UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Consumers Energy Co.
Docket No. PR 25-52-000

January 16, 2026

SIERRA CLUB'S REQUEST FOR REHEARING AND RESCISSION OF BLANKET CERTIFICATE

Pursuant to 15 U.S.C. § 717r(a) and 18 C.F.R. § 385.713, the Sierra Club respectfully requests rehearing of the Commission's December 18, 2025, order granting petitioner Consumers Energy Co.'s ("Consumers Energy's") application for a limited jurisdiction blanket certificate. *See* Order, 193 F.E.R.C. ¶ 61,212 (Dec. 18, 2025) (accession no. 20251218-3035). The Sierra Club further requests that the Commission rescind the certificate issued to Consumers Energy in this matter.

I. Background & Procedural History

A. *Consumers Energy's Application*

Consumers Energy applied for a blanket certificate of limited jurisdiction under 15 U.S.C. § 717f(c) and 18 C.F.R. § 284.224. *See* Appl., PR 25-52-000 (May 19, 2025) (accession no. 20250519-5135). As a local distribution company and Hinshaw pipeline, Consumers Energy sought "a blanket certificate of limited jurisdiction authorizing it to transport and sell natural gas in interstate commerce as though it were an intrastate pipeline as defined in Section 311 of the" Natural Gas Policy Act. *Id.* at 4.

The impetus for Consumers Energy's application was the company's plan to "expand[] its natural gas operations to include a Renewable Natural Gas ('RNG') program available to its retail customers," which would also involve "exploring opportunities to deliver volumes of . . . RNG . . . into Consumers Energy's gas system within Michigan to then sell and transport—via displacement, exchange, or other means—limited volumes of . . . RNG to states outside of Michigan." *Id.* at 3–4.

B. *Sierra Club's Motion to Intervene and Protest*

The Sierra Club filed a timely motion to intervene and protest. *See* Sierra Club Mot. to Interv. & Protest, PR 25-52-000 (June 9, 2025) (accession no. 20250609-5147).[1] The Sierra Club argued that Consumers Energy's application "appears intended and likely to cause the increased production, interstate shipment, and/or sale of factory-farm gas." *Id.* at 3; *see also N. Nat. Gas Co.*, 190 F.E.R.C. ¶ 61,114, at *7 n.46 (Feb. 19, 2025) ("Factory-farm gas refers to methane captured during the process of breaking down [livestock] manure."). The Sierra Club noted public reporting and various statements by Consumers Energy which indicated that the company's planned RNG expansion "appears to rely on the installation of biodigesters at factory farms, or CAFOs [Concentrated Animal Feeding Operations]." Sierra Club Mot. to Interv. & Protest at 7–8 & n.3; *see also Consumers Energy Adds Enough Clean Energy to Power Nearly 400,000 Homes in 2024*, Consumers Energy Co. (Dec. 9, 2024), https://perma.cc/KV56-HC3T; *Carbon Offsets for Natural Gas*, Consumers Energy Co. (last accessed June 4, 2025), https://perma.cc/9WW4-393T.

[1] Seminole Electric Cooperative, Inc. filed a timely motion to intervene and comments on Consumers Energy's application. *See* Seminole Elec. Coop. Mot. to Interv. & Cmts., PR25-52-000 (June 9, 2025) (accession no. 20250609-5140). The RNG Coalition filed an out-of-time motion to intervene. *See* RNG Coal. Mot. to Interv., PR 25-52-000 (July 3, 2025) (accession no. 20250703-5097). Along with the Sierra Club, both were granted intervenor status. Order at 3.

The Sierra Club argued that pursuant to the public convenience and necessity standard which governs applications like Consumers Energy's,[2] "the Commission must investigate and evaluate the extent to which the Application will induce the production, shipment, and sale of factory-farm gas," because the production of "factory-farm gas can have serious environmental consequences for neighboring communities and the planet." Sierra Club Mot. to Interv. & Protest at 10.

The Sierra Club did not argue in its protest that the National Environmental Policy Act ("NEPA") requires the consideration of such environmental consequences here. *Id.* at 5 n.2. Rather, regardless of whether NEPA also requires consideration of those impacts, the Sierra Club explained that the "public convenience and necessity standard" requires the consideration of, *inter alia*, the environmental consequences of gas production and consumption resulting from certificated activities, and further that not considering such consequences would constitute a "fail[ure] to consider an important aspect of the problem," which would render the Commission's public convenience and necessity analysis arbitrary and capricious regardless of the agency's NEPA analysis. *Id.* at 4–6.

The Sierra Club explained that as part of its analysis under the Natural Gas Act and 18 C.F.R. § 284.224(b), the Commission must consider upstream environmental consequences from the production of factory-farm gas, including: leaks of methane and

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[2] The regulation governing blanket certificates of limited jurisdiction like the one Consumers Energy seeks here contains language echoing the statutory requirement that the Commission may only issue a certificate if doing so will serve "the present or future public convenience and necessity." *Compare* 15 U.S.C. § 717f(e), *with* 18 C.F.R. § 284.224(b)(3). For ease of reference, the "public convenience and necessity standard" found in both the statute and the regulation is herein referred to in the singular.

other dangerous and planet-warming gases from digesters, *id.* at 11; factory farms' abandonment of lower-emissions methods of animal waste management to maximize the amount of methane produced and sold, *id.* at 11–12; the installation of "equipment to warm . . . manure in order to keep producing methane through the winter—methane that would otherwise not exist," *id.* at 12; the induced expansion of herd sizes, which increases enteric emissions of methane and localized air pollution, *id.* at 12–15; and the production of a byproduct known as digestate, which increases ammonia emissions and nitrate runoff, *id.* at 16–17, and nitrous oxide emissions, *id.* at 18–19, and which may concentrate heavy metals to unsafe levels in digestate used as fertilizer, *id.* at 19–21.

The Sierra Club also argued that "[w]hen the administrative record lacks sufficient information to allow the Commission to evaluate a project's environmental effects," the public convenience and necessity standard "requires the Commission to attempt to acquire such information" before it can grant an application. *Id.* at 21. The Sierra Club proposed a list of questions for the Commission to put to Consumers Energy and other relevant stakeholders regarding the role of the proposed certificate in the production, sale, and transportation of factory-farm gas. *Id.* at 22–23.

C. *Consumers Energy's Answer*

Consumers Energy filed a motion for leave to file an answer and a proposed answer to the Sierra Club's and Seminole Electric Cooperative's filings. *See* Mot. to Answer & Answer, PR25-52-000 (June 18, 2025) (accession no. 20250618-5231). Consumers Energy did not dispute the Sierra Club's point that the public convenience and necessity standard requires the consideration of foreseeable upstream environmental consequences. Consumers Energy merely noted that its application did not involve "any specific ground disturbances or changes to operational air and noise emissions" associated with "construction activities," and stated that it was not "associated with any FERC-jurisdictional facilities or expansion projects dedicated to increasing RNG production . . . for the specific purpose of interstate commerce transportation across Consumers Energy's pipeline system." *Id.* at 3–4.

D. *The Commission's Requests for Data and Consumers Energy's Responses*

The Commission issued two requests for information from Consumers Energy. *See* Data Request, PR 25-52-000 (Aug. 21, 2025) (accession no. 20250821-3064) ("8/21/25 Data Request"); Data Request, PR 25-52-000 (Oct. 9, 2025) (accession no. 20251009-3078) ("10/9/25 Data Request").

As relevant here, the 8/21/25 Data Request required Consumers Energy to "[p]rovide a breakdown of the quantity of geological natural gas and RNG Consumers Energy expects to transport under section 311 of the Natural Gas Policy Act" and "[p]rovide a list of all current and/or prospective RNG producers for Consumers Energy including contract term and volume and identify the source of the RNG supply (wastewater sludge, manure, landfill, etc.)." 8/21/25 Data Request at 2.

In response, Consumers Energy explained that it "currently has three third-party RNG producers interconnected to its local distribution pipeline system whose production volume in 2024 was approximately 2,472 MMBtu/day, on average, and who could potentially transport RNG volumes under a limited jurisdiction certificate in the future." Resp. to Data Request at 2, PR 25-52-000 (Sept. 12, 2025) (accession no. 20250912-5128) ("9/12/25 Resp. to Data Request"). Additionally, Consumers Energy explained that it "is aware of some RNG production facilities under construction that, in theory, could result in a maximum volume of approximately 1,000 MMBtu/day of RNG being distributed locally . . . or transported under section 311 of the NGPA." *Id.*

Further, in answer to the Commission's request that it identify "all current and/or prospective RNG producers" and "identify the source of the RNG supply," Consumers Energy indicated that it currently has an "active interconnection" with a dairy manure-based factory-farm gas supplier, "Keene 23 TMS, interconnected with Red Leaf RNG, LLC." *Id.* at 3. Consumers Energy further explained that it "is aware of two prospective interconnection projects in the design or construction phase," both of which are dairy manure-based factory-farm gas suppliers: "Monterey 23 TMS, interconnected with Monterey RNG, LLC" and "Sebewa 30 TMS, interconnected with Meadowbrook Ag-Grid LLC." *Id.*

The Sierra Club filed comments on Consumers Energy's September 12, 2025, response. *See* Sierra Club Cmts., PR 25-52-000 (Oct. 2, 2025) (accession no. 20251003-5002). "In light of [Consumers Energy's] confirmation that [its] system does and will flow factory-farm gas, the Sierra Club reiterate[d] that the Commission must consider, as part of its public convenience and necessity analysis, how approving [the] application would affect and/or induce the production of such gas and the resulting environmental consequences." *Id.* at 1. The Sierra Club specifically urged the Commission to investigate and consider:

- How the agricultural operations which supply the dairy manure digesters listed on page 3 of Consumers Energy Co.'s [9/12/25 Response to Data Request] would manage their manure with and without digesters, the differing environmental consequences of those different manure management methods, and whether those agricultural operations would build and/or operate such digesters if Consumers Energy Co.'s application were denied;

- How the construction and/or operation of digesters resulting from a decision to grant Consumers Energy Co.'s application would affect the herd sizes of the factory farms which supply the dairy manure digesters listed on page 3 of Consumers Energy Co.'s [9/12/25 Response to Data Request], and the concomitant environmental consequences of herd size expansion, such as increased methane emissions from enteric fermentation, localized air pollution, and induced land use changes related to feed crops needed to supply expanded factory farms; and

- How the construction and/or operation of digesters resulting from a decision to grant Consumers Energy Co.'s application would affect ammonia and nitrous oxide emissions from digestate and the concentration of heavy metals in digestate.

Id. at 2. The Sierra Club also noted that "[f]ailing to consider any or all of these factors would constitute a 'fail[ure] to consider an important aspect of the problem,' and would thus render an ultimate decision on Consumers Energy Co.'s application arbitrary and capricious." *Id.* (second alteration in original) (quoting *Motor Vehicle Mfrs. Ass'n of the U.S., Inc. v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 43 (1983)).

Although the Commission issued its second request for data after Consumers Energy's 9/12/25 Response to Data Request and after the Sierra Club's comments on that response, the Commission's second request for data did not seek additional information regarding the issues the Sierra Club raised. *See* 10/9/25 Data Request.

E. *The Commission's Order*

The Commission granted Consumers Energy's application and issued the requested blanket certificate of limited jurisdiction. *See* Order, 19 F.E.R.C. ¶ 61,212.[3]

The Commission assessed the environmental consequences solely through the lens of NEPA, concluding that "[a]ny transported RNG will be produced from separate upstream projects over which the Commission possesses no authority. Therefore, the

[3] The Commission's Order notes that Sierra Club's timely motion to intervene was granted. Order at 3.

Commission is not required under NEPA to evaluate the possible environmental effects stemming from production of RNG." *Id.* at 7. The Commission failed to consider the extent to which the Natural Gas Act's and 18 C.F.R. § 284.224(b)(3)'s "public convenience and necessity" standard independently requires the agency to assess the upstream and downstream environmental consequences of certificated activities, or to weigh those consequences in its decisionmaking. *See id.* at 4–5, *7.

Further, the Commission rejected the Sierra Club's argument that the agency "must seek out information about the relationship between Consumers Energy's proposed service and the company's intention to monetize the environmental attributes of RNG by obtaining carbon credits under California's low carbon fuel standard." *Id.* at 8. The Commission did not respond to the Sierra Club's arguments that it should seek answers to various other questions, including the three questions the Sierra Club specifically proposed in its comments on Consumers Energy's response to the 8/21/25 Data Request, which are set forth verbatim above.

Finally, again citing NEPA precedents, the Commission reasoned that "even assuming [it] had jurisdiction, agencies are only required to analyze reasonably foreseeable environmental effects and need not engage in undue speculation," and concluded that "[t]he impacts claimed by . . . Sierra Club go beyond uncertainty into speculation." *Id.* The Commission stated that according to Consumers Energy, "there are no future developments of new RNG projects related to its proposed request and [the company] does not yet know any specific quantities of RNG that it would transport in the future under its blanket certificate." *Id.* Although the Commission had elicited from Consumers Energy the information that there are "two prospective interconnection projects in the design or construction phase" which "could result in a maximum volume of approximately 1,000 MMBtu/day of RNG being . . . transported under section 311 of the NGPA" if the application were approved, 9/12/25 Response to Data Request at 2–3, the Commission did not explain its apparent decision to reject the Sierra Club's request that it seek additional information about the degree to which those prospective producers' plans depend on the granting of Consumers Energy's application.

II. Concise Statement of Alleged Errors

Pursuant to 18 C.F.R. § 385.713(c)(1), the Sierra Club provides the following concise statements of alleged errors in the Commission's Order:

A. The Commission did not address the Sierra Club's argument that the "public convenience and necessity" standard requires the agency to consider reasonably foreseeable upstream and downstream environmental effects regardless of whether NEPA also required the Commission to consider those impacts.

B. The Commission failed to consider reasonably foreseeable upstream environmental consequences of permitting the certificated activity, rendering its public convenience and necessity analysis arbitrary and capricious.

C. The Commission failed adequately to explain its decisions not to seek additional information regarding the effect granting the application will have on factory-farm gas production in Michigan and the resulting environmental consequences.

D. The Commission failed to seek information sufficient to conclude that potential environmental effects of the certificated activity are too speculative to require consideration.

E. The Commission's conclusion that the upstream environmental effects of factory-farm gas production caused by the certificated activity are speculative is arbitrary and capricious and lacks substantial evidence.

III. Statement of Issues

A. *The Commission Failed to Address the Sierra Club's Argument that the Natural Gas Act's and 18 C.F.R. § 284.224(b)(3)'s Public Convenience and Necessity Standard Requires Consideration of Upstream Environmental Consequences.*

It is black-letter law that the Commission must "respond to significant arguments raised by the parties to a proceeding." *Citizens Action Coal. of Ind., Inc. v. FERC*, 125 F.4th 229, 243 (D.C. Cir. 2025); *TransCanada Power Mktg. Ltd. v. FERC*, 811 F.3d 1, 12–13 (D.C. Cir. 2015). Failure to do so renders the agency's ultimate decision arbitrary and capricious. *See, e.g.*, *N.E. Power Generators Ass'n, Inc. v. FERC*, 881 F.3d 202, 210–13 (D.C. Cir. 2018); *TransCanada*, 811 F.3d at 12–13.

The Sierra Club argued that the agency must consider reasonably foreseeable upstream and downstream environmental effects as part of its public convenience and necessity analysis. *See* Sierra Club Mot. to Interv. & Protest at 3–6 (citing, *inter alia*, 15 U.S.C. § 717f and 18 C.F.R. § 284.224(b)(3)). As described in greater detail *infra* at Part III.B, this argument is grounded in the Natural Gas Act's text and is firmly supported by significant caselaw. The argument that the public convenience and necessity standard requires the consideration of upstream and downstream environmental effects is thus substantial enough to require the agency to provide a meaningful response.

However, FERC's order addresses only whether *NEPA* requires the consideration of upstream and downstream environmental effects. *See* Order at 7–9. The agency decided to apply categorical exclusions from NEPA review to the proposed project. *Id.* at 7. It reasoned that under the Supreme Court's recent decision in *Seven County*, "any potential impacts associated with the upstream production of RNG are beyond the scope of required *NEPA* review." *Id.* (emphasis added) (citing *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 145 S. Ct. 1497, 1516–17 (2025)). And the agency further asserted that it "is not required *under NEPA* to evaluate the possible environmental effects stemming from production of RNG." *Id.* (emphasis added). Finally, the agency "conclude[d] that applying categorical exclusions [under NEPA] to the proposed action in this proceeding is appropriate and no case-specific NEPA document is required." *Id.* at 9.

The agency's assertion that NEPA does not require the consideration of the upstream effects raised by the Sierra Club is a non sequitur. The Sierra Club did not argue here that *NEPA* requires the agency to consider those effects; rather, the Sierra Club argued that the agency must consider those impacts as part of its *public convenience and necessity* analysis under the Natural Gas Act and 18 C.F.R. § 284.224(b)(3). Developments under NEPA law do not limit the scope of the environmental effects which the agency must consider under the Natural Gas Act's and 18 C.F.R. § 284.224(b)(3)'s public convenience and necessity standard, any more than NEPA limits the requirement that the agency consider, for instance, market need, the impact on ratepayers, or any other factor which feeds into the public convenience and necessity analysis.

Not only does the public convenience and necessity standard's requirement that the agency consider upstream and downstream environmental effects exist independent of NEPA, it predates NEPA by decades. *Compare* Natural Gas Act, ch. 556, § 7(c), Pub. L. No. 75-688, 52 Stat. 824, 825 (1938) (enacting the public convenience and necessity standard), *with* National Environmental Policy Act of 1969, Pub. L. No. 91-190, 83 Stat. 852 (1970). Indeed, several years before Congress enacted NEPA, the Supreme Court explained that evidence regarding the end-use of natural gas's effect on air pollution—*i.e.*, the downstream effects of granting a certificate—"was entitled to great weight" in the public convenience and necessity analysis. *Fed. Power Comm'n v. Transcont'l Gas*

Pipe Line Corp., 365 U.S. 1, 30 (1961). And decisions of the Federal Power Commission under Section 7 "issued in the 1950s and 1960s routinely discussed how natural gas transported via a proposed pipeline project would be used and assessed the air quality impacts of that use." Romany M. Webb, *Climate Change, FERC, and Natural Gas Pipelines: The Legal Basis for Considering Greenhouse Gas Emissions Under Section 7 of the Natural Gas Act*, 28 N.Y.U. Env't L.J. 179, 224 (2020); *see, e.g.*, *In re Transcont'l Gas Pipe Line Corp.*, 38 F.P.C. 906, 909 (1967) (approving certificate of public convenience and necessity in part because doing so would displace coal and thus "alleviate to some extent New York's serious air pollution problem"). In other words, courts and FERC's predecessor agency considered indirect environmental effects to be properly part of the public convenience and necessity analysis under the Natural Gas Act *prior* to the passage of NEPA.

To the extent the Commission reasoned that it lacks jurisdiction to regulate factory-farm gas gathering and production activities, this too is nonresponsive to the Sierra Club's position. *See* Order at 7 (reasoning that "[a]ny transported RNG will be produced from separate upstream projects over which the Commission possesses no authority").[4] The Sierra Club does not argue that FERC may or must regulate the

[4] The Commission's assertion that it lacks jurisdiction over production and gathering activities appears to be part and parcel of its reasoning that NEPA does not require the consideration of upstream environmental effects. *See* Order at 7 (reasoning that because "RNG will be produced from separate upstream projects over which the Commission possesses no authority . . . the Commission is not required *under NEPA* to evaluate the possible environmental effects stemming from production of RNG" (emphasis added)). Because the Commission's reasoning regarding its jurisdiction goes to its conclusions about the scope of effects which it must consider under NEPA, it is thus also nonresponsive to the Sierra Club's contention that the public convenience and necessity standard requires consideration of such effects.

production of factory-farm gas or that FERC has statutory jurisdiction over such production. Rather, the Sierra Club's argument is that in the course of exercising its jurisdiction to decide whether a given application satisfies the public convenience and necessity standard, "the Commission [must] evaluate all factors bearing on the public interest," *Atl. Refin. Co. v. Pub. Serv. Comm'n of N.Y.*, 360 U.S. 378, 391 (1959), which include the reasonably foreseeable environmental consequences stemming from the upstream production and downstream use of gas.

In short, the Sierra Club argued in its initial Protest that the public convenience and necessity standard requires the Commission to consider reasonably foreseeable upstream environmental effects independent of NEPA's requirements. *See* Mot. to Interv. & Protest at 4–6. The Commission responded that NEPA does not require it to consider such environmental effects. *See* Order at 7, 9. This non sequitur is a failure to respond to a "significant argument[] raised by [a] part[y] to a proceeding," which requires rehearing and, if not corrected, will render the agency's order arbitrary and capricious. *Citizens Action Coal. of Ind., Inc.*, 125 F.4th at 243.

B. *The Public Convenience and Necessity Standard Requires Consideration of Upstream Environmental Consequences Independent of the National Environmental Policy Act.*

The Commission's order is arbitrary, capricious, and contrary to law because the public convenience and necessity standard requires the agency to consider reasonably foreseeable upstream environmental effects, which the Commission refused to do.

As the Sierra Club explained in its protest, "[t]he Commission cannot determine whether a project 'is or will be required by the present or future public convenience and necessity' unless it considers the environmental effects of a project as part of its analysis." Mot. to Interv. & Protest at 5 (quoting 15 U.S.C. § 717f(e); 18 C.F.R.

§ 284.224(b)(3)); *see also City of Oberlin v. FERC*, 937 F.3d 599, 602 (D.C. Cir. 2019) ("[T]he Commission will issue a certificate of public convenience and necessity only if a project's public benefits . . . outweigh its adverse effects (such as a deleterious environmental impact on the surrounding community)."). Indeed, the D.C. Circuit has repeatedly invalidated FERC's Section 7 analyses for inadequately considering environmental effects. *See, e.g.*, *N.J. Conservation Found. v. FERC*, 111 F.4th 42, 63 (D.C. Cir. 2024); *Vecinos para el Bienestar de la Comunidad Costera v. FERC*, 6 F.4th 1321, 1331 (D.C. Cir. 2021); *cf. Healthy Gulf v. FERC*, 107 F.4th 1033, 1047 (D.C. Cir. 2024) (holding the Commission's inadequate environmental analysis rendered its public interest determination under Section 3 of the NGA arbitrary and capricious). And as noted above, the Supreme Court has explained that evidence regarding a gas pipeline's effects on downstream air pollution is "entitled to great weight" in the public convenience and necessity analysis. *Transcont'l Gas Pipe Line Corp.*, 365 U.S. at 30.

The Supreme Court's seminal decision in *NAACP v. Federal Power Commission*, 425 U.S. 662 (1976), further confirms that FERC must consider environmental effects in its public convenience and necessity analysis. There, the Court explained that although the Natural Gas Act's "principal purpose" is "to encourage the orderly development of plentiful supplies of . . . natural gas at reasonable prices," the public convenience and necessity standard "undoubtedly [includes] other subsidiary purposes," such as "conservation, environmental, and antitrust questions." *Id.* at 669–70 & n.6.

Not only may the Commission consider "conservation, environmental, and antitrust questions," *id.*, it must do so. In *City of Pittsburgh v. Federal Power Commission*, 237 F.2d 741 (D.C. Cir. 1956), the agency refused to consider the antitrust implications of a particular application, reasoning that such concerns exceeded the scope of the public convenience and necessity standard. The court rejected that position: "[I]f it appears that [a] project would tend to produce monopolization of a [given] market, the Commission cannot ignore that fact merely because it is an antitrust factor and such factors have been placed within the ken of the Attorney General." *Id.* at 754. The court set aside the Commission's order. *Id.* at 755–56.

Just as the Federal Power Commission improperly refused to consider "antitrust factor[s]" as part of its public convenience and necessity analysis in *Pittsburgh*, *id.* at 754, the Commission has improperly refused to consider "environmental . . . questions" here. *NAACP*, 425 U.S. at 670 n.6. In modern administrative law parlance, that refusal constitutes a "fail[ure] to consider an important aspect of the problem" and thus renders the resulting agency decision arbitrary and capricious. *Motor Vehicle Mfrs. Ass'n*, 463 U.S. at 43. Moreover, the agency's refusal to consider such effects is "not in accordance with law," because the Natural Gas Act's and 18 C.F.R. § 284.224(b)(3)'s public convenience and necessity standard requires the agency to do so. 5 U.S.C. § 706(2)(A).

Here, as explained at length in the Sierra Club's protest, the production of factory-farm gas can have significant environmental effects. *See* Sierra Club Mot. to Interv. & Protest at 10–21. Specifically:

- Anaerobic digester facilities frequently leak, discharging plumes of methane and other gases which can harm the environment. *See id.* at 11.
- The installation of anaerobic digesters can cause factory farms to abandon lower-emissions methods of waste management, in order to maximize the amount of methane that can be produced and sold. *Id.* at 11–12. For example, although anaerobic digestion slows in cold temperatures—decreasing methane emissions from factory-farm manure in winter—some producers install equipment to warm manure through the winter to create

methane which otherwise would not exist, and which those producers can then market as environmentally friendly.

- By providing an additional revenue stream to factory farms, factory-farm gas production leads factory farms to expand their herd sizes. *Id.* at 12–16. An empirical study by researchers from Stanford University and Johns Hopkins University (released after the Sierra Club filed its protest and intervention) found that "the presence of a digester and attendant incentives are associated with an increase in barn area by 5,398 (SE 1,423) square meters three years after digester construction is anticipated. This is equivalent to 860 (SE 200) additional mature dairy cows housed three years after digester construction is anticipated." Varun Magesh et al., *Do Methane Mitigation Incentives Intensify Livestock Production? Evidence from California, 2016–2050* at 4 (2025), https://dho.stanford.edu/wp-content/uploads/digesters.pdf.[5] The expansion of herds, in turn, leads to increased enteric methane emissions and localized air pollution endangering human health. *See* Sierra Club Mot. to Interv. & Protest 14–15.

- The process of turning livestock feces and urine into factory-farm gas—anaerobic digestion—produces a byproduct called digestate. Anaerobic digestion mineralizes nitrogen in the animal waste, leading to increased ammonia emissions and nitrate runoff, *id.* at 16–17, as well as increased emissions of nitrous oxide, a gas with a 100-year global warming potential 273 times greater than that of CO_2, *id.* at 18–19.

- The process of anaerobic digestion may also concentrate heavy metals in animal waste to potentially hazardous degrees. *Id.* at 19–21. Given that digestate is commonly used as fertilizer, this presents a risk for uptake of heavy metals into crops.

Insofar as the certificated activity would cause or exacerbate these environmental harms, the Commission must consider such environmental harms as part of its public convenience and necessity analysis.

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[5] Although the aforementioned study focused on California, as noted in the Sierra Club's protest, Consumers Energy's application appears likely intended at least in part to allow the company and/or its suppliers of factory-farm gas to establish pathways with California's Low Carbon Fuel Standard. Mot. Interv. & Protest 8–9. Doing so would allow factory-farm gas producers in Michigan to obtain many of the same incentives which the researchers in the Magesh et al. study identify as incentivizing dairy expansion in California.

C. The Commission Failed to Adequately Explain Its Decisions Not to Seek Additional Information.

The Commission reasoned that the impacts raised by the Sierra Club regarding the environmental effects of factory-farm gas production that could result from the certificated activity "go beyond uncertainty into speculation." Order at 8. Therefore, the agency concluded, it need not assess such effects. *Id.* But the Commission declined—without explanation—the Sierra Club's request to seek additional information regarding precisely those effects. The Commission cannot rest its decision on a lack of information without seeking out the information in question or providing a reasoned explanation for why it refused to do so.

As noted above, in response to an earlier request for additional data from the Commission, Consumers Energy stated it was "aware of some RNG production facilities under construction that, in theory, could result in a maximum volume of approximately 1,000 MMBtu/day of RNG being distributed locally . . . or transported under section 311 of the NGPA." 9/12/25 Resp. to Data Request at 2. Consumers Energy also stated it has an "active interconnection" with a dairy manure-based factory-farm gas supplier, "Keene 23 TMS, interconnected with Red Leaf RNG, LLC." *Id.* at 3. And Consumers Energy further explained that it "is aware of two prospective interconnection projects in the design or construction phase," both of which are dairy manure-based factory-farm gas suppliers: "Monterey 23 TMS, interconnected with Monterey RNG, LLC" and "Sebewa 30 TMS, interconnected with Meadowbrook Ag-Grid LLC." *Id.*

Given that the Commission sought and received information about specific sources of factory-farm gas that are either currently operating or are "in the design or construction phase," *id.*, the Sierra Club urged the Commission to seek additional information about how a decision to grant the present application would affect those factory-farm gas producers, because such information would be material to the public convenience and necessity determination. *See* Sierra Club Cmts., PR 25-52-000 (Oct. 2, 2025) (accession no. 20251003-5002). The Sierra Club thus raised the kind of significant issue which requires the Commission to provide a reasoned response. *Citizens Action Coal. of Ind.*, 125 F.4th at 243; *TransCanada*, 811 F.3d at 12–13.

But the agency declined to seek additional information regarding the three factory-farm gas producers Consumers Energy identified, even though it took the time to seek additional information on unrelated topics. *See* 10/9/25 Data Request. Further, the Commission's order gives no reason for its apparent decision not to attempt to find out how granting the application would affect the existence or operation of the aforementioned factory-farm gas producers, even though the Commission did offer an explanation for why it decided not to seek more information on another subject. *See* Order at 8 (explaining why the Commission decided not to "seek out [additional] information about the relationship between Consumers Energy's proposed service and the company's intention to monetize the environmental attributes of RNG by obtaining carbon credits under California's low carbon fuel standard"). The agency's failure to explain its decision not to seek additional information regarding the effect the certificated activity would have on factory-farm gas production in Michigan is arbitrary and capricious.

D. The Commission's Refusal to Seek Additional Information is Arbitrary and Capricious.

1. <u>The Commission Acted Arbitrarily and Capriciously in Failing to Seek Additional Information Regarding the Effects Granting the Application Would Have on Factory-Farm Gas Production in Michigan and the Resulting Environmental Consequences.</u>

The Commission's decision not to seek additional information is not only unreasoned, *see supra* at 17–18, it is also unreasonable. Once Consumers Energy identified particular factory-farm gas producers which do or may in the future ship gas on its system and pursuant to the applied-for certificate, the Sierra Club urged the Commission to seek additional information regarding those producers which could illuminate whether the certificated authority would induce additional factory-farm gas production and the potential environmental effects of doing so. *See supra* at 6–7 (setting forth verbatim the Sierra Club's proposed areas for additional inquiry). But the agency did not do so, instead resting its decision on a purported lack of such information. *See* Order at 8 (characterizing the Sierra Club's concerns as "go[ing] beyond uncertainty into speculation"). This was arbitrary and capricious.

Under the Natural Gas Act's public convenience and necessity standard, FERC cannot grant a certificate unless the agency concludes that doing so will serve the public convenience and necessity. *See* 15 U.S.C. § 717f(e) (FERC "shall" issue a certificate if the applicant satisfies the public convenience and necessity standard and prescribing that "otherwise such application shall be denied"). If the Commission does not have sufficient information to conclude that a proposed project would satisfy the public convenience and necessity standard, it must deny the application. And as described above, that standard "requires the Commission to evaluate *all* factors bearing on the public interest," *Atl.*

Refin. Co., 360 U.S. at 391 (emphasis added), including "environmental . . . questions," *NAACP*, 425 U.S. at 670 n.6.

The arbitrary and capricious nature of the Commission's decision not to seek additional information on these topics is especially clear given that the Commission *did* seek more information on other issues. *See* 10/9/25 Data Request. There is no apparent reason—nor does the Commission proffer any—why it could not have sought additional information regarding the three factory-farm gas producers Consumers Energy identified in its response to the Commission's first request for more information.

In short, if the Commission lacked sufficient information to conclude that granting the certificate would not result in upstream environmental harms outweighing any benefits, the only permissible options available to the agency were either to deny the application or to seek more information. It chose neither route. Instead, the Commission took a see-no-evil approach, reasoning that because it had insufficient information regarding such environmental harms, it must grant the application. This was arbitrary and capricious.

2. The Commission's Decision Not to Seek Additional Information Regarding the Role of the Low Carbon Fuel Standard in Consumers Energy's and its Suppliers' Decisionmaking Was Arbitrary and Capricious.

The Sierra Club urged the Commission to investigate the extent to which Consumers Energy's application is a prelude to its participation in California's Low Carbon Fuel Standard, or LCFS. Mot. to Interv. & Protest at 8–10. The Sierra Club did so because the certificated authority—granting Consumers Energy the right to "sell and transport—via displacement, exchange, or other means— . . . RNG to states outside of Michigan" without physically transporting any such gas across state lines mirrors the book-and-claim accounting methods which the LCFS uses to subsidize out-of-state producers of factory-farm gas. Appl. ¶ 8; Cal. Code Regs. tit. 17, § 95488.8(i)(2)(A); *see also* Gonca Seber et al., *Evaluating the Policy Value of Dairy Biomethane-Derived Hydrogen in California's Low Carbon Fuel Standard* at 2, Int'l Council on Clean Transp. (Sept. 2024), https://perma.cc/BM8E-3TJU (describing LCFS's book-and-claim system).

Representatives of Consumers Energy have publicly stated that they "intend[] to monetize environmental attributes [of RNG] by selling them into carbon markets" and identified the LCFS as one of "two primary carbon credit markets." *See* Direct Testimony of Neal P. Dreisig on Behalf of Consumers Energy Co. at 17–18, *In re Consumers Energy Co.*, No. U-21148 (Mich. Pub. Serv. Comm'n, Dec. 2021), https://perma.cc/ZW27-SNNT[6]; *see also In re Consumers Energy Co.*, No. U-21387, 2024 WL 1209153, at *2 (Mich. Pub. Serv. Comm'n Mar. 15, 2024) (noting that "if there is any unsubscribed RNG Program supply, [Consumers Energy Co.] 'will sell the environmental attributes into renewable fuel markets to recover any remaining costs of supply and the remaining gas supply will be used for internal use'" (citation omitted)).

Additionally, the LCFS's much-criticized life-cycle assessment methodology counts factory-farm gas as intensely carbon-negative, creating immense windfalls for massive factory farms without accounting for the deleterious environmental effects of incentivizing the production of such gas. *See* Evan Halper & Samuel Oakford, *California Draws Ire as Out-of-State Factory Farms Turn Pig Poop Into Cash*, Wash. Post (Apr. 19, 2025), https://www.washingtonpost.com/business/2025/04/19/climate-factory-farms-carbon-credit-california. Further, the immensely profitable nature of the LCFS threatens

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[6] The referenced testimony is found at pages 289–90 of the PDF at the above URL.

to distort the renewable energy market in favor of the largest factory farms and to the detriment of other forms of clean energy. *See* Kevin Fingerman et al., *Risks of Crediting Carbon Offsets in Low Carbon Fuel Standards: Lessons Learned from Dairy Biomethane*, 206 Energy Policy at *3 (Nov. 2025), https://doi.org/10.1016/j.enpol.2025.114738 (comparing carbon intensity scores for manure biogas and other sources of energy under the LCFS).

In light of the foregoing, the Sierra Club urged the Commission to seek more information regarding Consumers Energy's and its suppliers' intent to participate in the Low Carbon Fuel Standard. Mot. to Interv. & Protest at 8–10. This information regarding the revenue streams available to Consumers Energy and its suppliers for the production of factory-farm gas is important to the public convenience and necessity standard because making it possible for those companies to participate in the LCFS is likely to intensify factory-farming practices in Michigan, which will have environmental consequences the Commission must consider.

The Commission declined to seek such information, stating that it "does not regulate RNG as a commodity, and issues related to California's low carbon fuel standard are outside the scope of the Commission's jurisdiction." Order at 8. This reasoning is arbitrary and capricious. The Sierra Club does not assert that the Commission does or should "regulate RNG as a commodity," nor that its "jurisdiction" includes running the LCFS. *Id.* The Commission does, however, broadly regulate and exercise jurisdiction over the interstate transportation and sale of natural gas, and specifically regulates and exercises jurisdiction over applications like Consumers Energy's. In the exercise of that jurisdiction, the Commission must determine whether granting the application would serve the public convenience and necessity. And in doing so, the Commission must consider the reasonably foreseeable environmental effects of allowing Michigan factory farms to access a massively profitable revenue stream which rewards them for environmentally destructive practices.

The Commission should grant rehearing, rescind the blanket certificate, and seek additional information regarding the intent of Consumers Energy and the three suppliers of factory-farm gas it identified in its 9/12/25 Response to the Commission's data request to participate in the LCFS.

E. The Commission's Reasoning that the Environmental Effects of Factory-Farm Gas Production are Speculative is Arbitrary, Capricious, and Not Supported by Substantial Evidence.

The Commission concluded that the potential environmental effects the Sierra Club raised were speculative because "Consumers Energy notes that there are no future developments of new RNG projects related to its proposed request and it does not yet know any specific quantities of RNG that it would transport in the future under its blanket certificate." Order at 8. The primary citation for this conclusion is a decision in a separate FERC matter, which has nothing to do with Consumers Energy and says nothing about what Consumers Energy's suppliers may or may not do in the future. *See id.* n.48 (citing *Rover Pipeline LLC*, 191 F.E.R.C. ¶ 61,233 at P 28).[7] Relying on a decision in a

[7] After citing *Rover Pipeline LLC*, 191 F.E.R.C. ¶ 61,233 at P 28, footnote 48 of the Commission's Order continues: "Consumers Energy states that its 2024 RNG system receipts were approximately 0.2% of total system receipts, which it expects to remain relatively unchanged in the future. Consumers Energy September 12, 2025 Response to Commission Staff's August 21, 2025 Data Request at 2." The discussion of Consumers Energy's 2024 system receipts and future projections based on those receipts does not support the Commission's assertion that Consumers Energy noted "there are no future developments of new RNG projects related to its proposed request" nor its assertion that Consumers Energy "does not yet know any specific quantities of RNG that it would

separate matter for a proposition that decision plainly does not stand for is quintessentially arbitrary and capricious decisionmaking. And stating something as a fact without providing any evidence for its veracity means the Commission's order lacks substantial evidence.

Although not cited in the Commission's decision, and therefore not a basis on which the Order can be upheld, Consumers Energy stated in its Answer to the intervenors' comments that its application is not "associated with any FERC-jurisdictional facilities or expansion projects dedicated to increasing RNG production . . . for the specific purpose of interstate commerce transportation across Consumers Energy's pipeline system." Answer at 4. But even if the Commission had relied on this representation to conclude that "there are no future developments of new RNG projects related to its proposed request," Order at 8, that would not suffice to justify the agency's decision for two reasons.

First, a project "dedicated to increasing RNG production," Answer at 4, would necessarily not be subject to the Commission's jurisdiction; this phrasing essentially just restates that gathering and production facilities are not FERC-jurisdictional. 15 U.S.C. § 717(b). But as discussed above, the Commission must still the upstream environmental effects of increasing factory-farm gas production when an exercise of its jurisdiction—such as a decision to issue the present certificate—would induce such an increase. Indeed, the Commission's first data request correctly stated that "[a]n important

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transport in the future." Order at 8 n.48. Further, the reference to Consumers Energy's 2024 receipts sheds no light on the Commission's mystifying citation of *Rover Pipeline* for the proposition that Consumers Energy stated "there are no future developments of RNG projects related to its proposed request." Order at 8.

consideration is the manner in which the RNG burns in comparison to" conventional natural gas, and that "[t]he two types of gases must not be so different that their varying mixture would . . . materially increase air pollutant emissions." 8/21/25 Data Request at 3; *see also Transcont'l Gas Pipe Line Corp.*, 365 U.S. at 30 (explaining evidence of certificated activity's downstream effects on air pollution is "entitled to great weight" in the public convenience and necessity analysis). The facilities which burn natural gas are not FERC-jurisdictional facilities any more than the facilities which produce factory-farm gas. Thus, if downstream environmental effects are "[a]n important consideration" in the public convenience and necessity analysis, 8/21/25 Data Request at 3, then so too are the upstream effects of producing factory-farm gas, even if neither category results directly from a FERC-jurisdictional project.

Second, Consumers Energy's Answer states that its application is not "associated" with factory-farm gas production facilities being built or operated "for the specific purpose of interstate commerce transportation across Consumers Energy's pipeline system." Answer at 4. But a factory-farm gas project need not be built "for the specific purpose of interstate commerce transportation," *id.*, for its environmental effects to be part of the public convenience and necessity analysis. So long as the certificated activity would result in new or intensified environmental harms from factory-farm gas production, the Commission must consider those upstream impacts in its public convenience and necessity analysis. For example, a factory-farm gas producer may not construct or operate a digester "for the specific purpose" of shipping that gas across state lines on Consumers Energy's system. *Id.* But by granting Consumers Energy's application, the Commission may open new markets—such as California's incredibly lucrative Low Carbon Fuel Standard—and thus cause the producer to increase its herd size to capitalize on that opportunity. Doing so would have upstream environmental effects on, for instance, localized air pollution in the area surrounding the factory farm, which the Commission must consider as part of its public convenience and necessity analysis.

Moreover, the Commission's conclusion that the environmental impacts raised by the Sierra Club are speculative is arbitrary and capricious because, as discussed *supra*, the Commission arbitrarily and capriciously refused to seek out information about those effects. In other words, rather than seek out available information about those effects, the Commission reasoned from its lack of knowledge regarding such effects that such effects are unknowable. That basic fallacy underlying the Commission's dismissal of the environmental effects of factory-farm gas as "speculative" renders the Commission's Order arbitrary and capricious.

IV. Conclusion

Based on the foregoing, the Sierra Club requests the Commission rehear and rescind the Order.

Respectfully submitted this 16th day of January, 2026.

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Certificate of Service

I hereby certify that I have this day served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 16th day of January, 2026.

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