United States Court of Appeals
for the District of Columbia Circuit

No. 17-1098 (consolidated with Nos. 17-1128, 17-1263, 18-1030)

ALLEGHENY DEFENSE PROJECT, *et al.*,

Petitioners,

v.

FEDERAL ENERGY REGULATORY COMMISSION,

Respondent.

On Petition for Review of Orders of the Federal Energy Regulatory Commission

INTERVENORS' RESPONSE IN OPPOSITION TO PETITIONERS' PETITION FOR REHEARING EN BANC

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 26.1 of the Federal Rules of Appellate Procedure and Circuit Rule 26.1 of the Rules of this Court, Intervenors[1] Transcontinental Gas Pipe Line Company, LLC, Chief Oil & Gas LLC, and Southern Company Services, Inc. make the following disclosures:

Transcontinental Gas Pipe Line Company, LLC ("Transco") is a natural gas pipeline company engaged in the transportation of natural gas in interstate commerce, which owns and operates an interstate natural gas transmission system that extends from Texas, Louisiana and the offshore Gulf of Mexico area to a terminus in the New York City metropolitan area. Its parent corporation is Williams Partners Operating, LLC, which is a wholly-owned subsidiary of The Williams Companies, Inc. (NYSE: WMB). We have no knowledge of any other entity owning 10% or more of Transco or Williams Partners Operating, LLC.

Chief Oil & Gas LLC ("Chief") is a private company engaged in exploration, production and marketing of natural gas in the Appalachian Basin, with its principal place of business in Dallas, Texas. No publicly held company has a ten percent or greater ownership interest in Chief.

[1] Due to changes in its interests subsequent to the filing of the Intervenors' Brief in support of Respondent on May 24, 2018, Anadarko Energy Services Company is not participating in this Response.

Southern Company Services, Inc.: Southern Company Services, Inc., Alabama Power Company, Georgia Power Company, Mississippi Power Company, and Southern Power Company (collectively, "Southern Companies") are each a wholly-owned subsidiary of The Southern Company, which is a publicly-held corporation.[2] Other than The Southern Company, no publicly-held company owns 10% or more of Southern Companies' stock. No publicly-held company holds 10% or more of Southern Company's stock. Southern Company stock is traded publicly on the New York Stock Exchange under the symbol "SO."

Through its subsidiaries, Southern Company is a leading U.S. producer of electricity, generating and delivering electricity to over four million customers in the southeastern United States. Southern Company subsidiaries include three vertically integrated electric utilities—Alabama Power Company, Georgia Power Company, and Mississippi Power Company—and a wholesale energy provider—Southern Power Company. These subsidiaries, each an Intervenor here through their agent Southern Company Services, Inc., own and operate electric transmission facilities and are engaged in the manufacture, generation,

[2] Gulf Power Company ("Gulf") is no longer a wholly-owned subsidiary of The Southern Company, as the stock purchase agreement between The Southern Company and NextEra Energy, Inc., whereby all outstanding common shares in Gulf were sold and transferred by The Southern Company to NextEra Energy, Inc., closed on January 1, 2019. At this time, Southern Company Services continues to serve as agent for Gulf on the Atlantic Sunrise Project.

transmission, and sale of electricity and serve both retail and wholesale customers within specified franchised electric service territories in portions of Alabama, Georgia, and Mississippi. Southern Company Services, Inc. is the services company for Southern Company and its operating subsidiaries. Southern Company Services, Inc. provides, among other things, engineering and other technical support for those operating subsidiaries.

Dated: October 8, 2019

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GLOSSARY

Certificate Order	Order Issuing Certificate, *Transcon. Gas Pipe Line Co.*, 158 FERC ¶ 61,125 (Feb. 3, 2017)
FERC	Federal Energy Regulatory Commission
JA	Joint Appendix citation
Landowner-Petitioners	Petitioners Hilltop Hollow Limited Partnership, Hilltop Hollow Limited Partnership, LLC, and Stephen D. Hoffman
Project	Transcontinental Gas Pipe Line Company, LLC's Atlantic Sunrise Project
R.	Record citation

INTRODUCTION

This Court affirmed the determination of the Federal Energy Regulatory Commission ("FERC") that Transcontinental Gas Pipe Line Company, LLC's Atlantic Sunrise Project (the "Project") serves a market need and public use. Petitioners seek rehearing en banc relying in large part on an issue framed in Circuit Judge Millett's Concurring Opinion as to whether this Court's long-established precedent holding that tolling orders are valid actions should be revisited as a potential due process deprivation.

The constitutional protection landowners have from eminent domain is for payment of just compensation – not the right to delay or derail a project that has a certificate of public convenience and necessity. As Chief Justice Roberts recently noted in *Knick v. Township of Scott, Pennsylvania*, the government is not required to provide compensation in advance of a taking, and "*[s]o long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities.*" 139 S. Ct. 2162, 2168 (2019) (emphasis added). Further, the district courts consistently and correctly treat FERC's issuance of a certificate order as a determination of public need and purpose (as a long line of cases has found) because: (1) a landowner's opportunity to challenge FERC's determination of public need ***during*** FERC's public notice-and-comment proceedings satisfies constitutional due process requirements;

(2) Congress determined in the Natural Gas Act that the power of eminent domain is conditioned only on the issuance of a certificate of public convenience and necessity, s*ee* 15 U.S.C. § 717f(h); and (3) the filing of a petition for review does not operate as an automatic stay of FERC's orders, *see* 15 U.S.C. § 717r(c) ("The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order."). The Natural Gas Act itself, therefore, allows a stay of FERC's orders only in those situations which are so extraordinary that such a stay is required, but absent such a stay, Congress has chosen for these projects to proceed despite an appeal of the issuance of a FERC certificate. Eminent domain is a necessary tool to ensure that these projects, which are after all in the public interest, can proceed.

The Court should deny the petition for rehearing en banc filed by Petitioners Hilltop Hollow Limited Partnership, Hilltop Hollow Limited Partnership, LLC, and Stephen D. Hoffman ("Landowner-Petitioners"). The Court properly upheld FERC's determination that the Project – a fully-subscribed and in-service interstate natural gas pipeline designed to meet growing demand for natural gas in mid-Atlantic and southeastern markets[1] – serves a market need and public use, and did

[1] The Project has been in full service for approximately one year and is designed to supply enough natural gas to meet the daily needs of more than 7 million American homes. *See* Williams, *Overview*, Atlantic Sunrise Pipeline Project, http://atlanticsunriseexpansion.com/about-the-project/overview/ (last visited Oct. 4, 2019).

so without relying solely on precedent agreements, although it was entitled to do so.

There was no deprivation of due process owed to the Landowner-Petitioners in FERC's issuance of a tolling order to allow itself more than 30 days to exercise its substantive expertise to thoroughly evaluate the multitude of complex issues raised by numerous stakeholders in their requests for rehearing of FERC's order issuing a certificate of public convenience and necessity for the Project. Congress did not design the Natural Gas Act in a way that allows Landowner-Petitioners to achieve their desired outcome, which is to stop or delay construction of an interstate natural gas pipeline *after* FERC has made a determination that there is a public need for the interstate pipeline and has issued a certificate of public convenience and necessity. The use of eminent domain is conditioned only on the issuance of a certificate of public convenience and necessity, which requires a determination that the project is in the public interest and there is a public need.

Under the provisions of the Natural Gas Act adopted by Congress, eminent domain will almost certainly proceed while judicial review of FERC's orders is pending. However, the taking will not lead to immediate construction of the project. Construction will only begin once the certificate holder has obtained all necessary federal permits, and then has obtained a Notice to Proceed from FERC. FERC cannot issue a Notice to Proceed until a certificate holder has both met all

pre-construction conditions in the certificate and has obtained all required federal permits. The pre-construction conditions and the federal permits in most, if not all, cases require both civil and environmental surveys. If a landowner has denied access to a property, then even the most basic surveys may not have been completed, leading to a "chicken and the egg" problem without the tool of eminent domain. Eminent domain must follow issuance of the certificate – not issuance of permits or resolution of all pending appeals – or these projects, which are in the public interest, could be delayed years by a single landowner denying survey access.

The affected landowner will have judicial recourse during the pendency of their appeals of the FERC certificate. For example, landowners will have judicial proceedings in which to assert defenses if eminent domain is exercised; landowners also may seek rehearing and stay of the Notice to Proceed once issued by FERC. Interim judicial recourse also is available under the All Writs Act in appropriate circumstances.

Finally, FERC has legitimate reasons to take longer than 30 days to fully consider the panoply of complex issues so often raised on rehearing in large infrastructure projects such as this one. Indeed, FERC's decisions on rehearing may limit or obviate the need for judicial review. Disallowing FERC's use of tolling orders would effectively undermine FERC's ability to carefully and

comprehensively perform its duties before there is judicial review, and would do so without securing the pre-taking judicial review Landowner-Petitioners seek since the Natural Gas Act allows eminent domain to proceed while judicial review occurs.

ARGUMENT

I. Landowner-Petitioners Fail to Provide Any Persuasive Basis to Overturn This Court's Precedent Upholding the Use of Precedent Agreements to Establish Market Need and Public Use.

Landowner-Petitioners' claim that they still have yet to receive judicial review of FERC's public use determination is simply wrong. The Court ruled in section II.B. of its opinion that FERC's public-convenience-and-necessity determination fully complied with Circuit precedent. *See Allegheny Def. Project v. FERC*, 932 F.3d 940, 947 (D.C. Cir. 2019). And as the Court explained in section II.C., "as long as FERC's public-convenience-and-necessity determination is not legally deficient, it necessarily satisfies the Fifth Amendment's public-use requirement." *Id.* at 948 (citing *Midcoast Interstate Transmission, Inc. v. FERC*, 198 F.3d 960, 973 (D.C. Cir. 2000)).

Nevertheless, the Court should decline Landowner-Petitioners' request that the Court reconsider en banc its precedent establishing that precedent agreements suffice to demonstrate market need as a precondition to issuance of a certificate of public convenience and necessity. Landowner-Petitioners fail to cite even a single

case from this precedent in their rehearing petition, much less explain why the Court should abandon its decisions, upheld time and again (including twice this year). *See Sierra Club v. FERC*, 867 F.3d 1357, 1379 (D.C. Cir. 2017); *Myersville Citizens for a Rural Cmty., Inc. v. FERC*, 783 F.3d 1301, 1311 (D.C. Cir. 2015); *Minisink Residents for Envtl. Pres. & Safety v. FERC*, 762 F.3d 97, 111 n.10 (D.C. Cir. 2014); *Birckhead v. FERC*, 925 F.3d 510, 517-18 (D.C. Cir. 2019); *see also Appalachian Voices v. FERC*, No. 17-1271, 2019 WL 847199, at *1 (D.C. Cir. Feb. 19, 2019).

Instead, Landowner-Petitioners make vague and unsupported references to the relative quantity of natural gas exports in the United States – that "more gas is exported from the United States on a daily basis then [sic] the Atlantic Sunrise Pipeline carries" (Petition at 17) – and argue that this generalized "fact" calls into question the objective of *this specific* Project and FERC's finding as to the Project's public use. This highly speculative argument is contradicted by the record, which demonstrates that FERC considered claims that gas transported by the Project could ultimately be used for export. (*See, e.g.*, R. 4203, Order on Rehearing, *Transcon. Gas Pipe Line Co.*, 161 FERC ¶ 61,250 (Dec. 6, 2017), at P 29 & nn.60-61, P 30 n.62, PP 34, 80, JA 829, JA 832, JA 852.) The record also demonstrates that the Project's objective is to meet growing demand for natural gas *in mid-Atlantic and southeastern markets*. (*See, e.g.*, R. 3954, Order Issuing

Certificate, *Transcon. Gas Pipe Line Co.*, 158 FERC ¶ 61,125 (Feb. 3, 2017) ("Certificate Order"), at PP 23, 29-30, JA 335, JA 338-39; R. 4203, Order on Rehearing, P 29, JA 829; R. 2666, Seneca Resources Corp. Comment at 1-2, JA 37-38; R. 1877, Southern Co. Servs. Comment at 1-4, JA 26-29; R. 1795, Washington Gas Light Co. Intervention Motion at 1-2, JA 24-25; R. 2678, Washington Gas Light Co. Comment at 1, JA 39; R. 3232, Comments of Rick Hamilton regarding the Atlantic Sunrise Project, JA 40.)

There is no basis on this record to second-guess FERC's reliance on precedent agreements to support the finding of market need and public use. FERC's factual findings are conclusive if supported by substantial evidence. *See Minisink*, 762 F.3d at 108. Substantial evidence "requires more than a scintilla, but can be satisfied by something less than a preponderance of the evidence." *Id.* (quoting *FPL Energy Me. Hydro LLC v. FERC*, 287 F.3d 1151, 1160 (D.C. Cir. 2002)). Thus, the possibility that different conclusions may be drawn from the same evidence does not mean FERC's findings are not supported by substantial evidence. *See Ariz. Corp. Comm'n v. FERC*, 397 F.3d 952, 954 (D.C. Cir. 2005) (the question "is not whether record evidence supports [petitioners'] version of events, but whether it supports FERC's" (alteration in original) (quoting *Fla. Mun. Power Agency v. FERC*, 315 F.3d 362, 368 (D.C. Cir. 2003))). The record overwhelmingly supports FERC's findings and far surpasses what is required to

demonstrate substantial evidence. At the very least, Landowner-Petitioners cannot show on this record that FERC failed to consider relevant factors or that FERC made a clear error of judgment, so their challenge must fail. *See Myersville*, 783 F.3d at 1308 (the Court evaluates only "whether the decision was based on a consideration of the relevant factors and whether there has been a clear error of judgment" (quoting *ExxonMobil Gas Mktg. Co. v. FERC*, 297 F.3d 1071, 1083 (D.C. Cir. 2002))); *see also Minisink*, 762 F.3d at 106 (the Court considers only whether FERC's decision was "reasoned, principled, and based upon the record") (quotation omitted).

Even if Landowner-Petitioners had identified a persuasive reason to revisit this Court's precedent upholding the use of precedent agreements to establish market need (and they have not), this case would not be a suitable vehicle for reconsidering that precedent. FERC's determination of market need did not rest on precedent agreements alone. As the Court explained, FERC "did not stop [with the precedent agreements for 100% of the Project's capacity]. It also relied on comments by two shippers and one end-user, as well as a study submitted by one of the Environmental Associations, all of which reinforced the demand for the natural gas shipments." *Allegheny Def. Project*, 932 F.3d at 947. As a result, even if the Court were to overrule its precedent and hold that FERC cannot rely solely

on precedent agreements to establish market need and public use, that ruling would not disturb the finding of market need and public use in this case.

II. There Is No Due Process Deprivation and the Court Should Not Abandon Decades of Precedent Upholding FERC's Use of Tolling Orders Because Landowner-Petitioners Received All Process Due to Them.

Landowner-Petitioners' rehearing petition and Circuit Judge Millett's concurrence seek to limit FERC's use of tolling orders so that landowners can more quickly petition a Court of Appeals for review of FERC's orders and obtain judicial review before eminent domain occurs. But disallowing tolling orders will not guarantee that judicial review of FERC's public use determinations takes place before takings occur: Section 19(c) of the Natural Gas Act provides that the filing of a petition for review does not operate as an automatic stay of FERC's orders. *See* 15 U.S.C. § 717r(c) ("The commencement of proceedings under subsection (b) of this section shall not, unless specifically ordered by the court, operate as a stay of the Commission's order."). Absent a stay, eminent domain may proceed and takings may occur before landowners receive a final judicial determination as to FERC's public use finding. Congress's decision to allow use of eminent domain once FERC issues a certificate, *see* 15 U.S.C. § 717f(h), reflects the reality that, without eminent domain to ensure survey access, a single landowner could deny voluntary access to its property and prevent construction of energy infrastructure that serves the national public interest.

It bears emphasis that the taking of property through eminent domain does not lead to immediate construction of a pipeline, and multiple opportunities for additional process are provided. The pipeline must first obtain all necessary federal permits – some of which require surveys of landowners' property (and thus the use of eminent domain, absent voluntary agreement for access) – and then a Notice to Proceed from FERC before it may begin construction. Landowners may seek rehearing and stays of any Notices to Proceed from FERC and then petition a Court of Appeals for judicial review under the Natural Gas Act. *See* 15 U.S.C. §§ 717r(a)-(b); *Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 397, 399 (D.C. Cir. 2017). Interim judicial recourse also is available in appropriate circumstances under the All Writs Act if, in fact, the statutory remedies are inadequate. *See* 28 U.S.C. § 1651(a) (empowering federal courts to issue writs as necessary to protect their prospective jurisdiction); *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985); *Town of Dedham v. FERC*, No. 15-cv-12352-GAO, 2015 WL 4274884, at *2 (D. Mass. July 15, 2015); *see also, e.g., Am. Pub. Gas Ass'n v. Fed. Power Comm'n*, 543 F.2d 356, 357-58 (D.C. Cir. 1976) (exercising jurisdiction under the All Writs Act and issuing injunctive relief). And landowners receive additional process in the eminent domain proceedings. But fast-tracking judicial review of FERC's decisions by disallowing the use of tolling orders does not guarantee judicial review will occur prior to takings because Congress did not

condition the exercise of eminent domain on anything other than issuance of a certificate of public convenience and necessity. *See* 15 U.S.C. § 717f(h).

Despite Landowner-Petitioners' focus on tolling orders, FERC's issuance of the tolling order (and this Court's precedent permitting such orders) is not dispositive of Landowner-Petitioners' due process claim. In the most recent pronouncement on eminent domain by the Supreme Court of the United States, Chief Justice Roberts, writing for the majority, made clear that landowners are entitled only to just compensation under the Fifth Amendment. "That does not mean that the government must provide compensation in advance of a taking or risk having its action invalidated: ***So long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities***." *Knick*, 139 S. Ct. at 2167-68 (emphasis added). FERC's issuance of tolling orders poses no obstacle to landowners' ability to obtain just compensation after a taking, and so Landowner-Petitioners' Fifth Amendment due process claim fails.

Additionally, Landowner-Petitioners' opportunity to challenge FERC's determination of public need during FERC's public notice-and-comment proceedings satisfies constitutional due process requirements. *See Mathews v. Eldridge*, 424 U.S. 319, 333 (1976) (explaining that due process requires only the opportunity to be heard "at a meaningful time and in a meaningful manner")

(citation omitted); *Myersville*, 783 F.3d at 1327 ("[A] commenter before [FERC] who has ample time to comment on evidence before the deadline for rehearing is not deprived of a meaningful opportunity to challenge the evidence."); *Minisink*, 762 F.3d at 115 ("Petitioners had the chance to make meaningful use of this information in connection with their petitions for rehearing. Under our precedent, this fact neutralizes any constitutional claim under the Due Process Clause."); *Blumenthal v. FERC*, 613 F.3d 1142, 1146 (D.C. Cir. 2010) (claim of denial of due process because no opportunity to respond before FERC issued initial decision failed because party "had such an opportunity and took advantage of it when filing its petition for rehearing, which FERC in turn thoroughly considered[,] [s]o this due process argument fails as well"); *see also Transcon. Gas Pipe Line Co., LLC v. Permanent Easement for 2.59 Acres*, No. 4:17-CV-00289, 2017 WL 1105237, at *7 (M.D. Pa. Mar. 24, 2017) (finding no violation of landowner's Fifth Amendment due process rights where "[landowner] had notice and opportunity to be heard before FERC and will have further notice and opportunity to be heard before this Court as to the amount of compensation to be determined"), *aff'd*, 709 F. App'x 109 (3d Cir. 2017), *subsequent mandamus proceeding*, 711 F. App'x 117 (3d Cir. 2018).

As the Panel correctly observed, Landowner-Petitioners "make no claim that they were deprived of a meaningful opportunity to be heard as part of the

Commission's proceedings leading up to its issuance of the Certificate Order." *Allegheny Def. Project*, 932 F.3d at 948. Landowner-Petitioners had ample notice and opportunity to be heard in the FERC proceedings as to the public purpose of the Project. ***Landowner-Petitioners not only intervened in the FERC proceeding, they also submitted 9 comments to FERC***. (*See* R. 2485; R. 2577; R. 2623; R. 3187; R. 3807; R. 3810; R. 3857; R. 3880; R. 3940.) FERC considered and responded to comments submitted by Landowner-Petitioners and other interested parties in the December 30, 2016 Final Environmental Impact Statement and its accompanying volumes. (*See generally* R. 3913, Final Environmental Impact Statement.) The Certificate Order also addressed concerns raised during the FERC proceeding. (*See generally* R. 3954, Order Issuing Certificate, JA 326-420.) Landowner-Petitioners had a further opportunity to be heard after the Certificate Order issued by participating in the rehearing process, 15 U.S.C. § 717r(a), and submitting their Requests for Rehearing, which FERC responded to at length in its Order on Rehearing. (*See* R. 4203, Order on Rehearing, PP 25-39, 42-61, 68-71, JA 826-35, JA 837-44, JA 846-48.) All of this process, including Landowner-Petitioners' opportunity to challenge the Certificate Order, satisfies constitutional due process requirements. *See Myersville*, 783 F.3d at 1327 ("[A] commenter before the Commission who has ample time to comment on evidence before the

deadline for rehearing is not deprived of a meaningful opportunity to challenge the evidence.").

Furthermore, while FERC's issuance of the tolling order is not dispositive of Landowner-Petitioners' due process claim, there are good reasons to allow FERC to consider requests for rehearing beyond 30 days. As this Court recognized in *California Company v. Federal Power Commission*, there is "no strong reason . . . why Congress would have wished to impose such a rigid strait jacket on the Commission, preventing it from giving careful and mature consideration to the multiple, and often clashing, arguments set out in applications for rehearing in complex cases." 411 F.2d 720, 721 (D.C. Cir. 1969). "Nor is any reason suggested why Congress would wish to put courts in the awkward position of reviewing a decision which the agency for the best of reasons may be willing to alter." *Id.* Thus, this Court declined "to impute to Congress a purpose to limit the Commission to 30 days' consideration of applications for rehearing, irrespective of the complexity of the issues involved." *Id.* at 722; *see also Moreau v. FERC*, 982 F.2d 556, 564 (D.C. Cir. 1993) (explaining that "[i]t seems to us clearly implicit in both subsections of section 717r that FERC must be allowed to rule on the matters raised in the rehearing petition before judicial review may be had" because "[s]ection 717r's obvious purpose . . . is to afford the Commission the first opportunity to *consider*, and perhaps dissipate, issues which are headed for the

courts" (third alteration in original) (citation and quotations omitted)). And while the concurrence and petition note that *California Company* involved disputes over money, the same can be said here since the Fifth Amendment provides only a right to payment of just compensation and an opportunity to be heard in compensation proceedings. *See* U.S. Const. Amend. V; *Knick*, 139 S. Ct. at 2167-68; *Bailey v. Anderson*, 326 U.S. 203, 205 (1945); *Bragg v. Weaver*, 251 U.S. 57, 59 (1919).

Granting the petition for rehearing en banc to depart from precedent and adopt a new rule would require this Court to find that "FERC's statutorily authorized practice of taking more than 30 days to finally dispose of a rehearing petition violates due process in each and every instance, no matter the reasons for taking more time, the complexity of the application, or the amount of development allowed or blocked in the interim." *Del. Riverkeeper Network v. FERC*, 895 F.3d 102, 113 (D.C. Cir. 2018). "The Constitution imposes no such categorical rule," and this Court should not either. *Id.*

CONCLUSION

The Court should deny the petition for rehearing en banc.

Respectfully submitted,

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Dated: October 8, 2019

CERTIFICATE OF COMPLIANCE

1. This brief complies with the typeface and type style requirements of Fed. R. App. P. 32(a)(5) and 32(a)(6) because it has been prepared in a proportionally spaced, 14-point typeface (Times New Roman) and is set in a plain, roman style, using italics for emphasis and citation only.

2. This brief complies with the type-volume limitations in this Court's Order of September 23, 2019 because it contains 3,507 words, excluding the parts of the brief exempted by Circuit Rule 32(e)(1) and Fed. R. App. P. 32(f).

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CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of October, 2019, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the CM/ECF system. I certify that all participants in the case are registered CM/ECF users and that service will be accomplished by the CM/ECF system. I further certify that nineteen copies of this filing were sent this day via Federal Express Next Day delivery to the Clerk of the Court.

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