thatcher v. Tenn. Gas Transmission Co.*, 180 F.2d 644, 647 (5<sup>th</sup> Cir. 1950), cert. denied, 340 U.S. 829 (1950); *Williams v. Transcon. Gas Pipe Line Corp.*, 89 F. Supp. 485, 486-88 (W.D.S.C. 1950)).

<sup>25</sup> *East Tennessee Natural Gas Co. v. Sage*, 361 F.3d 808, 830 (4<sup>th</sup> Cir. 2004) citing *Clark v. Gulf Oil Corp.*, 570 F.2d 1138, 1145-46 (3<sup>rd</sup> Cir. 1977), *Fla. Power & Light Co. v. Federal Energy Regulatory Comm’n*, 598 F.2d 370, 379 (5<sup>th</sup> Cir. 1979), *Public Serv. Comm’n of Ky. v. Federal Energy Regulatory Comm’n*, 610 F.2d 439, 442-43 (6<sup>th</sup> Cir. 1979).

<sup>26</sup> *Kentucky Natural Gas Corp. v. Federal Power Comm’n, et al.*, 159 F.2d 215, 218 (6<sup>th</sup> Cir. 1947).

<sup>27</sup> Certificate Order at P 40; Rehearing Order at P 30 (“Our ultimate conclusion that the public interest is served by the construction of the proposed project reflects our findings that the benefits of a project will outweigh its adverse effects.”).

The Petition discusses the applicable history and context of NGA Section 7(h), and AGA supports the issuance of a declaratory order, as requested by PennEast. AGA is submitting these comments to emphasize certain matters of particular importance to LDCs.

**D. A Disruption in the Certification, Permitting, and Development of Interstate Natural Gas Infrastructure Would Jeopardize a Utility’s Obligation to Serve Customers**

LDCs have an obligation to serve retail customers, and reliability and safety are the most important operational goals for all natural gas LDCs.<sup>28</sup> Residential and business customers expect and demand uninterrupted service for human need purposes, such as home heating, and business purposes.<sup>29</sup> An LDC’s obligation to provide natural gas service to retail customers arises from state law and is regulated at the local level by state commissions or other regulatory authorities. As an essential predicate to providing natural gas distribution services, utilities develop and implement detailed long-term supply plans<sup>30</sup> that are subject to periodic update, review and

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<sup>28</sup> Most laws or regulations that govern utility service include the concept of the “obligation to serve.” In short, this duty stems from the reality that when a franchise service territory is granted by a state or regulatory entity a public interest is established in maintaining reliable service. *See, e.g.*, 66 Pa. Cons. Stat. § 2207 (stating that “the natural gas distribution company shall serve as the supplier of last resort for residential, small commercial, small industrial and essential human needs customers and any other customer classes determined by the commission”); Nev. Admin. Code § 704.499 (stating that each utility shall exercise reasonable diligence and care to provide customers with natural gas and to the extent possible, should avoid any shortage or interruption.).

<sup>29</sup> There are several factors that utilities evaluate when deciding to enter into precedent agreements for new pipeline capacity beyond simply being able to meet peak demands, including costs savings, supply security, and price stability. However, for brevity purposes these comments focus on the LDCs’ obligation to serve as it relates to the need to secure adequate pipeline capacity. *See* PennEast’s October 17, 2016 Answer filed in Docket No. CP15-558-000 and the attached report of Concentric Energy Advisors, Inc., discussing the reasons why LDCs contract for pipeline capacity; *see also* Certificate Order at P 29 (stating that there is sufficient market demand for the PennEast Project, that the LDC customers have determined, based on their assessment of the long-term needs of their particular customers and markets, and discussing that the Commission finds that “end users will generally benefit from the project because it would develop gas infrastructure that will serve to ensure future domestic energy supplies and enhance the pipeline grid by providing additional transportation capacity connecting sources of natural gas to markets in Pennsylvania and New Jersey.”).

<sup>30</sup> As one state court succinctly explained, “[n]ecessarily encompassed within a utility’s obligation to serve is an attendant obligation to plan and make reasonable provision for the continuing availability of its products or services in order to meet reasonably expected future demand, given the information which the utility possesses and the

approval processes, as applicable.<sup>31</sup> The goal of these gas supply plans is to ensure that natural gas utilities can reliably meet their projected physical demand for service on peak days. This process requires building and managing portfolios of physical natural gas supply, and building or contracting for storage and pipeline transportation services in order to meet anticipated peak day customer needs. The predominant factor driving a gas utility’s decision to enter into transportation agreements and become a firm shipper, including at times an anchor shipper on a proposed pipeline project, is to have natural gas supplies available as part of the utility’s portfolio of assets to respond to current and future customer demands and to meet operational needs.

Interstate pipelines play a critical role in the natural gas supply chain because much of the natural gas flowing through those pipelines is ultimately received by LDCs to serve retail customers that use natural gas in their homes, businesses, or industrial facilities. Thus, LDCs often serve as “anchor shippers” that contractually agree to subscribe to service from new and expanded interstate pipelines. Guided by past experience and regulatory oversight, gas utilities plan natural gas deliveries on a daily, weekly, monthly, and seasonal basis by matching supply resources to forecasted demand and preparing for “design day” conditions (or a historic “peak day” load). During the winter, LDCs typically use a full suite of supply assets and tools to fulfill the obligation to serve customers reliably and safely, both on an average day as well as a peak demand day.

Historically, the Commission has evaluated these proposed interstate pipeline projects pursuant to the NGA, and when the requirements of the NGA are met, issues a certificate of public

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options open to it.” *People’s Org. for Wash. Energy Res. v. Utils. & Transp. Comm’n*, 104 Wn.2d 798 (Supreme Court of Washington, 1985).

<sup>31</sup> This update, review, and approval process relates to both internal company practices and, where applicable, regulatory review. *See, e.g.*, Mass. G.L. c. 164, § 69I (the Massachusetts Department of Public Utilities shall approve or reject utility company long-range plans).

convenience and necessity for the pipeline. The Commission may modify its determinations on rehearing and an appellate court may review a Commission order under the NGA. However, until the issuance of the Third Circuit Opinion, it has not been the case that a single landowner could supplant the Commission's authority and prohibit a pipeline's construction after a certificate has been issued. The effect of the Third Circuit Opinion is to effectively grant a specific type of landowner veto power over an interstate, federally-certificated project that the Commission has determined is in the public interest, thus nullifying the entire review process under the NGA.

AGA is concerned that the siting process will return to a period prior to the enactment of NGA Section 7(h), where there had been effectively no federal eminent domain, for a class of landowners thereby negating the Commission's siting authority. As the Petition demonstrates, the legislative history of the NGA provides insight into the difficulty of the siting process prior to the enactment of the eminent domain section.<sup>32</sup> The legislative history related to NGA Section 7(h) discusses the difficulties of obtaining rights-of-way from railroads seeking to protect their coal delivery business and states seeking to extract certain concessions from pipelines before rights-of-way would be obtainable.<sup>33</sup> The implementation of NGA Section 7(h) was intended to stop individual entities or limited groups from thwarting the federal certificate process; however, the Third Circuit Opinion effectively re-imposes this regime for a specific type of landowner (with either a possessory or non-possessory interest). AGA is concerned because if a state or a single landowner can say 'no' to the development of natural gas pipelines, such an action would likely

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<sup>32</sup> See Petition at 31.

<sup>33</sup> See, e.g., F. Vinson Roach, *A Compilation of the Legislative History of the Natural Gas Act, Part II, April 10, 1941 to July 1, 1968* at 839-845 (1968) (Statement and Testimony of J.J. Hendrick, General Counsel of Natural Gas Pipeline Co. of America discussing right-of-way issues with railroads and in Wisconsin).

force utilities (in any jurisdiction to be served by the proposed pipeline and/or jurisdictions up/downstream)<sup>34</sup> to curb safe and affordable service and refuse access to new customers including new businesses.

**E. Ramifications of the Third Circuit Opinion Have Already Occurred and the Courts, Regulators, Landowners, and Energy Industry Would Benefit from the Commission’s Formal Interpretation of the NGA**

In the Petition, PennEast discusses the importance of the Commission issuing a formal interpretation of the statute it administers, *i.e.*, the NGA, so that further caselaw is not developed absent Commission input, and that it do so soon.<sup>35</sup> It is imperative the Commission weigh in on this issue because it has regulatory authority over interstate gas projects and the Third Circuit (in the rehearing phase) and other courts<sup>36</sup> would benefit from the Commission’s interpretation of the NGA. In the past the Commission has not shied away from providing guidance on subjects within its jurisdiction and related statutory provisions.<sup>37</sup>

Additionally, stakeholders, such as regulators, landowners, and energy industry participants, *etc.*, would benefit from the Commission issuing an order in this proceeding. The Third Circuit Opinion has already been cited to halt certain ongoing permitting processes related to the PennEast Project. On October 8, 2019, the New Jersey Department of Environmental

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<sup>34</sup> If a single landowner, such as a state can veto construction it would likely end the project overall and effect customers and states being served upstream or downstream. For example, if New Jersey decides to end a project it could have ramifications for customers in jurisdictions upstream (Pennsylvania) and downstream (New York / New England) of New Jersey.

<sup>35</sup> Petition at 11, 44. On October 8, 2019, the Third Circuit extended the time to file a request for rehearing until October 22, 2019. As noted in the Petition (at 44), PennEast intends to seek rehearing; therefore, the appellate phase has not concluded.

<sup>36</sup> See *Columbia Gas Transmission, LLC v. 0.12 Acres of Land, More or Less*, No. 19-cv-1444 (D. Md. Aug. 22, 2019), appeal filed in the 4<sup>th</sup> Circuit, No. 19-2040, September 20, 2019.

<sup>37</sup> See, *e.g.*, *NextEra Energy, Inc. v. Pac. Gas and Elec. Co.*, 166 FERC ¶ 61,049 (2019) and *Exelon Corp. v. Pac. Gas and Elec. Co.*, 166 FERC ¶ 61,053 (2019), *reh’g denied*. 167 FERC ¶ 61,096 (2019) (discussing Commission jurisdiction under the Federal Power Act in response to a petition for declaratory order).

Protection (“NJ DEP”) issued a letter that denied, without prejudice, PennEast’s application for a Freshwater Wetlands Individual Permit and Water Quality Certificate that were pending before NJ DEP.<sup>38</sup> The NJ DEP stated that, while the pipeline had responded sufficiently to a deficiency letter in September 2019, the application could not be “administratively complete,” under New Jersey law. The fundamental deficiency, according to the NJ DEP, was that in light of the Third Circuit Opinion, PennEast no longer had the legal authority to perform activities on several properties along the proposed pipeline alignment, and to carry out all requirements of the state’s statutory requirements.<sup>39</sup> The NJ DEP’s procedural actions illustrate the importance of this issue and the effect that the Third Circuit Opinion has on regulators, landowners, and the energy industry overall. This situation, however, is unfolding without the benefit of the Commission’s interpretation of the NGA, as sought in the Petition. Therefore, the Commission should interpret NGA Section 7(h) in the requested declaratory order so that it can be considered as part of this ongoing process.

#### **IV. CONCLUSION**

For the reasons stated above, the American Gas Association respectfully requests that the Commission consider these comments in this proceeding. AGA urges the Commission to issue the requested declaratory order and provide its position on the important issues raised in the

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<sup>38</sup> See, e.g., “New Jersey turns down permits for proposed 120-mile natural gas pipeline,” October 12, 2019, available at” <https://www.phillyvoice.com/new-jersey-proposed-natural-gas-pipeline-120-miles-trenton-pennsylvania-penneast/> (last visited October 18, 2019). PennEast submitted a response to the NJ DEP’s October 8 denial which explains that the Third Circuit Opinion should have no bearing on the application process for several reasons. “PennEast Pipeline Responds to NJDEP’s Rejection of Permit Application,” October 16, 2019, available at: <https://www.njbia.org/penneast-pipeline-responds-to-njdeps-rejection-of-permit-application/> (last visited October 18, 2019).

<sup>39</sup> Notably, the NJ DEP issued its denial of the application prior the Third Circuit issuing a mandate under Federal Rules of Appellate Procedure. F. R. App. P. Rule 41 (mandate is issued seven days after the time to file a petition for rehearing expires, or seven days after entry of an order denying a timely petition for panel rehearing, petition for rehearing *en banc*, or motion for stay of mandate, whichever is later).

Petition. It is of critical importance to AGA and its members that the interstate natural gas industry retains the ability to construct the infrastructure needed to meet the demands of LDCs and their customers, and the overall natural gas market.

Respectfully submitted,

*/s/Matthew J. Agen*

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October 18, 2019

## CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding in accordance with the requirements of Rule 2010 of the Rules of Practice and Procedure, 18 C.F.R. § 385.2010 (2019).

Dated this 18<sup>th</sup> day of October 2019, Washington, DC.

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