

ORAL ARGUMENT HELD IN ABEYANCE
IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

DELAWARE RIVERKEEPER
NETWORK, ET AL., *Petitioners,*

v.

DOCKET NO. 18-1128
(CONSOLIDATED WITH 18-
1144, 18-1220, 18-1225, 18-1226,
18-1233, 18-1256, AND
18-1274)

FEDERAL ENERGY REGULATORY
COMMISSION, *Respondent.*

DELAWARE RIVERKEEPER NETWORK AND
THE DELAWARE RIVERKEEPER'S
OPPOSITION TO CONTINUED ABEYANCE

Delaware Riverkeeper Network and the Delaware Riverkeeper (“Delaware Riverkeeper”) oppose the continued abeyance of this matter and request that the abeyance be lifted and that the matter before this Court be allowed to proceed.

As set forth in Petitioners’ Joint Supplemental Brief on Ripeness, the claims before this Court are fit for judicial determination. The Certificate Order issued to PennEast Pipeline Co., LLC (“PennEast”) and Rehearing Order constitute final agency actions, and review of those actions are neither premature nor abstract. The

administrative record is complete and there is no additional Federal Energy Regulatory Commission (“Commission”) action to be taken on the Certificate.

Just as significantly, without action from this Court, Delaware Riverkeeper and its members will continue to face concrete, immediate, and significant risk of condemnation, pre-construction and construction activities, and irreparable harm to property and the environment. The PennEast Certificate has granted PennEast the authority to take property owned by Delaware Riverkeeper’s members. PennEast has already exercised this authority, and condemnation actions are proceeding. In addition, the Commission’s practice of allowing pre-construction and construction activities once it issues a Certificate, means that Delaware Riverkeeper and its members stand to suffer additional hardships and irreparable harm the longer a ruling on the merits is delayed. These activities irreparably harm Delaware Riverkeeper’s recreational and aesthetic interests.

If the Court is inclined to continue the abeyance, it must also stay the PennEast Certificate Order to prevent the irreparable harm to property and the environment. Only a stay would prevent Delaware Riverkeeper and its members from suffering additional hardships associated with condemnation and

construction, while the Court's consideration of this matter remains dormant.

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CERTIFICATE OF SERVICE

I certify that on January 7, 2020, the foregoing document was electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit through the Court's CM/ECF system, which filing effected service upon counsel of record through the CM/ECF system.

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