

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

Transcontinental Gas Pipe Line Company LLC)	
)	Docket Nos. CP17-101-007
)	CP20-49-001

**ANSWER TO TRANSCO’S MOTION FOR LEAVE;
MOTION FOR LEAVE TO ANSWER AND PROPOSED ANSWER**

Pursuant to Rule 213(a)(3) of the Federal Energy Regulatory Commission’s (“Commission” or “FERC”) Rules of Practice and Procedure,¹ Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation (“Intervenors”) respectfully submit this answer to Transcontinental Gas Pipe Line Company, LLC’s (“Transco”) August 5, 2025 Motion for Leave.² This Answer is timely filed because it has been filed within 15 days of Transco’s August 5 motion.³

Intervenors additionally move, pursuant to Rules 212 and 213 of the Commission’s Rules of Practice and Procedure,⁴ for leave to answer Transco’s August 5, 2025 proposed Answer⁵ to multiple protests, including Intervenors’ June 24, 2025 Protest⁶ of Transco’s Petition⁷ requesting that FERC reissue a certificate for the Northeast Supply Enhancement System (“NESE”) Project. Intervenors’ proposed Answer is timely filed because it has been filed within 30 days of the pleading Intervenors seek leave to answer.⁸

I. Answer to Transco’s Motion for Leave

The Commission should deny Transco’s Motion for Leave because Transco’s proposed Answer is untimely. Rule 213 provides that the Commission may grant leave to file an answer that is otherwise not allowed, such as an answer to a protest, but requires that an answer must be made “not later than 30 days after the filing of the pleading” which it answers, unless otherwise

¹ 18 C.F.R. § 385.213(a)(3).

² Motion for Leave to Answer and Answer of Transcontinental Gas Pipe Line Company, LLC to Protests, Docket Nos. CP17-101-007, CP20-49-001, Accession No. 20250805-5228 (Aug. 5, 2025) (“Transco Answer”).

³ 18 C.F.R. § 385.213(d)(1).

⁴ *Id.* §§ 385.212, 385.213.

⁵ Transco Answer.

⁶ Protest and Motion to Intervene by Central Jersey Safe Energy Coalition, Food & Water Watch, New Jersey League of Conservation Voters Education Fund, NY/NJ Baykeeper, Princeton Manor Homeowners Association, Sierra Club, and Surfrider Foundation, Docket Nos. CP17-101-007, CP20-49-001, Accession No. 20250624-5513 (June 24, 2025) (“Protest”).

⁷ Petition of Transcontinental Gas Pipe Line Company, LLC for Expedited Reissuance of Certificate Authority, Docket Nos. CP17-101-007, CP20-49-001, Accession No. 20250529-5275 (May 29, 2025) (“Petition”).

⁸ 18 C.F.R. § 385.213(d)(2)(ii).

ordered.⁹ Transco's Answer to the Protest is untimely because it was not filed within 30 days of the June 24, 2025, filing of the Protest; Transco instead waited 42 days and filed on August 5, 2025.

II. Motion for Leave to Answer

Rule 213(a)(2) generally prohibits answers to answers but provides that they may be allowed if "ordered by the decisional authority."¹⁰ The Commission has allowed answers otherwise prohibited by Rule 213 when the answers would: provide clarification; aid the Commission in understanding the issues; provide additional information that assists the Commission in its decision-making process; or help ensure a complete record.¹¹ Because Intervenor's proposed Answer to Transco's Answer would assist the Commission's decision-making process and clarify the issues, the Commission should grant Intervenor's Motion for Leave.

III. Proposed Answer to Transco's Answer

A. Transco's Petition Requests a Procedure that the Natural Gas Act Does Not Authorize.

Transco's Petition requests that FERC take an action that is not authorized by the Natural Gas Act. Far from being a "pretextual procedural argument[],"¹² this fact requires FERC to deny the Petition because, as an agency created by statute, FERC has no more authority than Congress specifically granted it in statute. *See Nat'l Fed'n of Indep. Bus. v. OSHA*, 595 U.S. 109, 117 (2022); *Marin Audubon Soc'y v. FAA*, 121 F.4th 902, 912 (D.C. Cir. 2024) (quoting *Fed. Election Comm'n v. Cruz*, 596 U.S. 289, 301 (2022)). Nothing in Transco's Answer corrects this fatal flaw in the Petition.

The Commission has not been granted discretion in the Natural Gas Act to reissue expired certificates in the manner that Transco requests. Transco filed its Petition pursuant to Rule 207, which allows for petitions seeking "[a]ny other action which is in the discretion of the

⁹ 18 C.F.R. § 385.213(d)(2)(ii).

¹⁰ *Id.* § 385.213(a)(2).

¹¹ *See, e.g.*, Order Issuing Certificate and Approving Abandonment, *Transcontinental Gas Pipe Line Company, LLC*, 182 FERC ¶ 61,006, P 13 (2023) (accepting answer of Catherine Folio "because it provides information that has assisted in our decision making"); Order Issuing Temporary Certificate, *Spire STL Pipeline LLC*, 177 FERC ¶ 61,147, P 16 (2021) ("Although the Commission's Rules of Practice and Procedure generally do not permit answers to protests, we will accept the answers here because they provide clarification and information that has assisted in our decision-making."); *Columbia Gas Transmission, LLC*, 157 FERC ¶ 61,247, P 5 n.4 (2016) ("[T]he Commission finds good cause to accept Columbia's answer since it does not delay the proceeding, assists the Commission in understanding the issues raised, and ensures a complete record.").

¹² Transco Answer at 8–9.

Commission and for which this chapter prescribes no other form of pleading.”¹³ The Natural Gas Act provides only that the Commission can grant applications for certificates¹⁴ or grant temporary certificates where an application is pending.¹⁵ The Natural Gas Act also grants FERC the authority to attach conditions to a certificate order, including in-service deadlines.¹⁶ When the Commission grants an extension of time of an in-service deadline pursuant to 18 C.F.R. § 385.2008, it is therefore merely exercising its authority to amend conditions it had previously attached to certificates. Transco has now asserted it is *not* requesting an extension of its prior certificate.¹⁷ Therefore, the only procedure by which Transco may once more obtain a certificate for the NESE Project is to submit a new application that meets the requirements specified in Section 7 of the Natural Gas Act¹⁸ and the Commission’s regulations,¹⁹ which Transco has not done. Transco’s preference that the Commission “reissue” a certificate because it would be “efficient[,]”²⁰ is irrelevant, because FERC has not been authorized by statute to do so. Further, long-term efficiency is best served when an agency follows its established rules and procedures, rather than permitting shortcuts that undermine the consistent expectations on which the public, landowners, and all parties rely.

Transco incorrectly implies²¹ that two recent executive orders²² support FERC “reissuing” a certificate, a procedure not provided for in either the Natural Gas Act or FERC’s regulations. Executive orders cannot amend statutes. *Clinton v. City of New York*, 524 U.S. 417, 438 (1998). Therefore, they cannot give FERC or any other agency power that Congress has not granted it.²³

Transco mistakenly asserts that the reissuance of a certificate previously vacated by a court is an appropriate analogy for the procedure it requests.²⁴ First, the fact that the Commission follows such a procedure on remand from a court’s order does not mean that a project proponent can invoke this procedure at will in the absence of a court order. Second, as Transco

¹³ 18 C.F.R. § 385.207(a). The rule also allows for petitions seeking several enumerated categories of action that are clearly inapplicable to Transco’s request.

¹⁴ 15 U.S.C. § 717f(c)–(e).

¹⁵ *Id.* § 717f(c)(1)(B).

¹⁶ *Id.* § 717f(e).

¹⁷ Transco Answer at 1–2, 4–5. As Intervenors’ Protest explained, Transco’s Petition did not, in any event, demonstrate either good cause for the extension of the deadline or extraordinary circumstances sufficient to justify failure to ask for an extension before the deadline had expired, as 18 C.F.R. § 385.2008 requires. Protest at 3–5.

¹⁸ 15 U.S.C. § 717f(d).

¹⁹ 18 C.F.R. §§ 157.1–157.23.

²⁰ Transco Answer at 3.

²¹ *Id.* at 5.

²² Declaring a National Energy Emergency, Exec. Order No. 14,156, 90 Fed. Reg. 8,433 (Jan. 20, 2025); Unleashing American Energy, Exec. Order No. 14,154, 90 Fed. Reg. 8,353 (Jan. 20, 2025).

²³ See Protest at 5–6.

²⁴ See Transco Answer at 5–8.

recognizes,²⁵ when a court vacates a Commission order because of specifically identified legal deficiencies, the Commission need only supplement the record or its analysis as necessary to correct those specific deficiencies. Here, by contrast, there is no court opinion guiding the Commission as to which elements of the previous record or decision must be revisited; there is only Transco’s assertion that “[c]ertain circumstances have changed” and “[o]ther circumstances have not.”²⁶ Finally, by following the unauthorized, ad hoc procedure Transco requests here, FERC would (in addition to acting unlawfully) be creating a lack of predictability and opening the door to similar improper requests for actions outside the bounds of the Commission’s statutory authority and its Rules of Practice and Procedure. Transco opted to abandon the Project; FERC vacated the certificate. There is no procedure and no basis for undoing those final acts.²⁷

As Transco recognizes,²⁸ FERC’s reasoning in extension orders is relevant here, even where Transco asserts its Petition should not be construed as a request for an extension. FERC imposes in-service deadlines because they serve three important functions. They protect “the information supporting FERC’s public convenience and necessity determinations from going stale with the passage of time.” *Sierra Club v. FERC*, 97 F.4th 16, 20 (D.C. Cir. 2024) (quoting *PennEast Pipeline Co., LLC*, 170 FERC ¶ 61,138, P 16 (2020)). Deadlines prevent neighboring landowners from indefinitely being unable to use their land in manners that might be incompatible with a project. *Id.* (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 10 (2012)). Deadlines also “prevent developers from holding on to certificates for so long that they ‘inhibit a potential competitor from pursuing its own project to serve the same market.’” *Id.* (citing *Chestnut Ridge Storage, LLC*, 139 FERC ¶ 61,149, P 9). *See also* Protest at 3–4. Even if Transco is not seeking an extension here, these reasons demonstrate why FERC should not give Transco the functional equivalent of an extension by reissuing a certificate on a prior record, rather than requiring Transco to submit a new application.

B. Transco’s Own Submissions Undermine Its Claims that FERC Can Reissue the Certificate Based on the Prior or Existing Record.

Even if Transco’s request to reissue its Certificate were permitted by the Natural Gas Act or FERC’s rules—which it is not—Transco’s own submissions to the docket since filing its

²⁵ *See id.* at 5–6.

²⁶ Transco Answer at 5.

²⁷ A better analogy than the one Transco offers is where a litigant opts to voluntarily dismiss a case when faced with court deadlines it will not meet. Even a dismissal without prejudice does not give the litigant the ability to simply reopen the case, even in the name of “efficiency.” A litigant seeking to reopen such a case would need to file a new action or satisfy the demanding standard of Rule 60(b), such as by showing mistake, fraud, or newly discovered evidence that could not reasonably have been presented earlier. Fed. R. Civ. P. 60(b); *see Waetzig v. Halliburton Energy Servs.*, 145 S. Ct. 690 (Feb. 26, 2025). Transco has not identified anything close to the circumstances that would justify reopening a case in federal court. Transco must file a new application.

²⁸ *See* Transco Answer at 8–9.

Petition demonstrate that neither the prior record nor the information that FERC now has before it are sufficient to support the issuance of a certificate. In its Petition and subsequent filings in support of the Petition, Transco has been inconsistent about whether the need for the NESE Project and the evidence supporting that need are the same as what FERC relied upon in originally granting a certificate for the Project, or are different such that FERC should consider additional evidence. Transco's claims that nothing about the need for the Project or the Project's environmental effects has changed are undermined by Transco continuing to provide FERC with new information about exactly those same, supposedly settled, questions.²⁹ FERC must require Transco to submit a new application and undertake the Commission's established and legally-required process to consider all the relevant evidence on a clear record.

FERC cannot accept at face value Transco's assertions that the Project continues to "pose[] no adverse impacts on Transco's existing customers or other pipelines and their captive customers" and that "constructing and operating the NESE Project remains the most economically and environmentally effective way to resolve the supply shortfall and pipeline constraints in the New York market area."³⁰ The environmental considerations have changed: Compressor Station 206 is subject to new air quality regulations; New Jersey has lowered its Hazardous Air Pollutant reporting thresholds; ambient concentrations of particulate matter and sulfur dioxide in New Jersey have increased; and the regulations under the New Jersey Flood Hazard Area Control Act have been amended.³¹ Both FERC and Transco's own submissions underscore this point. For example, a new conformity analysis by FERC's staff was needed, and Transco submitted a new greenhouse gas emissions analysis to the New York Department of Environmental Conservation that purports to provide new calculations for the Project's greenhouse gas emissions, which Transco has not submitted to FERC and which may change even further, as Transco states that it may adopt yet-to-be-identified mitigation measures.³² That filing also raises the new idea—not contemplated in any detail in FERC's initial evaluation of the Project—that the Project would be converted to carry 76% clean hydrogen by 2050.³³ The risks and potential environmental harms of that proposal, upon which Transco bases its greenhouse gas calculations, has never been assessed. The extent of the Project's harms, therefore, is not the same as before and must be adequately established in the record so that FERC complies with the National Environmental Policy Act, is able to adequately weigh the Project's harms in its Natural Gas Act determination, and ensures that any certificate it issues includes conditions to mitigate harms.

²⁹ See, e.g., Transco Answer at 3; *id.* at Attachments A & B; Petition at 8.

³⁰ Transco Answer at 5.

³¹ See Protest at 8–9.

³² See Letter from Joseph Dean, Transco, to Karen Gaidasz, N.Y. State Dep't of Env't Conservation (June 9, 2025) (attached hereto as Exhibit A with enclosures); Letter from Joseph Dean, Transco, to Karen Gaidasz, N.Y. State Dep't of Env't Conservation (June 12, 2025) (attached hereto as Exhibit B).

³³ Ex. A at NESE Proposed Project GHG Analysis, 5.

Transco's submissions also belie the claim that nothing has changed around the potential need for the Project. Transco has submitted new precedent agreements and updated analyses from the Project shippers on their purported need for additional gas capacity.³⁴ That evidence cannot be taken at face value, and the public—including captive ratepayers who could be forced to pay for the additional capacity—must be afforded the opportunity to examine these conclusions and submit their own evidence in response. In addition, the original Project purpose was to serve the needs of gas utility customers, but Transco's more recent submissions reference serving power generation needs.³⁵ The Project shippers are local distribution companies whose captive ratepayers are residential and commercial customers, not power generators. The D.C. Circuit has previously faulted FERC for failing to clearly address evidence that captive utility customers could be made to pay for capacity that they do not need but that utility companies can profit from by reselling it to power generators. *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 58–61 (D.C. Cir. 2024). FERC must have a clear record before it that establishes need for the Project and what public need the additional capacity will serve. Transco's submissions fail to establish such a record but do make abundantly clear that circumstances have changed since the original certificate was granted.

Moreover, what Transco attempts to simultaneously acknowledge and ignore is that the world surrounding the Project has changed in the years since FERC conducted its original analysis. While Transco makes much of the alleged changes caused by the issuance of certain executive orders³⁶—which do not change the law and cannot manufacture factual realities that do not exist³⁷—the company fails to acknowledge that the gas transmission network in the area has changed, and the relative economic efficiency of alternatives is likely to have changed as well, given the changes in inflation, supply chains, and tariffs that have occurred since 2019. Although Transco may claim that it “is not proposing to change the nature of the Project,”³⁸ FERC cannot properly determine whether the Project is required by the public convenience and necessity without understanding how the Project fits into a much-changed world.

IV. Conclusion

Intervenors respectfully request that the Commission deny Transco's Motion for Leave, or, alternatively, grant Intervenors' Motion for Leave and consider Intervenors' proposed Answer to Transco's Answer when determining how to respond to Transco's Petition.

Dated: August 20, 2025

³⁴ Transco Answer at Attachments A, B.

³⁵ See Petition at 8, 10.

³⁶ See Petition at 2, 7–8, 10, 16.

³⁷ See Protest at 5–6.

³⁸ Transco Answer at 3.

Respectfully submitted,

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