United States Court of Appeals
FOR THE DISTRICT OF COLUMBIA CIRCUIT

Argued December 18, 2025 Decided August 28, 2026

No. 24-1253

EAST TENNESSEE GROUP,
PETITIONER

v.

FEDERAL ENERGY REGULATORY COMMISSION,
RESPONDENT

EAST TENNESSEE NATURAL GAS, LLC,
INTERVENOR

Consolidated with 25-1072

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

Ryan J. Regula argued the cause for petitioner. With him on the briefs was *Kelly A. Daly*.

Scott R. Ediger, Attorney, Federal Energy Regulatory Commission, argued the cause for respondent. With him on the brief were *David L. Morenoff*, Deputy General Counsel, and *Robert H. Solomon*, Solicitor.

Joshua S. Johnson argued the cause for respondent-intervenor. With him on the brief were *Jeremy C. Marwell*, *Andrew N. Beach*, and *James D. Seegers*.

Before: MILLETT, KATSAS and CHILDS, *Circuit Judges*.

Opinion for the Court filed by *Circuit Judge* CHILDS.

CHILDS, *Circuit Judge*: Symbols of our nation's interconnectivity come in many forms. One of these is our energy system, embodied in the copious pipelines and grids crisscrossing these United States. When it works well, our energy system is a Möbius strip, seamlessly connected and fluidly running between cities and states. The success of these grids and lines results from a daily exercise in public and private collaboration, led in part by the work of the Federal Energy Regulatory Commission. Our role today is to smooth a dispute between these participants about the procedure that was used to approve some improvements to this unified system.

A natural gas company, East Tennessee Natural Gas, LLC, sought permission from the Federal Energy Regulatory Commission to improve its pipeline services and facilities and increase its customer service rates to account for these improvements. A collective of the company's customers, known as East Tennessee Group, protested. When the agency granted East Tennessee Natural Gas's requests, the customers came to us to challenge the lawfulness of the agency proceedings. In particular, they challenge the adequacy of the Federal Energy Regulatory Commission's responses to their requests for data. The heartbeat of East Tennessee Group's challenge is that, despite receiving the data they requested, the agency's tardiness in providing that data still violated their procedural due process rights in the agency proceeding. On that basis, and others, East Tennessee Group petitions for vacatur of the agency's resulting orders. We deny the petitions.

I.

A.

Congress enacted the Natural Gas Act, Pub. L. No. 75–688, 52 Stat. 821 (1938) (codified as amended at 15 U.S.C. §§ 717–717z), to regulate the transportation and sale of natural gas in interstate commerce. *PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 489 (2021). Congress vested the Federal Energy Regulatory Commission (FERC or Commission) with a connected authority to regulate the "construction, extension, or abandonment of" natural gas facilities under Section 7 of the Natural Gas Act. 15 U.S.C. § 717f. To obtain pipeline construction permissions, natural gas companies must initiate proceedings before FERC, and their applications are reviewed by the Commission. *See id.* § 717f(c), (d).

Before constructing facilities, a natural gas company must seek permission from FERC in the form of a Certificate of Public Convenience and Necessity (Certificate). *Id.* § 717f(c). The Commission may grant a "qualified applicant" a Certificate subject to certain conditions, including that the "proposed . . . construction . . . authorized by the certificate, is or will be required by the present or future public convenience and necessity." *Id.* § 717f(e). Similarly, to abandon facilities they must also seek FERC's permission, and it may be granted if "the present or future public convenience or necessity permit such abandonment." *Id.* § 717f(b).

Although a natural gas company is obligated to include several exhibits for the Commission's review, only one set of exhibits is relevant to this dispute: the "Exhibit Gs."[1] *See* 18 C.F.R. § 157.14(a)(8)–(10). These exhibits pertain to the flow data of the energy source involved in the certificate application, in this case natural gas. Like other natural gas data, the Exhibit Gs can contain what is known as "Critical Energy Infrastructure Information." *Id.* § 388.113(c)(2). FERC regulation defines Critical Energy Infrastructure Information as national security sensitive information depicting "specific engineering, vulnerability, or detailed design information about proposed or existing critical infrastructure." *Id.* FERC strictly controls public access to this information and provides it only upon request. *See id.* §§ 388.113(g). By FERC regulation, any such request must include a signed non-disclosure agreement, a detailed statement of need for the requested Critical Energy Infrastructure Information, and the requester's contact information. *Id.* § 388.113(g)(5)(i). Following receipt of that request, FERC determines whether, and under what conditions, it will release the Critical Energy Infrastructure Information. *Id*. § 388.113(g)(5)(iii).

The undercurrent of the challenge before us is the timeliness of FERC's provision of natural gas pipeline Critical Energy Infrastructure Information to a requester.

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[1] "Exhibit G" contains "[f]low diagrams" that show the daily capacity of the current facilities and their operation "with and without proposed facilities added." 18 C.F.R. § 157.14(a)(8). "Exhibit G-I" contains additional flow diagrams depicting "the maximum deliveries" of the energy that the "applicant's existing and proposed facilities" can achieve under favorable operating conditions. *Id.* § 157.14(a)(9). "Exhibit G-II" is "a statement of engineering design data in explanation and support of the diagrams and the proposed project." *Id.* § 157.14(a)(10).

B.

1.

East Tennessee Natural Gas (Pipeline) is a "natural gas company" that is "engaged in the transportation of natural gas in interstate commerce." 15 U.S.C. § 717a(1), (6). It is the owner and operator of a natural gas pipeline that crosses several states, including Georgia, North Carolina, Tennessee, and Virginia. In the spring of 2023, the Pipeline submitted to FERC an application for permission under Section 7 of the Natural Gas Act for both a Certificate of Public Convenience and Necessity and also for permission to abandon facilities (certificate proceedings). *Id.* § 717f(b), (c); J.A. 33, 37. The Pipeline's application sought to construct and then operate miles of new cross-county natural gas pipeline and facilities; it also sought to test, upgrade, and replace its current facilities (System Alignment Program).

The Pipeline contended that the System Alignment Program meets FERC's statutory and policy requirements for a Certificate. The Pipeline reported that construction was necessary to address the changes in its customers' usage of natural gas, which had resulted in shortfalls in the natural gas available in certain parts of its system, and the Pipeline further represented that ordinary alternative methods were no longer effective to serve those changed needs. To further bolster the necessity of the System Alignment Program, the Pipeline's application contained representations of energy flow data, including all the Exhibit Gs. The entire volume of the Pipeline's application that contained the Exhibit Gs was withheld from the public certificate proceeding docket, as it contained Critical Energy Infrastructure Information.

Of course, the System Alignment Program and all its benefits have a price tag, and because the Pipeline proposed that the System Alignment Program was one "designed" to benefit "existing customers," its customers would help foot the bill. J.A. 38. The Pipeline thus asked the Commission for a "pre-determination" to roll the costs of the System Alignment Program into its service rate, with the rate to be determined in a future proceeding.

East Tennessee Group (Customers) is an association of these affected customers, each of whom is a retail distributor of natural gas, and each has contracts to receive natural gas through the Pipeline's transportation system. The Customers intervened and also protested in the certificate proceedings for the System Alignment Program, requesting that the certificate be denied. *See* 18 C.F.R. § 157.10; J.A. 5. The Customers argued: (1) there were more cost-effective alternatives to the System Alignment Program; (2) there was insufficient evidence to show that the System Alignment Program was responsive to changes in customers' energy service needs; and (3) there was insufficient justification for the Commission to pre-determine that the Pipeline could roll the costs of the System Alignment Program into future customer service rates. Of course, the Customers were concerned about the prospect of paying, even in part, for a project that would cost hundreds of millions of dollars. Yet the Customers also searched for record evidence of the need for such an extensive, expensive project.

The Pipeline answered the protests, in part challenging the Customers' assertions about the fairness of the rolled-in rate and the necessity of the System Alignment Program. It contested the Customers' argument that there was a lack of flow data to show that the System Alignment Program was necessary to continue uninterrupted services. Pointing to its flow data, among other things, the Pipeline argued that there was sufficient evidence in the record to support the program's necessity.

As filings continued to be made on the docket, FERC began its own work. FERC's Office of Energy Projects requested troves of supplemental information from the Pipeline. Of these requests, several pertained to receiving additional pipeline flow data to assess the necessity of the System Alignment Program. All productions from the Pipeline pertaining to flow data were withheld from the public docket as Critical Energy Infrastructure Information.

After the parties made their submissions and the hearing concluded, the Commission issued its order granting the Pipeline a Certificate of Public Convenience and Necessity and approving the Pipeline's request for facility abandonment (Certificate Order).[2] *E. Tenn. Nat. Gas, LLC*, 186 FERC ¶ 61,210 (2024). The Commission found that the System Alignment Program, and the proposed rolled-in rate, complied with the Natural Gas Act and the Commission's Certificate Policy Statement.[3]

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[2] One Commissioner dissented in part from the Certificate Order; her analysis, pertaining to Section 7 of the Endangered Species Act, 16 U.S.C. § 1536, is not relevant to this dispute.

[3] The Commission relies on the criteria in guidance documents, known as "policy statements," to make determinations about these applications. Certification of New Interstate Natural Gas Pipeline Facilities, 88 FERC ¶ 61,227 (Sept. 15, 1999), *clarified*, 90 FERC ¶ 61,128 (Feb. 9, 2000), *further clarified*, 92 FERC ¶ 61,094 (July 28, 2000) (collectively, Certificate Policy Statement). When it was necessitated by the record, this court has reviewed challenges to the Commission's interpretations of the Certificate Policy Statement. *See, e.g.*, *Minisink Residents for Env't Pres. & Safety v. FERC*, 762 F.3d 97, 106–11 (D.C. Cir. 2014).

Critically, in so finding, the Commission identified, expanded upon, and addressed the arguments of the Customers in great detail. The Commission found that, when considering the evidence, there was sufficient explanation about why the Pipeline's alternative measures could no longer serve its customers as its private and public obligations required. *E. Tenn. Nat. Gas, LLC*, 186 FERC ¶ 61,210, at P 15–16. Importantly, the Commission noted the Exhibit Gs and the Pipeline's supplemental data productions when it determined that the System Alignment Program was needed for the Pipeline to continue uninterrupted service. *Id.* at P 14 & n.71, 15 & nn.72, 74–78, P 16 & nn.79–82. The Commission additionally found that the rolled-in rate treatment was appropriate because, among other things, the System Alignment Program would ensure that the Pipeline could "continue to provide reliable service to its customers." *Id.* at P 21. The Commission specifically noted that any objections to the fairness of the rolled-in rate could be addressed in a future proceeding under Section 4 of the Natural Gas Act.[4] *Id.*

2.

In April of 2024, the Customers filed a petition for rehearing. J.A. 19. In their petition, the Customers explained that they had requested "a timely copy" of the Pipeline's "Form 567 System Flow Diagram," which they believed was being improperly withheld by FERC. J.A. 242–

[4] Under Section 4 of the Natural Gas Act, 15 U.S.C. § 717c, pipelines "initiate proceedings to set or modify permanent rates." *Mo. Pub. Serv. Comm'n v. FERC*, 601 F.3d 581, 583 (D.C. Cir. 2010). There, the Commission considers challenges to the fairness of service rates. *See* 15 U.S.C. § 717c(a)–(b); *see also BNP Paribas Energy Trading GP v. FERC*, 743 F.3d 264, 267 (D.C. Cir. 2014) ("The Natural Gas Act requires that rates be just and reasonable and not unduly discriminatory." (citing *id.*))

43. In the Customers' view, their outstanding request thus precluded the Commission from lawfully issuing the Certificate Order. J.A. 243.

To that end, the Customers specified two errors in their petition. *See* 18 C.F.R. § 385.713(c); J.A. 241. First, that the Commission erred in making a premature decision, specifically one made before the Customers were "provided access to critical information and documents essential to [their] ability to meaningfully participate" in the certificate proceedings. J.A. 241. Second, that the Commission erred in concluding "substantial evidence" supported "its decision when," in the Customers' view "not all information had been made available for the parties to examine and to test the validity" of the Pipeline's assertions in its Certificate application. J.A. 241. As a result, the Customers argued the Certificate Order was unlawful because it was arbitrary and capricious and violated the Customers' due process rights.

a.

According to the certificate proceeding docket, the Customers' petition for rehearing was the first time they ever mentioned their data request. So to understand the Customers' rehearing challenge, we must take a step back in time. In June of 2023, Rick Smead, of RBN Energy LLC, who stated he was "supporting" the Customers, reached out to a representative for the Pipeline. P.A. 63. Smead asked for "a copy" of the Pipeline's 2022 "Form 567 system flow diagram that was just filed at the Commission." P.A. 63.

Form No. 567 is an annually required set of diagrams that natural gas pipelines provide to FERC to "reflect[] operating conditions on its main transmission system during the previous twelve months." 18 C.F.R. § 260.8(a). This form is withheld from the public as Critical Energy Infrastructure

Information, but it can be released by request when the appropriate showing is made. *Id.* § 388.113(g)(5); *see also* P.A. 148–49.

The Pipeline responded that to receive a copy of that form, Smead should request it directly from FERC's Critical Energy Infrastructure Information Coordinator. Smead submitted his request to FERC the same day. A month later, Smead again contacted the Pipeline, stating that he had not received a response and asked if the Pipeline had been directed to provide him the 2022 Form No. 567. The Pipeline stated that it received no such direction from FERC. Smead sent no further emails to the Pipeline and made no comments about this request on the certificate proceeding docket before the Commission.

The Customers' April 2024 request for rehearing—containing their specified errors and statement of issues[5]—was entirely based on their lack of access to the Pipeline's 2022 Form No. 567.

b.

On May 20, 2024, the Commission denied rehearing (Rehearing Denial Order). *E. Tenn. Nat. Gas, LLC*, 187 FERC ¶ 62,119 (2024). Later in May, FERC began the procedure to disclose the Pipeline's 2022 Form No. 567 to the Customers. Upon finding that the Customers had made the required showing, FERC granted the Customers permission to view the Pipeline's 2022 Form No. 567. In July, the Customers filed a petition for review of the Certificate and

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[5] FERC's regulations require that each "issue" for rehearing be separately enumerated and include citations to any "Commission and court precedent" on the matters raised by the petitioner; otherwise, the issue is waived. 18 C.F.R. § 385.713(c)(2).

Rehearing Denial Orders. Petition for Review, No. 24-1253, Dkt. 2065352 (July 18, 2024); *see Allegheny Def. Project v. FERC*, 964 F.3d 1, 19 (D.C. Cir. 2020) (en banc); *see also* 15 U.S.C. § 717r(a); 18 C.F.R. § 385.713. Then, in August, the Customers requested the Pipeline's 2023 Form No. 567. Again, FERC concluded that the Customers made the required showing to access the document and gave the Customers access to both the 2022 and 2023 Form No. 567s (Pipeline's annual flow data).

The Customers did not make comments on the certificate proceeding docket or otherwise respond to FERC upon receiving the Pipeline's annual flow data. So, later that month, FERC's Office of Energy Projects made a filing on that docket to prompt the Customers to respond. FERC filed copies of two new letters—sent to the Customers and the Pipeline—requesting comments about the Pipeline's annual flow data. The Customers objected to FERC's request for comments; the Pipeline complied. The Customers argued that only if they had received the Pipeline's annual flow data in 2023 would they have had the necessary time and resources to analyze the data and raise appropriate comments.

In September of 2024, the System Alignment Program began. Even with the commencement of the program, in October of 2024, FERC again reached out via letter and docket filing to the Customers and the Pipeline, asking another time for comments on the docket about the Pipeline's annual flow data. The Pipeline timely responded; however, the Customers reiterated their objection and declined to make comments. In fact, the Customers declined to make any further comments at all about the Pipeline's annual flow data.

In December of 2024, a panel of the Commission issued a supplemental order, an "Order Addressing Arguments Raised on Rehearing" (Modified Certificate Order). *E. Tenn. Nat. Gas, LLC*, 189 FERC ¶ 61,232 (2024). While the Commission maintained that the Certificate Order was final, *id.* at P 1 (citing *Allegheny*, 964 F.3d 1), it modified the discussion of the Certificate Order in part to address the Customers' petition for rehearing. In relevant part, the Commission declined to consider the Customers' argument that they were denied due process because it found that FERC eventually did provide the Pipeline's annual flow data. Because the Customers' rehearing request was entirely premised on receiving that data, the Commission then reaffirmed its ultimate conclusion to issue the Certificate Order.

Following this decision, the Customers again petitioned for review, this time, not just of the Commission's Certificate Order, but also of the Rehearing Denial and the Modified Certificate Orders. Petition for Review, No. 25-1072, Dkt. 2101821 (Feb. 19, 2025). FERC responds, and the Pipeline intervenes to support it. We consider their consolidated petitions below.

II.

Before we reach the merits of these petitions, there are three threshold justiciability issues to address. We first consider whether the Customers have standing to bring this challenge, which they do. We next consider whether the Customers' challenge is moot, which it is not. Then we must discern which of the Customers' challenges we have statutory jurisdiction to review, and there is only one.

A.

We begin, where we must, with constitutional standing. The Natural Gas Act permits the Customers to seek judicial review of the Certificate Order if they were parties to the underlying proceedings and "aggrieved" by the order. 15 U.S.C. § 717r(b). To be "aggrieved," *id.*, the Customers must establish that they meet the constitutional minimum of standing. *See MISO Transmission Owners v. FERC*, 177 F.4th 1204, 1220 (D.C. Cir. 2026); *see also Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61 (1992). The Customers must therefore show that they "(1) suffer[] an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016).

The Customers begin by asserting that the Commission's Certificate Order causes them to suffer an injury because the costs of the System Alignment Program will be rolled into their service rate, and a procedural injury resulting from the Commission making its decision before the Customers' data request was fulfilled. The Customers argue that vacatur of the Certificate Order will redress those injuries. This seems simple enough. However, the Pipeline challenges the Customers' standing on redressability grounds, arguing that, in actuality, the Customers' only cognizable harm is related to their receipt of the Pipeline's annual flow data. As such, because FERC has already provided the Pipeline's annual flow data, this court is without the ability to redress their injury. The Pipeline does not break new ground with this argument; the Commission's position on the Customers' rehearing petition made a similar assertion. And yet, we still disagree.

The source and character of the Customers' harm is plain. We see the veins of these asserted injuries throughout the three orders that the Customers challenge. Theirs is not only the monetary injury caused by the rolled-in rates permitted by the orders. It is also the procedural injury caused by the ways in which FERC responded to the Customers' requests for the Pipeline's annual flow data.

True, the challenged orders do not directly regulate the Customers or immediately determine their future service rates. *See PNGTS Shippers' Grp. v. FERC*, 592 F.3d 132, 137 (D.C. Cir. 2010) (no standing when the effect of FERC's actions on customer rates was not "inevitable" and would be later determined). However, these orders, taken together, will imminently affect the terms and rate of the Pipeline's service to the Customers because FERC approved the System Alignment Program and predetermined, before the Section 4 proceeding where rate determinations normally occur, that a rolled-in rate will pay for it. This is sufficient for standing. *See Miss. Valley Gas Co. v. FERC*, 68 F.3d 503, 508 (D.C. Cir. 1995) (holding that there was an injury in fact when the challenged FERC orders would "affect the rates" to be paid to a natural gas company and the orders were "directly within the authority conferred upon FERC by the Natural Gas Act"); *MISO*, 177 F.4th at 1222 (concluding customers had standing when they were "directly subject to the rates established by the challenged orders"); *Dep't of Com. v. New York*, 588 U.S. 752, 767 (2019) ("[S]ubstantial risk that the harm will occur" is sufficient for Article III injury. (citation omitted)).

Further, the facts of the orders' issuance are what sit at the heart of the Customers' petition: the untimeliness of their access to the Pipeline's annual flow data, which the Customers felt was necessary to their ability to effectively participate and protest in the certificate proceeding. In the Customers' view, FERC has not yet given them the careful review and consideration of their protest that certificate proceedings require. Though the flow data was ultimately turned over and FERC solicited comment thereafter, the Customers felt the time they were given to review and respond to the data was too short and came too late to cure the harm they suffered and to allow for fair consideration of their objections. The Customers believe that, absent FERC's untimely responses, the substance of their participation and, in turn, the outcome of the challenged orders could have been different. That is also enough. *See Mendoza v. Perez*, 754 F.3d 1002, 1010 (D.C. Cir. 2014) (holding a petitioner is not required to show that "correcting the procedural violation would necessarily alter the final effect of the agency's action on the [petitioner's] interest"). Because the Customers challenge the propriety of the "procedural do-over" the Commission afforded them, their standing to petition is satisfied. *Fore River Residents Against the Compressor Station v. FERC*, 77 F.4th 882, 889 (D.C. Cir. 2023); *see also Minisink Residents for Env't Pres. & Safety v. FERC*, 762 F.3d 97, 106 (D.C. Cir. 2014) (describing similar fulfilment of procedural injury requirements for standing).

Now, in response to the Pipeline's redressability challenge, we conclude that the aforementioned harms can still be resolved by an order of this court. Vacatur or even remand of the challenged orders would provide the Customers a host of relief, including, but not limited to, a new chance to rely upon the allegedly untimely flow data for their challenge to the System Alignment Program and its predetermined rolled-in rate. *See Lichoulas v. FERC*, 606 F.3d 769, 775 (D.C. Cir. 2010) ("[T]here should be little question" that when the subject of challenge is "the inaction" of an agency, "a judgment preventing or requiring the action will redress it." (citation modified)); *see also Ne. Energy Assocs. v. FERC*, 158 F.3d 150, 153–54 (D.C. Cir. 1998) (concluding that redressability was fulfilled because remand could allow the Commission the opportunity to consider new arguments).

Moreover, for the redressability of a procedural injury, this court does not require more than what the Customers have already presented us with. *See Lujan*, 504 U.S. at 572 n.7 (explaining that when petitioners are afforded a procedural right to protect their interest in an agency proceeding they need not meet the ordinary redressability standard); *see also Sierra Club v. FERC*, 827 F.3d 59, 65 (D.C. Cir. 2016) (For "a party alleg[ing] deprivation of its procedural rights, courts relax the normal standards of redressability and imminence."). We find ourselves satisfied with the Customers' showing. Thus, the Customers have Article III standing to seek our review.

B.

The Pipeline also posits that the Customers' petition is moot, relying on a similar rationale to what it used in its redressability challenge. Here, the Pipeline suggests that the Customers received complete relief when they obtained the Pipeline's annual flow data and were offered multiple opportunities to use it during the certificate proceedings. So, in the Pipeline's view, this court can no longer provide an effective remedy. Again, we do not agree.

Mootness doctrine ensures that federal courts decide only "actual, ongoing controversies." *Pub. Citizen, Inc. v. FERC*, 92 F.4th 1124, 1127 (D.C. Cir. 2024) (citation omitted). When a case is moot, a decision by this court "will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." *Id.* at 1128 (citation omitted); *see also Tenaska Clear Creek Wind, LLC v. FERC*, 108 F.4th 858, 867 (D.C. Cir. 2024) ("If events outrun the controversy such that the court can grant no meaningful relief, the case must be dismissed as moot." (citation omitted)). No events have caused this court to lose the power to provide relief to the Customers.

FERC's initiation of the System Alignment Program has not mooted the petition because this court could use vacatur to require FERC to stop the program and follow a different procedure to review the certificate application. *See Del. Riverkeeper Network v. FERC*, 857 F.3d 388, 396–97 (D.C. Cir. 2017), *overruled in part on other grounds by Allegheny*, 964 F.3d 1 (D.C. Cir. 2020) (rejecting that the initiation of a project mooted dispute because vacatur could halt it and could "force FERC to follow the proper" procedure); *see also Gunpowder Riverkeeper v. FERC*, 807 F.3d 267, 272 (D.C. Cir. 2015) (similar). Nor has the start of Section 4 proceedings mooted the petition. Those proceedings, which deal only with the fairness of a service rate, will not address the injuries that the Customers have charged us to assess. Because that proceeding would only provide the Customers partial relief, if any, this petition cannot be moot. *See Del. Riverkeeper Network*, 857 F.3d at 397 (explaining that "even the availability of a partial remedy is sufficient to prevent [a] case from being moot." (citation omitted)).

Finally, FERC fulfilling the Customers' request for the Pipeline's annual flow data did not moot this dispute. Access to the Pipeline's annual data was, and remains, distinct from the objections the Customers have consistently lodged about the proceedings and the Certificate Order. *Gunpowder Riverkeeper*, 807 F.3d at 272. The Customers believe FERC's failure was not only in initially declining to provide the data but then later providing it in an untimely fashion, which they believe denied them the chance to properly protest in the first place and file their rehearing petition. *Cf. Fore River*, 77 F.4th at 890 (concluding that a petition was mooted because petitioners had received "all of the procedural relief" they requested). Thus, the Customers request a second chance, a procedural do-over, that keeps their petition live. *See id.* at 889 (remarking that the petition was mooted in part because it did "not raise any specific objection to the Commission's own process on rehearing or to the substance of its decision").

Providing the data has not made it so "that the decision [of the court] will neither presently affect the parties' rights nor have a more-than-speculative chance of affecting them in the future." *Gunpowder Riverkeeper*, 807 F.3d at 272 (citation omitted)). In the Customers' eyes, the data they have now received does them little good; they believe it came too late to be of any utility to their cause. Hence, the Customers' petition is not moot.

C.

Next, several of the arguments FERC and the Pipeline make in response to this petition assert that we lack the statutory jurisdiction to consider several of the Customers' arguments. We must take such assertions seriously, for Section 19 of the Natural Gas Act strictly circumscribes the scope of our review of Commission orders, largely so that we may only review what the Commission has first taken a swing at. *See* 15 U.S.C. § 717r(b) ("No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing."); *Entergy Servs., Inc. v. FERC*, 391 F.3d 1240, 1247 (D.C. Cir. 2004) ("Parties seeking review of FERC orders must petition for rehearing . . . [and] raise in that petition *all* of the objections urged on appeal." (citation omitted)). Consequently, unless there is a "reasonable ground" for the Customers' "failure" to make an objection to the Commission first, we will not consider it here. *See* 15 U.S.C. § 717r(b).

To begin, we must determine precisely what the Customers argued before the Commission because those will likely be the only overtures we may hear. As we noted above, the Customers' petition for rehearing specified just two errors in the Commission's Certificate Order. First, that the Certificate

Order was issued "prematurely," because the Customers had not yet been given the "critical information and documents"—the Pipeline's annual flow data—they needed to participate in the certificate proceedings. J.A. 241. Second, the Customers argued that the Certificate Order was unsupported by substantial evidence because they were not able to meaningfully participate via comment without the data. *See* J.A. 241. These two procedural errors were the entire basis of their petition for rehearing.

The Customers, in their understandable zeal, have made many arguments before us in their petition beyond their two procedural errors. In particular, the Customers now argue the Certificate Order is also unlawful because the Commission: (1) ignored contradictory evidence in the docket record, (2) ignored evidence in another proceeding the Pipeline had pending before the Commission, (3) maintained its predetermination of a rolled-in service rate, (4) improperly relied on the Policy Statement in the certificate proceedings, and (5) misapplied the Policy Statement in the Certificate Order. Petitioner's Br. 14–16; *see also id.* at 18–31. The Customers assure us that these arguments are reviewable. We think not.

These new arguments do not appear in the Customers' petition for rehearing. *See Colum. Gulf Transmission, LLC v. FERC*, 106 F.4th 1220, 1236 (D.C. Cir. 2024) (declining to consider arguments from petitioner made for the first time in its brief). Resisting this fact, the Customers argue that the new arguments are so important or obvious that they need not be explicated or supported to be preserved for our review, but this is just not true. *Birckhead v. FERC*, 925 F.3d 510, 520 (D.C. Cir. 2019) (declining to consider unpreserved arguments despite its own "misgivings" about the Commission's actions). The Customers' additional arguments indeed depend on detailed consideration of the certificate proceeding record, other Commission proceedings, and the Commission's particular uses of its Policy Statement. Relatedly, the Customers' arguments are also not salvageable because they are intertwined with the preserved ones the Customers made in their petition for rehearing. That is artful argument that we do not allow. *See Off. of the Consumers' Couns., State of Ohio v. FERC*, 914 F.2d 290, 295 (D.C. Cir. 1990) ("Petitioners cannot preserve an objection indirectly."); *Peregrine Oil & Gas II, LLC v. FERC*, No. 21-1106, 2022 WL 2764203, at *2 (D.C. Cir. July 15, 2022) (declining to consider an unpreserved argument intertwined with a preserved one).

Because they do not concede their arguments are new, the Customers also do not argue that there were reasonable grounds for their failure to make these arguments to the Commission first. 15 U.S.C. § 717r(b) ("No objection to the order of the Commission shall be considered by the court unless such objection shall have been urged before the Commission in the application for rehearing *unless there is reasonable ground for failure so to do*." (emphasis added)); *see also Ctr. for Biological Diversity v. FERC*, 67 F.4th 1176, 1183 (D.C. Cir. 2023). With this exception foreclosed, we have no occasion to review these arguments.

So whatever their merit, the Customers' new arguments are outside of our statutory jurisdiction and flit away from our review. *See* 15 U.S.C. § 717r(b); *Entergy Servs.*, 391 F.3d at 1247 (citation omitted).

III.

Now, we address the merits. The fountainhead of this procedural challenge is the Customers' assertion that they were unlawfully denied access to the Pipeline's annual flow data and subsequently engaged in uninformed decision-making in the absence of the Customers' data-informed advocacy. We review these arguments, and we find them wanting.

We review the Certificate Order under our arbitrary and capricious standard. *Minisink*, 762 F.3d at 105–06. Thus, we ensure "the Commission's decisionmaking is reasoned, principled, and based upon the record." *Id.* at 106 (quoting *Am. Gas Ass'n v. FERC*, 593 F.3d 14, 19 (D.C. Cir. 2010)). However, we will not substitute the Commission's judgment with our own. *See id.* Especially here, where the decision to grant the Certificate Order "is a matter peculiarly within the discretion of the Commission." *Id.* (citation omitted).

A.

The Customers argue that the Commission's orders violated the Administrative Procedure Act, 5 U.S.C. § 706(2), because they believe FERC "fail[ed] to address the obfuscation and denial of [the Customers'] access" to the Pipeline's annual flow data, which they also contend was wrongfully "not made available until after the Certificate Order was granted." Petitioner's Br. 14. Further, the Customers posit, the Certificate Order was unlawful because FERC "denied" them "timely access" to this critical information, thereby depriving them of the chance to "participate meaningfully" in the certificate proceedings. *Id.* at 15.

FERC and the Pipeline contest the Customers' challenge on several grounds, but we repeat only the most salient arguments here. FERC argues that the Certificate Order was sufficiently supported by the administrative record, including data responsive to the Customers' request for the Pipeline's annual flow data. Further, FERC contends that the Customers "never demonstrated the materiality" of the Pipeline's annual flow data, "despite repeated opportunities to do so." Respondent's Br. 25. The Pipeline makes similar assertions, adding that the Customers repeatedly declined to properly act upon receiving the data by making responsive arguments during rehearing.

We have been here before. In *Minisink Residents for Environmental Preservation and Safety v. FERC*, petitioners claimed "that their due process rights were violated because the Commission failed to timely provide them with certain documentation during the proceedings." 762 F.3d at 115. There, petitioners sought "particular hydraulic studies and engineering analyses that [the pipeline] provided to FERC;" and, in that case, the pipeline submitted this documentation "as part of its application." *Id.* Denying the petition, we determined that FERC provided petitioners access to that documentation in time for them to "make meaningful use" of it during rehearing. *Id.*

In *Myersville Citizens for a Rural Community, Inc. v. FERC*, we considered similar arguments that petitioners suffered due process violations because they were "deprived of a meaningful opportunity to comment" on Critical Energy Infrastructure Information. 783 F.3d 1301, 1327 (D.C. Cir. 2015) (citation modified). Referencing *Minisink*, we rejected that argument. *Id.* In part, because we reasoned that petitioners did not receive their requested documents "too late," because they were still able to comment before the rehearing deadline. *Id.* So we concluded petitioners had a "meaningful opportunity to challenge" the evidence that they tardily received. *Id.* (citation modified).

Today, we again reject that these circumstances can support a due process violation. *Minisink*, 762 F.3d at 115 (concluding that petitioner's ability to use belatedly provided documentation for a rehearing petition "neutralize[d]" its due process argument); *see also Myersville*, 783 F.3d at 1327.

In this context, due process only requires that the challenger have "a meaningful opportunity to challenge new evidence." *Myersville*, 783 F.3d at 1327 (citation modified). FERC gave the Customers multiple opportunities *and* time to submit comments about the Pipeline's annual flow data. The Customers repeatedly declined to use the data or otherwise participate in the certificate proceeding using that data. *See id.* In fact, they maintained that every opportunity it had to comment was futile, because they received the data incurably late. So never, not once, did the Customers accept FERC's invitation to make a comment about the substance of the data they received.

We do not mean to suggest that agencies have carte blanche to delay the dissemination of documents relevant to a proceeding to interested parties until after the order has been issued. There may be cases where the tardy provision of the requested information is shown to come too late. But the Customers here have made no such showing. The Customers' due process claim ultimately fails because they have not demonstrated how the delay in disclosure caused any actual prejudice to their challenge. *See id.* ("Due process challenges to agency action are subject to the general prejudicial error rule."); *id.* (describing a showing of prejudice as "identify[ing]" what petitioners "would have done differently" if the documents in question had been produced earlier). The Customers could have done so in the two months between FERC's provision of the documents and the expiration of their time to present responsive arguments, and in the eight months that followed before they filed their opening brief in this court. Never did the Customers request an extension for time to respond. Never have they shared how much more time they required and why. The Customers have chosen not to explain how the tardy release of the Pipeline's annual flow data precluded them from making specific arguments or otherwise caused them any actual form of prejudice.

Even so, we note that despite the Customers' lack of comment, the Commission still considered ample sources of the Pipeline's flow data and even asked for supplemental information related to the same. As required by its ordinary procedure, the Commission considered the Pipeline's flow and capacity data, including the Exhibit Gs. *See* 18 C.F.R. § 157.14(a)(8)–(10). The Commission even reviewed updated Exhibit G data from the Pipeline. There was no prejudice, and this is what dooms the Customers' due process claim.

For similar reasons, the Customers' arbitrary and capricious claim also cannot succeed. The Commission was no stranger to the Customers' particular wishes for additional showings of flow data. Based on the Customers' initial protests, FERC asked the Pipeline to defend the System Alignment Program with such evidence. In response, the Pipeline used its flow data to assert that alternative measures could no longer provide its customers reliable access to gas. FERC, accordingly, and repeatedly, reached out to the Pipeline to obtain additional flow data before an order was issued. And this was information that the Pipeline readily provided.

FERC also took the step of requesting and reviewing purchase agreements from the Pipeline to further substantiate the Pipeline's claims about its flow data. Specifically, FERC sought evidence to show that the Pipeline had been forced to rely on purchases of gas because of its inability to rely on its own gas flow supply to serve its customers and avoid service disruptions. The Commission considered all this flow data and corroborative evidence, among other record information, before it issued the challenged orders. This satisfies the substantial evidence standard. *B&J Oil & Gas v. FERC*, 353 F.3d 71, 77 (D.C. Cir. 2004) (concluding a "data-rich evidentiary record" satisfied the substantial evidence standard). Further, the Customers' ongoing silence on the docket "leaves us with no basis for concluding that FERC's decision is unsupported by substantial evidence." *Id.* at 78; *see also Prohibition Juice Co. v. FDA*, 45 F.4th 8, 25 (D.C. Cir. 2022) (concluding that vacatur was "unwarranted" when "petitioner had ample opportunity" but still "failed to show that an agency error harmed it").

Accordingly, in our view, FERC was exhaustive in collecting and reviewing the data needed to conclude that the Pipeline earned its Certificate. The Customers did not suffer from the Commission's thoughtful review of data even more fulsome than what the Customers earlier sought. Thus, we conclude that FERC properly conducted its proceedings to review the Pipeline's proposed developments to this stretch of our interconnected energy system. The wheel turns. The petitions for review are denied.

So ordered.