

United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

No. 18-1252

September Term, 2019

FILED ON: August 14, 2020

ENABLE MISSISSIPPI RIVER TRANSMISSION, LLC AND ENABLE GAS TRANSMISSION, LLC,
PETITIONERS

v.

FEDERAL ENERGY REGULATORY COMMISSION,
RESPONDENT

AMERICAN AIRLINES, INC., ET AL.,
INTERVENORS

Consolidated with 18-1254

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

Before: SRINIVASAN, *Chief Judge*, ROGERS and WILKINS, *Circuit Judges*

JUDGMENT

These petitions for review of orders of the Federal Energy Regulatory Commission were presented to the Court and briefed and argued by counsel. The Court has afforded the issues full consideration and has determined that they do not warrant a published opinion. See D.C. CIR. R. 36(d). For the following reasons, it is

ORDERED AND ADJUDGED that the petitions for review be **DISMISSED AS MOOT**.

Enable Mississippi River Transmission, LLC, together with Enable Gas Transmission, LLC, filed a petition for review of the Federal Energy Regulatory Commission's Revised Policy Statement on Treatment of Income Taxes, *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 162 FERC ¶ 61,227 (Mar. 15, 2018), and of its Order on Rehearing of the same, *Inquiry Regarding the Commission's Policy for Recovery of Income Tax Costs*, 164 FERC ¶ 61,030 (July 18, 2018). *Enable Miss. River Transmission, LLC v. FERC*, No. 18-1252.

SFPP, L.P. also petitioned for review of these orders, *SFPP, L.P. v. FERC*, No. 18-1254, and the petitions were consolidated. These petitions assert a facial challenge to FERC’s statement of its policy regarding income-tax allowances for master limited partnership pipelines.

In a companion case argued on the same day as these consolidated facial challenges, SFPP, L.P. disputed the application in its individual rate case of the policy announced in the orders here under review. *SFPP, L.P. v. FERC*, 19-1067. Faced with a similar situation in the companion cases of *Canadian Ass’n of Petroleum Producers (“CAPP”) v. FERC*, 487 F.3d 973 (D.C. Cir. 2007) (per curiam) (facial challenge), and *ExxonMobil Oil Corp. v. FERC*, 487 F.3d 945 (D.C. Cir. 2007) (per curiam) (as-applied challenge), we noted in the former case the existence of “substantial issues of both standing and ripeness,” but found it unnecessary to “address these threshold issues” because of our resolution in the as-applied case of the merits arguments proffered by the facial petitioners, *CAPP*, 487 F.3d at 974 (citing *ExxonMobil*, 487 F.3d 945). We therefore dismissed CAPP’s challenge as moot in light of our decision in *ExxonMobil. Id.*

When questioned at oral argument on the applicability of *CAPP*, and specifically whether the instant petitions presented any substantive challenge to the at-issue policy that would not be resolved in the as-applied case, counsel for the instant petitioners identified no such challenge, but instead iterated the importance of there being “some forum in which to challenge this policy.” Oral Arg. Recording 14:29-15:11, 16:13-16:33; *see generally id.* 14:29-18:28.

This forum has been provided in the as-applied case, *SFPP, L.P. v. FERC*, No. 19-1067 (decided July 31, 2020). Therefore, and in light of both *CAPP* and our resolution, in *SFPP, L.P.*, of the merits arguments raised here, we dismiss the instant petitions for review as moot. *See CAPP*, 487 F.3d at 974.

Pursuant to D.C. Circuit Rule 36, this disposition will not be published. The Clerk is directed to withhold issuance of the mandate herein until seven days after resolution of any timely petition for rehearing or petition for rehearing *en banc*. *See* FED. R. APP. P. 41(b); D.C. CIR. R. 41(a)(1).

Per Curiam

FOR THE COURT:
Mark J. Langer, Clerk

BY: /s/
Daniel J. Reidy
Deputy Clerk