



1440 G Street NW, 8th Floor, Washington D.C. 20005 | 202-297-6100
Carolyn@carolynelefant.com | LawOfficesofCarolynElefant.com | licensed in MD, DC, NY

August 19, 2019

Mark J. Langer
Clerk of the Court
United States Court of Appeals for
the District of Columbia Circuit
E. Barrett Prettyman United States Courthouse
333 Constitution Avenue N.W.
Washington D.C. 20001

Re: *Atlantic Coast Pipeline LLC et. al. v. FERC*. Nos. 18-1224 *et. al.*
Rule 28(j) Supplemental Authority
Oral Argument Scheduled for October 16, 2019

Dear Mr. Langer,

The Wintergreen Property Owners' Association and Friends of Wintergreen (collectively, Wintergreen Petitioners) submit this response to the Rule 28(j) letter filed by the Federal Energy Regulatory Commission (Commission) on August 9, 2019. Contrary to the Commission's letter, this Court's recent ruling in *Allegheny Defense Project v. FERC*, No. 17-1098 (D.C. Cir. Aug. 2, 2019) holding that the Commission satisfied the National Environmental Policy Act, 42 U.S.C. §4321 by taking a hard look at route alternatives has no bearing on the Wintergreen Petitioners' NEPA claims.

First, *Allegheny* did not consider the procedural infirmities in the Commission's order that the Wintergreen Petitioners raised. These included the Commission's failure to respond to various studies that the Wintergreen Petitioners submitted in the record and the Commission's improper reliance on non-record evidence to support its NEPA conclusions. Wintergreen Br. 9

Next, in contrast to the *Allegheny* Petitioners, the Wintergreen Petitioners did not challenge whether the Commission looked hard enough at alternatives under NEPA but rather, whether it acted unlawfully in applying a heightened "significant environmental advantage" standard to reject route alternatives. See Wintergreen Br. 23-25; Reply Br. 7. *Allegheny* did not address the applicable standard for evaluation of alternative routes but instead examined only whether the

Commission had taken a hard look at other routes. In fact, application of a heightened environmental standard precludes a hard look at alternatives because it automatically considers the pipeline's proposed route superior to alternatives" (Wintergreen Reply Br. 7).

Finally, when choosing between alternatives in *Allegheny*, the Commission accorded more weight to the proposed route's avoidance of "potentially dangerous elevation changes." Here, the Commission took the opposite approach and discounted the safety benefits that the alternative routes would have offered. Wintergreen Br. 24 (highlighting safety hazards that alternative would avoid); Reply Br. 8. In short, rather than choose an alternative that minimized safety risks as it did in *Allegheny*, in this case, the Commission approved a route that places the Wintergreen community directly in harm's way.

Respectfully submitted,



Carolyn Elefant
Law Offices of Carolyn Elefant
on behalf of Wintergreen Petitioners