

No. \_\_\_\_\_

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In the  
**Supreme Court of the United States**

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PENNEAST PIPELINE COMPANY, LLC,  
*Petitioner,*

v.

STATE OF NEW JERSEY; NEW JERSEY DEPARTMENT OF  
ENVIRONMENTAL PROTECTION; NEW JERSEY STATE  
AGRICULTURE DEVELOPMENT COMMITTEE; DELAWARE  
& RARITAN CANAL COMMISSION; NEW JERSEY WATER  
SUPPLY AUTHORITY; NEW JERSEY DEPARTMENT OF  
TRANSPORTATION; NEW JERSEY DEPARTMENT OF THE  
TREASURY; NEW JERSEY MOTOR VEHICLE COMMISSION,  
*Respondents.*

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**On Petition for Writ of Certiorari to the  
United States Court of Appeals  
for the Third Circuit**

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**PETITION FOR WRIT OF CERTIORARI**

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## QUESTION PRESENTED

The Natural Gas Act authorizes a private gas company to exercise the federal government's power of eminent domain to secure necessary rights-of-way for the construction of an interstate pipeline if FERC grants the company a certificate of public convenience and necessity for the project. 15 U.S.C. §717f(h). This Court has long recognized that the federal eminent domain power may be exercised against state-owned property. *See, e.g., Kohl v. United States*, 91 U.S. 367 (1875). Consistent with that rule, for the better part of a century, certificate holders have invoked §717f(h) to secure rights-of-way across private- and state-owned property alike. Yet the decision below, issued without the benefit of the federal government's views, deemed this long-settled understanding mistaken and held that the federal eminent domain power in §717f(h) cannot be exercised by certificate holders as to property in which a state has an interest. In reaching that conclusion, the Third Circuit conceded that its decision "may disrupt how the natural gas industry, which has used the NGA to construct interstate pipelines over State-owned land for the past eighty years, operates." App.30. FERC has since confirmed that the Third Circuit's interpretation of §717f(h) is mistaken, but that the court's prediction about the dire consequences is correct.

The question presented is:

Whether the NGA delegates to FERC certificate holders the authority to exercise the federal government's eminent domain power to condemn land in which a state claims an interest.

**PARTIES TO THE PROCEEDING**

Petitioner is PennEast Pipeline Company, LLC (“PennEast”). It was the plaintiff-appellee below.

Respondents are the State of New Jersey; the New Jersey Department of Environmental Protection; the New Jersey Agriculture Development Committee; the Delaware & Raritan Canal Commission; the New Jersey Water Supply Authority; the New Jersey Department of Transportation; the New Jersey Department of the Treasury; and the New Jersey Motor Vehicle Commission. Respondents were the defendant-appellants below.

## **CORPORATE DISCLOSURE STATEMENT**

Pursuant to this Court's Rule 29.6, petitioner states as follows:

PennEast Pipeline Company is a joint venture owned by Red Oak Enterprise Holdings, Inc., an indirect subsidiary of The Southern Company (20% interest); NJR Midstream Company, an indirect subsidiary of New Jersey Resources Corporation (20% interest); SJI Midstream, LLC, a subsidiary of South Jersey Industries, Inc. (20% interest); UGI PennEast, LLC, an indirect subsidiary of UGI Corporation (20% interest); and Spectra Energy Partners, LP, an indirect subsidiary of Enbridge Inc. (20% interest).

Publicly traded companies The Southern Company, New Jersey Resources Corporation, South Jersey Industries, Inc., UGI Corporation, and Enbridge Inc. have a 10% or greater interest in PennEast Pipeline Company.

**STATEMENT OF RELATED PROCEEDINGS**

1. *In re: PennEast Pipeline Co. LLC v. Verizon New Jersey Inc., et al.*, No. 19-2596 (3d Cir.) (consolidated with Nos. 19-2597, 19-2598, 19-2599, 19-2600, 19-2601). On January 28, 2020, the Third Circuit vacated the district court's June 6, 2019 order condemning New Jersey's property interests in separate parcels in light of the decision challenged in this petition and remanded to the district court to determine whether New Jersey's conduct with regard to those separate parcels constitutes a waiver, estoppel, or other relinquishment of its sovereign immunity defense.

2. *Delaware Riverkeeper Network, et al. v. FERC*, No. 18-1128 (D.C. Cir.) (consolidated with Nos. 18-1144, 18-1220, 18-1225, 18-1226, 18-1233, 18-1256, and 18-1274). The petitioners in that case, including New Jersey, seek review of the FERC order granting PennEast a certificate of public convenience and necessity. On October 1, 2019, the D.C. Circuit held the consolidated cases in abeyance pending disposition of this case.

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