
**In the United States Court of Appeals
for the District of Columbia Circuit**

No. 26-1086

IN RE CENTRAL MAINE POWER COMPANY, *et al.*,
Petitioners.

ON PETITION FOR EXTRAORDINARY WRIT UNDER THE
ALL WRITS ACT TO STAY ORDER
OF THE FEDERAL ENERGY REGULATORY COMMISSION

**OPPOSITION OF RESPONDENT
FEDERAL ENERGY REGULATORY COMMISSION
TO ALL WRITS ACT PETITION**

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MAY 15, 2026

**CERTIFICATE AS TO PARTIES, RULINGS,
AND RELATED CASES**

A. Parties:

The parties appearing before this Court and before the Federal Energy Regulatory Commission are as stated in the All Writs Act petition.

B. Ruling under review:

Coakley v. Bangor Hydro-Elec. Co., Opinion No. 594, 194 FERC ¶61,208 (Mar. 19, 2026), *reh'g applications filed*, *Coakley v. Bangor Hydro-Elect. Co.*, FERC Dkt. Nos. EL11-66, *et al.* (Apr. 20, 2026) (pending with the Commission).

C. Related Ruling:

Coakley v. Bangor Hydro-Elec. Co., “Order Denying Motion for Stay,” 195 FERC ¶61,108 (May 13, 2026).

D. Related cases:

This case concerns the review of an order of the Federal Energy Regulatory Commission that was issued on remand from this Court’s decision in *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017). This case is related to *Central Maine Power v. FERC*, Dkt. No. 20-1329 (D.C. Cir.), which is in abeyance pending the outcome of agency proceedings, including the proceeding here on review. This case also involves substantially similar issues to those presented in *MISO Transmission Owners v. FERC*,

Nos. 25-1045, *et al.* (D.C. Cir.) (oral argument held March 17, 2026; decision pending).

/s/ *Jared B. Fish*
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INTRODUCTION

On March 19, 2026, the Federal Energy Regulatory Commission issued Opinion 594, in which it determined that New England ratepayers had been charged unlawfully high electric rates for years. That conclusion flows from this Court’s rejection of the Commission’s earlier, higher rate, established in orders this Court vacated in *Emera Maine v. FERC*, 854 F.3d 9 (D.C. Cir. 2017). Specifically, Opinion 594 finds that Petitioners New England Transmission Owners (“Owners”) benefitted from charging an unreasonably high return-on-equity rate (“Return”) for their transmission facility investments. That high Return was passed through to consumers,

hiking their electric bills. To make ratepayers whole, Opinion 594 directs the Owners to refund to ratepayers the difference between the higher Return charged and the lawful, “just and reasonable” Return the Commission set in Opinion 594. Ordering such refunds falls squarely within the Commission’s authority to correct ratemaking errors identified by a court.

The Owners have more than a year, until May 20, 2027, to make refund payments. In fact, on April 14, 2026—the same day the Owners filed their emergency All Writs Act petition with this Court—the Commission extended the payment deadline from 30 days to 427 days, per the Owners’ request, thus eliminating any basis for seeking urgent judicial action. In the meantime, the Opinion 594 agency proceeding is ongoing. The Owners requested agency rehearing of Opinion 594 less than a month ago, on April 20, and the Commission is considering their request. Should rehearing be denied, the Federal Power Act provides an avenue *at that time* for the Owners to challenge the refund obligation in this Court.

The Owners, however, have chosen a different approach. Instead of waiting for the Commission to decide their rehearing request and seeking judicial review in the normal course, the Owners ask this Court to grant an emergency stay of the challenged Opinion 594 refund obligation, advanced

through an extraordinary All Writs Act petition. The Owners’ stay application is meritless. Economic harms, which can later be remedied, do not constitute the type of *irreparable* harm necessary to warrant a stay of agency action. And here, any refunds paid pursuant to Opinion 594 are remediable: Should the Court decide a petition challenging the refund obligation after the May 2027 refund-payment deadline, and should the Court deem that obligation unlawful, any refunds already paid *by* that deadline can be recouped by the Owners. Tellingly, the Owners make no argument otherwise. The Owners’ emergency All Writs Act stay request should be denied.

BACKGROUND

I. The Commission’s recent Opinion 594 directs Transmission Owners to pay the challenged refunds to address errors this Court earlier identified in *Emera Maine*

Section 206 of the Federal Power Act, 16 U.S.C. §824e, requires the Commission—either upon its own investigation or upon third-party complaint—to remedy a rate it deems unjust or unreasonable and replace it with a “just and reasonable” rate. *FERC v. Elec. Power Supply Ass’n*, 577 U.S. 260, 277 (2016) (discussing 16 U.S.C. §§824d, e). Section 206 sets forth a two-step process. First, the Commission must decide if the existing rate is

unjust or unreasonable. *Emera Me.*, 854 F.3d at 24–25. If it is, then, at step two, the Commission must “fix”—i.e., set—a replacement “just and reasonable” rate. *Id.*; §824e(a).

In its 2014-issued Opinion 531, the Commission granted a Section 206 complaint filed by consumer-aligned groups (“Consumers”), deeming the then-effective 11.14% Return charged by the Owners¹ to be unjustly high and preliminarily setting a lower replacement rate of 10.57%. *Coakley v. Bangor Hydro-Elec. Co.*, Opinion No. 594, 194 FERC ¶61,208, P 11 (2026). Later that year, on rehearing in Opinion 531-A, the Commission confirmed its initial determination and made the 10.57% Return effective as of October 16, 2014—the date of Opinion 531-A. *Id.*

Several groups, including the Owners and Consumers, petitioned for judicial review of the Opinion 531 orders in this Court. *Id.* P 15. In its 2017 *Emera Maine* decision, the Court vacated the Commission’s orders and remanded for further agency proceedings. 854 F.3d at 30. Among other things, the Court agreed with Consumers that FERC failed to adequately show that the 10.57% Return—which was at the higher end of the

¹ The Return applies to transmission owners within the footprint of the ISO-New England regional market operator. *See Emera Me.*, 854 F.3d at 15–16.

FERC-determined zone of reasonableness—was, in fact, “just and reasonable.” *Id.* at 27. The Court observed that, traditionally, the agency had set a utility’s Return “at the midpoint of the zone of reasonableness”—which would have produced a lower Return of 9.39% in this matter. *Id.* And while the Commission may, in its discretion, choose a different rate within the zone, it failed to justify the 10.57% Return in this proceeding. *Id.* at 27–28.

On remand from *Emera Maine*, the Commission established a paper hearing to develop a Return methodology that would withstand judicial scrutiny. Opinion 594 P 19. After considering numerous submissions by the Owners, Consumers, and others, the Commission found that, to fix a “just and reasonable” Return, it should consider multiple financial models. *Id.* PP 19, 60–69. Specifically, the Commission decided to rely on two models that produce zones of reasonableness—Discounted Cash Flow and the Capital-Asset Pricing Model—to establish a composite zone of reasonableness. *Id.* PP 69–73.

The Commission also stated, in its 2018 Briefing Order soliciting stakeholder input, that the ultimately determined Return would be effective as of October 16, 2014—i.e., the date the judicially-rejected 10.57% Return was fixed in Opinion 531-A. *Coakley v. Bangor Hydro-Elec. Co.*, 165 FERC

¶61,030, PP 14, 60 (2018) (“2018 Briefing Order”). That approach is consistent with decades of judicial precedent. Case law dating back to 1965 confirms the Commission’s authority to make a new rate effective as of the date it originally established an initial rate—where the initial rate was later rejected on judicial review. *See, e.g., Okla. Gas & Elec. Co. v. FERC*, 11 F.4th 821, 831 (D.C. Cir. 2021) (explaining that FERC lawfully “make[s] retroactive changes to the rates” “when a court invalidates a filed rate as unlawful”); *accord United Gas Improvement Co. v. Callery Props., Inc.*, 382 U.S. 223, 229–230 (1965); *La. Pub. Serv. Comm’n v. FERC*, 866 F.3d 426, 431 (D.C. Cir. 2017); *Pub. Utils. Comm’n v. FERC*, 988 F.2d 154, 162 (D.C. Cir. 1993). Such backdating is “the proper remedy” because it “puts the parties in the position they would have been in had the error not been made.” *Off. of Consumers’ Counsel v. FERC*, 826 F.2d 1136, 1139 (D.C. Cir. 1987).

In 2019, the Owners predicted that the Commission would ultimately fix a Return significantly lower than the 10.57% rate the Court rejected in *Emera Maine*. In a filing with the Commission, the Owners explained that, “[b]ased on the [New England Transmission Owners’] preliminary analysis,” the Commission’s revised approach in another proceeding, “when

applied to the record in this case, produces a base [Return] of 9.84%.”

Coakley v. Bangor Hydro-Elec. Co., Supplemental Filing of the New England Transmission Owners, FERC Dkt. Nos. EL11-66, *et al.*, at 28–29, 52 (Dec. 23, 2019), <https://perma.cc/Q7RB-T69P>.

The Owners’ forecast of a significantly lower Return proved prescient. In the recently-issued Opinion 594—the subject of the Owners’ All Writs Act petition—the Commission fixed a Return of 9.57%.² Opinion 594 P 44. Consistent with *Emera Maine*’s observation that “FERC typically sets a utility’s base [Return] at the midpoint of the zone of reasonableness,” 854 F.3d at 27, the 9.57% rate reflects “the midpoint of the composite zone of reasonableness,” Opinion 594 P 44. And consistent with the Commission’s well-established authority to correct its errors after judicial remand, FERC

² The Commission’s March 2026 issuance of the unanimous and lengthy 329-page Opinion 594 reflects a reasonable sequencing with a related matter. *Emera Maine* caused the Commission to revisit the Returns in both ISO-New England *and* another regional market operator, the Midcontinent Independent System Operator. After this Court rejected the revised Midcontinent-relevant Return in *MISO Transmission Owners v. FERC*, 45 F.4th 248 (D.C. Cir. 2022), the Commission on remand set about developing lawful Returns in both regions. The revised Midcontinent Return has been challenged in *MISO Transmission Owners v. FERC*, Nos. 25-1045, *et al.* (D.C. Cir.), which was argued on March 17, 2026 (decision pending). Two days later, the Commission issued Opinion 594 in the ISO-New England proceeding.

set the 9.57% Return as of October 16, 2014—the date of the judicially-rejected Opinion 531-A. *Id.* PP 44, 474–475. Finally, to effectuate the 2014 effective date, the Commission directed the Owners to refund to ratepayers the difference between the prior-in-effect higher rate of 10.57% and the lower, “just and reasonable” rate of 9.57%. *Id.* P 476; 2018 Briefing Order P 14 (explaining that the Owners have been charging the 10.57% rate notwithstanding *Emera Maine’s* vacatur of Opinion 531-A).

II. The FERC Opinion 594 proceeding remains ongoing

Before an aggrieved party may seek judicial review of a FERC order, it must afford the Commission an opportunity to revise that order by seeking agency rehearing within 30 days. 16 U.S.C. §825l(a)–(b). The Owners sought rehearing of Opinion 594 on April 20, 2026. *See Coakley v. Bangor Hydro-Elec. Co.*, New England Transmission Owners Rehearing Request, FERC Dkt. Nos. EL11-66, *et al.* (Apr. 20, 2026), <https://perma.cc/TLZ9-7H5W>. Until the Commission files the agency record with a court of appeals, it may respond to any request for rehearing by issuing a reasoned rehearing order. *Allegheny Def. Project v. FERC*, 964 F.3d 1, 13, 16–17 (D.C. Cir. 2020)

(en banc)³; 16 U.S.C. §825l(b). Only at that point is the agency proceeding final and complete. *Cf. Adorers of the Blood of Christ v. FERC*, 897 F.3d 187, 195 (3d Cir. 2018) (explaining that “administrative exhaustion” occurs once the court obtains “exclusive” jurisdiction over a FERC matter, which happens only after the Commission files the agency record with the court of appeals). The Commission is currently assessing the Owners’ recently-filed rehearing application.

Separately, on April 2, the New England Transmission Owners lodged two filings with the Commission, dealing with the timing and effectiveness of Opinion 594. In one, the Owners requested that the Commission extend Opinion 594’s disputed refund-payment deadline from April 20, 2026 (i.e., 30 days from issuance of Opinion 594, as directed by that order, *see* Opinion 594 Ordering P (B)) to December 13, 2027. *Coakley v. Bangor Hydro-Elec. Co.*, Refund Deadline Extension Request, FERC Dkt. Nos. EL11-66, *et al.* (Apr. 2, 2026), <https://perma.cc/S4JF-MNJU>. In the other filing, a subset

³ While *Allegheny Defense Project* involved the Natural Gas Act, it is well-established that “the relevant provisions of the [Federal Power Act and Natural Gas Act] are analogous,” meaning “[t]his Court has routinely relied on [Natural Gas Act] cases in determining the scope of the [Federal Power Act], and vice versa.” *Hughes v. Talen Energy Mktg., LLC*, 578 U.S. 150, 164 n.10 (2016).

of the New England Transmission Owners—Eversource Energy Service Company, Central Maine Power Company, and The United Illuminating Company (the latter two of which are subsidiaries of Avangrid Networks, Inc.)—filed a motion to stay Opinion 594’s obligation that all Owners pay refunds dating back to October 2014. *Coakley v. Bangor Hydro-Elec. Co.*, Refund Stay Request, FERC Dkt. Nos. EL11-66, *et al.* (Apr. 2, 2026), <https://perma.cc/JGT6-DCZC>. Dozens of parties filed responsive filings with the Commission; all but the Owners and the Connecticut Business and Industry Association opposed a stay. *See Coakley v. Bangor Hydro-Elec. Co.*, “Order Denying Motion For Stay,” 195 FERC ¶61,108, PP 12–27 & n.37 (May 13, 2026) (“May 13 Stay Order”). On May 13, the Commission denied the stay request. *Id.* P 1.

Just 12 days after submitting their agency stay request, on April 14 those same Owners filed the emergency All Writs Act petition. The petition urges the Court to preempt the Commission’s deliberation on the Owners’ agency stay request and impose a judicial stay. These Owners claim that they have been irreparably harmed by Opinion 594’s “[30-day] deadline” for paying refunds, which they argue they “cannot meet.” Owners’ April 14 All Writs Act Petition at 12–13 (“Pet.”).

That same day, the Commission extended the deadline for all Owners to pay refunds by 395 days—to May 20, 2027. *Coakley v. Bangor Hydro-Elec. Co.*, “Notice of Extension of Time,” FERC Dkt. Nos. EL11-66, *et al.* (Apr. 14, 2026), <https://perma.cc/9ZSG-HJ46>. The extension affords the Commission time to address the Owners’ rehearing request and—if the Commission ultimately sustains Opinion 594’s refund directive—for the Owners to seek judicial review of that order in the normal course. *See Allegheny Def. Project*, 964 F.3d at 13, 16–17; 16 U.S.C. §825l(b). The Owners responded on April 17 by filing with this Court a supplemental All Writs Act submission, in which they argue that the extension “has no bearing on the[ir] Petition,” that “[n]othing material has changed,” and that they remain entitled to an emergency judicial stay. Owners’ April 17 Supplemental All Writs Act Submission at 2–3 (“Supp. Pet.”).

SUMMARY OF ARGUMENT

Relief under the All Writs Act is extraordinary and rare. It is available only if a stay pending appeal is unavailable *and* if the aggrieved party would suffer irreparable harm absent a stay. In addition, the stay applicant must make a strong showing that it is likely to succeed on the merits and that a stay is in the public interest.

I. The Owners’ All Writs Act petition fails to meet these demanding standards. This Court has admonished litigants that economic injuries, which are later remediable, do not constitute irreparable harm. Yet that is all that the Owners show here. For one thing, the Owners have no obligation to pay refunds pursuant to Opinion 594 until May 20, 2027—more than a year from now. And even if, in the normal course of judicial review, the Court ultimately deemed the refund obligation unlawful, and even if it issued such decision *after* the Owners began distributing refunds, the Court and Commission indisputably have the power to order recoupment of any refunds already disbursed. Thus, any harm the Owners might sustain is manifestly not irreparable.

Attempting to dodge this Court’s stay standard, the Owners make the incredible assertion that allotting them more than a year to satisfy their refund obligations is “not[] material” to deciding whether they suffer irreparable harm *now* due to that obligation. The Owners reason that the bare existence of such future liability could precipitate an array of business harms in the near-term—e.g., credit-rating downgrades and “pressure on liquidity and cash flow.” These claims, however, lack the requisite proof and are otherwise speculative.

More broadly, this Court has never deemed generalized business impacts to constitute irreparable harm justifying a stay, and on-point case law holds that they do not. That makes sense. Numerous agency decisions affect regulated entities' businesses. Under the Owners' expansive theory of irreparable harm, extraordinary stays would be transformed from the rare exception into the common rule.

II. The Owners' failure to demonstrate irreparable harm is dispositive and fatal to their extraordinary stay application. But it is worth noting that the Owners also do not satisfy the other stay factors. For one thing, they are not likely to succeed on the merits. Binding precedent confirms the Commission's authority to order refunds reflective of a new rate, where the new rate corrects an error identified by the court—here, by this Court in *Emera Maine*. The Commission does not brief that issue here, however, in deference to the arguments the Commission might later advance in responding to the Owners' pending agency rehearing request.

Further, the public interest would be disserved by staying Opinion 594's refund obligation. Congress charged the Commission with protecting ratepayers from unjust or unreasonable electric rates. In Opinion 594, the Commission determined that the Owners' original, pre-Opinion 531 Return

of 11.14% was unjustly high, and deemed a Return of 9.57% to be “just and reasonable.” As the agency tasked with protecting the public against unlawful rates, this Court has recognized that the Commission’s setting of “just and reasonable” rates *demonstrates* the public interest. Dozens of entities—States, utilities, and consumer groups—agree, as reflected by their vigorous opposition to the Owners’ agency stay request.

III. Finally, the Owners’ request for an extraordinary stay runs afoul of this Court’s rules. A party seeking relief in this Court must seek *and obtain* a decision on a stay request presented to the agency before petitioning for a judicial stay. The Owners sought a stay of Opinion 594 with the Commission on April 2, 2026. Yet instead of waiting for the agency to act on that request, the Owners leapfrogged the agency process by seeking immediate relief with this Court. Even if Opinion 594’s original, 30-day deadline to make refund payments justified such a maneuver, any such rationale evaporated once the Commission extended the deadline by 395 days. The proper course at that point was for the Owners to withdraw their emergency petition. Instead, they dug in, boldly insisting that “[n]othing material has changed.”

ARGUMENT

I. Standard of Review

“Relief under the All Writs Act is an extraordinary remedy that may be invoked only if the statutorily prescribed remedy is clearly inadequate.” *In re NTE Conn., LLC*, 26 F.4th 980, 987 (D.C. Cir. 2022) (quoting *Reynolds Metals Co. v. FERC*, 777 F.2d 760, 762 (D.C. Cir. 1985)) (cleaned up). In other words, an All Writs Act petition seeking to stay agency action is appropriate only if an otherwise authorized “stay pending appeal is not available to prevent irreparable injury.” *Id.* (quoting *Reynolds*, 777 F.2d at 762).

Assuming the prerequisites for All Writs Act relief exist, the aggrieved party must satisfy the “well established requirements ... for [a] stay pending appeal.” *Id.* (quoting *Reynolds*, 777 F.2d at 762). The Court

must consider “(1) whether the stay applicant has made a strong showing that it is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure other parties interested in the proceeding; and (4) where the public interest lies.”

Id. (quoting *Nken v. Holder*, 556 U.S. 418, 434 (2009)). Failure to prove irreparable harm is dispositive and thus fatal to a stay application. *Clevinger v. Advocacy Holdings, Inc.*, 134 F.4th 1230, 1236 (D.C. Cir. 2025); *Wis. Gas*

Co. v. FERC, 758 F.2d 669, 674 (D.C. Cir. 1985); *see also Alpine Secs. Corp. v. Fin. Indus. Regul. Auth.*, 121 F.4th 1314, 1328 (D.C. Cir. 2024) (all four factors, including a showing that petitioner “will suffer irreparable harm without a stay,” must be satisfied).

II. The Owners suffer no cognizable, imminent harm, much less *irreparable* harm

“Ordinarily, ‘economic loss does not, in and of itself, constitute irreparable harm.’” *NTE*, 26 F.4th at 990 (quoting *Wis. Gas*, 758 F.2d at 674). Indeed, “in most circumstances financial harms can be remedied through subsequent legal action.” *Id.* Only if economic loss sustained pending judicial review cannot later be redressed *upon* judicial review, or if the challenged action “threatens the very existence of [the aggrieved party’s] business” absent a stay, can that party demonstrate irreparable harm. *Id.*; *Wis. Gas*, 758 F.2d at 674.

Further, the averred “injury must be both certain and great; it must be actual and not theoretical.” *Wis. Gas*, 758 F.2d at 674. That means “the injury complained of is of such *imminence* that there is a clear and present need for equitable relief to prevent irreparable harm.” *Id.* (cleaned up). “[F]ear[.]” that an injury is “liable to occur at some indefinite time” does not suffice. *Id.* (quoting *Connecticut v. Massachusetts*, 282 U.S. 660, 674

(1931)). Nor are allegations that a harm is “likely to occur” adequate absent “proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future.” *Id.* Finally, the stay applicant must show causation—i.e., “that the alleged harm will directly result from the action which the movant seeks to enjoin.” *Id.*

The Owners must comply with each of these strictures; they flunk all of them. Any refunds owed pursuant to Opinion 594 are due in more than a year, not imminently; those refunds are recoverable, not irremediable; and the Owners’ feared business risks are not the type of injuries that support an irreparable harm claim and, in any event, lack the requisite proof. *See* May 13 Stay Order PP 37–41.

A. Any refunds the Owners owe are not due for more than a year and are, in any event, remediable

1. The Commission’s recent Opinion 594 requires the Owners to pay refunds for unlawfully high Returns that they charged ratepayers dating back to 2014. Opinion 594 PP 44, 474–475. Yet the Owners are not required to make good on their refund obligation until May 20, 2027—more than a year from now. *See* FERC Notice of Extension of Time at 5. That is the polar opposite of the required “*imminen[t]*” harm that might justify an extraordinary stay. *Wis. Gas*, 758 F.2d at 674. Lest there be any doubt on

this score, a May 2027 deadline affords the Commission a reasonable period to decide the merits of the Owners’ objections to Opinion 594’s refund instruction on rehearing, and—should the agency sustain that outcome—for the Owners to petition for judicial review in the normal course. *See* 16 U.S.C. §825l(a)–(b).

The same result obtains even were the Court to issue a decision on a petition for review *after* the May 2027 deadline. The Court and Commission have the “unquestioned power” to order recoupment of any refunds unlawfully disbursed. *See Reynolds*, 777 F.2d at 763; *TNA Merchant Projects, Inc. v. FERC*, 857 F.3d 354, 361–362 (D.C. Cir. 2017); *see also* May 13 Stay Order PP 37–38 (“[T]here is a remedy to recover refunded amounts in the event the Commission’s decision is reversed or revised.” (cleaned up)). In *Reynolds*, the stay applicant alleged “direct, immediate and severe harm in the form of huge additional costs” that it would bear pending resolution of FERC’s action on judicial review. 777 F.2d at 763 (cleaned up). Yet even there, the Court held that such allegations of *irreparable* harm were “frivolous” given the clear authority of both the Commission and the Court to later require such costs—if deemed unlawful—to be “recouped.” *Id.* (cleaned up); *see also Chaplaincy of Full Gospel Churches v. England*, 454

F.3d 290, 298 (D.C. Cir. 2006) (relied upon by the Owners (Pet. 16), yet finding no irreparable harm where lost compensation could be recovered upon judicial reversal); *Wis. Gas*, 758 F.2d at 672, 675 (deeming a stay application “frivolous” even where monetary harms were only *potentially* recoverable).

TNA Merchant Projects bolsters this conclusion. There, the Court explained that the Commission acts well within its remedial discretion in ordering recoupment of erroneously disbursed refunds. 857 F.3d at 361–362. No surprise, then, that the Owners advance no argument that refunds paid pursuant to Opinion 594 are not recoverable—indeed, they acknowledge that such outlays may be recouped. *See* Pet. 26 (asserting that the refunds could be reversed); May 13 Stay Order P 38 (same). Nor do the Owners allege—much less proffer the requisite proof—that notwithstanding such recoverability, the refunds “threaten[] the very existence of the[ir] ... business[es].” *Wis. Gas*, 758 F.2d at 674; *accord Clevinger*, 134 F.4th at 1235 (requiring a showing that “financial injury [is] so great as to threaten [the movant’s] continued existence”); *see also* May 13 Stay Order PP 39–40.

2. The Owners rely on this Court’s decision in *NTE* granting a stay, but that case hurts rather than helps their irreparable harm claim. Unlike here,

NTE involved concrete, imminent, and irremediable economic injury. Specifically, the challenged FERC order would have barred petitioner NTE—the owner of an electric generation facility—from “participat[ing] in the 2022 [electric] capacity auction,” to be held approximately two weeks hence. 26 F.4th at 986–987. That circumstance would have “deprived [NTE] of ... millions of dollars,” which likely “could not be recovered after the auction.” *Id.* at 987, 991 (cleaned up). In other words, an emergency stay of the Commission’s order was necessary to avert an imminent and permanent injury.⁴ *Id.* at 991; *see also Alcresta Therapeutics, Inc. v. Azar*, 755 Fed. Appx. 1, 5 (D.C. Cir. 2018) (also relied upon by the Owners (Pet. 17), yet finding irreparable harm where, unlike here, the movant was “highly unlikely ... [to] be able to recover from the government its lost revenues,” and losses “threaten[ed] the very existence of the movant’s business” (quoting *Wis. Gas*, 758 F.2d at 674)); *Texas v. EPA*, 829 F.3d 405, 433 (5th Cir. 2016) (also relied upon by the Owners (Pet. 16), yet finding irreparable harm where, unlike here, \$2 billion in “nonrecoverable” compliance costs would be

⁴ The extraordinary stay in *NTE* did not last long. The Court dissolved the stay less than a month later after the Commission issued a merits order on rehearing that addressed deficiencies the Court identified in FERC’s initial order in the implicated agency proceeding. Order, *In re NTE Conn., LLC*, No. 22-1011 (D.C. Cir.), Doc. 1937375 (Mar. 2, 2022).

incurred “almost immediately,” which would likely cause “permanent” power plant closures and “threaten[] the very existence of the movant[s’] business[es]” (cleaned up)); *Nemer Jeep-Eagle, Inc. v. Jeep-Eagle Sales Corp.*, 992 F.2d 430, 435–436 (2d Cir. 1993) (also relied upon by the Owners (Pet. 19), yet, like their other inapposite authorities, involving a “threat[]” to the “continued existence” of the movant’s business).

This matter is nothing like *NTE*, *Alcresta*, *Texas*, or *Nemer Jeep-Eagle*. No emergency exists: The Owners owe no refunds until May 2027, and those refunds are recoverable should the Court reject their lawfulness in the normal course of judicial review.

B. The Owners’ conjectured business impacts from carrying a refund obligation do not constitute irreparable harm

That the ordered refunds are compensable if the Court were to ultimately reject them as unlawful is dispositive. But the Owners also argue that various business impacts with a professed connection to the Opinion 594 refund obligation independently constitute irreparable harm. Pet. 13–18. They speculate that simply carrying the refund obligation on their books might result in higher borrowing costs, credit-rating downgrades, and “severe and immediate pressure on liquidity and cash flow.” *E.g., id.* at 13–14.

1. The Owners’ business-impacts theory of irreparable harm is meritless. Indeed, the Owners cite no case from this Court standing for the proposition that an agency order’s downstream, indirect impacts on a business’s financial metrics can give rise to a claim of irreparable harm. That makes sense for two reasons. *First*, any number of market factors can influence a company’s finances. It would be exceedingly difficult to prove that fluctuations in, say, a company’s market capitalization over time occur as a “direct[] result” of a challenged agency action and not for other market or regulatory reasons. *See Wis. Gas*, 758 F.2d at 674. Similarly, because numerous factors impact a company’s financial state at any given time, it is possible that “corrective relief will be available at a later date”—e.g., that any dip in market capitalization will be resolved by the time judicial review concludes. *See id.* (cleaned up).

Second, the Owners’ business-impacts theory of irreparable harm would open the floodgates to extraordinary stay requests. Virtually any agency order that pertains to a business will have some impact on that business’s finances. If a litigant needed to show only conjectured—even likely—prospects of “credit-rating downgrades,” “higher borrowing costs,” and “diver[sions] [of] significant liquidity,” the number of stay applications

would explode. *See* Pet. 13–17. The “extraordinary remedy” of a stay would be transformed from the emergency exception into the general rule. *Cf. NTE*, 26 F.4th at 987 (quoting *Reynolds*, 777 F.2d at 762).

2. Finding no binding authority to support their sweeping theory of irreparable harm, the Owners resort to extra-circuit district court cases that are uniformly inapposite. In *Winnebago Tribe of Nebraska v. Stovall*, 216 F. Supp. 2d 1226, 1232–1233 & n.4 (D. Kan. 2002) (Pet. 18), the court found irreparable injury where “the issues concern[ed] [(1)] the scope of tribal sovereignty, an issue that can not be measured in [recoverable] dollars”; (2) prior seizure of property, which threatened plaintiffs’ business; (3) lost revenue that prevented the funding of government services, and (4) already-occurred near-total-loss of access to credit and a downgraded credit rating. Those circumstances—involving the non-compensable issue of compromised tribal sovereignty and proven economic harms—are worlds removed from the facts here. *See also Winnebago Tribe of Neb. v. Stovall*, 341 F.3d 1202, 1206 (10th Cir. 2003) (affirming the district court’s decision and noting “the district court’s explicit recognition that *more than economic damages* were at stake” (emphasis added)).

Painewebber Inc. v. Nwogugu, No. 98 Civ. 2441, 1998 WL 545327 (S.D.N.Y. Aug. 26, 1998) (Pet. 18), is also afield. There, the court had already determined that a \$1.9 billion debt obligation, set forth in financing statements filed by the defendant, was “false and fraudulent.” *Id.* at *2. The only questions were whether to permanently enjoin the defendant from repeating the offense, and whether to allow the plaintiff to discharge the previously filed statements. *Id.* Here, by contrast, no court has even considered, much less determined, the lawfulness of Opinion 594’s refund obligation.

Long Island Lighting Co. v. County of Suffolk, 628 F. Supp. 654, 661 (E.D.N.Y. 1986) (Pet. 18), is similarly wide of the mark. That case involved an immediate economic loss of more than \$100 million, the risk that an electric utility would violate its generation reserve requirements, an inability for the utility to secure compensation for monetary losses caused by the challenged law, and “threaten[ed] ... destruction of an on-going business concern.” *Id.* The court held that these facts combined supported a finding of irreparable harm. *Id.* Again, here, the Owners make no argument that the very existence of their businesses is jeopardized by a future obligation to pay refunds. *See also St. Albans Co-op. Creamery, Inc. v. Glickman*, 68 F.

Supp. 2d 380, 385–386 (D. Vt. 1999) (Pet. 18) (finding irreparable harm where dairy farmers stood to “immediate[ly]” incur “devastating” losses of hundreds of millions of dollars due to a challenged agency milk pricing system, which losses were unrecoverable).

To the extent this Court seeks guidance from extra-circuit decisions, those cases that are closer analogues cut sharply against the Owners: They stand for the proposition that credit-rating downgrades and other business impacts do *not* amount to legally significant “irreparable harm” absent a showing of business destruction. *See, e.g., In re Mirant Corp.*, No. 03-46590, 2004 WL 3203309, at *3 (Bankr. N.D. Tex. Dec. 21, 2004) (no irreparable harm notwithstanding a potential credit-rating downgrade, even though such downgrade could cost the utility approximately \$10 million per year, because such losses did not threaten the utility with insolvency); *Gen. Transp. Servs. v. Kemper Ins. Co.*, No. 5:03-cv-620, 2003 WL 21703635, at *3–4 (N.D.N.Y. June 25, 2003) (no irreparable harm notwithstanding a risk of insolvency, even though the defendant defaulted on \$700 million of its notes and sustained a credit-rating downgrade); *see also WestLB AG v. BAC Fla. Bank*, No. 11 Civ. 5398, 2012 WL 3135825, *5 (S.D.N.Y. Aug. 2, 2012) (no irreparable harm absent concrete evidence of business insolvency).

3. Even if the Owners’ business-impacts theory of irreparable harm were viable in some generic sense, the Owners fail to substantiate such a claim in *this* case. A stay “movant must provide proof that the harm has occurred in the past and is likely to occur again, or proof indicating that the harm is certain to occur in the near future,” that “corrective relief will [not] be available at a later date,” and that “the alleged harm will directly result from the action which the movant seeks to enjoin.” *Wis. Gas*, 758 F.2d at 674 (cleaned up).

The Owners fall short of these standards. They do not prove, beyond “[b]are allegations of what is likely to occur,” that their feared business impacts “will *in fact* occur.” *Id.* Nor do they prove that risks of “liquidity and cash flow” issues, “credit-rating downgrades and higher borrowing costs,” and the like (*e.g.*, Pet. 14) could not be “correct[ed]” during the pendency of judicial review—*e.g.*, through the natural vicissitudes of the market or regulatory actions at the state level. *See Wis. Gas*, 758 F.2d at 674; May 13 Stay Order P 44 (explaining that state public utility commissions “oversee the setting of retail rates,” which could affect the Owners’ finances (cleaned up)). And, finally, the Owners do not prove that such impacts—even if their imminent occurrence were substantiated—would be the “direct[] result” of

the Opinion 594 refund obligation rather than other regulatory or market factors. *Wis. Gas*, 758 F.2d at 674. The Owners’ failure to meet any one of these criteria sinks their claim to irreparable harm.

If anything, recent events undercut the Owners’ warnings of imminent financial distress. In their April 17 supplemental submission, the Owners assert that just carrying Opinion 594’s “refund obligation” on their books for the next year “would still damage the [Owners’] credit metrics by pushing their operation-funds-to-debt ratios below established downgrade thresholds.” Supp. Pet. 2; Pet. 13–14 & Exh. B, Attach. A (Moreira Aff.)

¶¶11–14. But that speculation is in tension with Eversource’s 2026 first-quarter earnings report, released 20 days later, which touts the company’s “[p]rojected 2026–2030 [funds from operations] to Debt” as being “100 [basis points] above S&P and Moody’s downgrade thresholds each year.” Eversource Energy Q1 2026 Earnings Report at 12 (May 7,

2026), <https://perma.cc/P2BL-U6HV>; see also *Coakley v. Bangor*

Hydro-Elec. Co., Opposition to New England Transmission Owners’ Stay

Request Filed by States, Consumer Groups, and Utilities, FERC Dkt.

Nos. EL11-66, at 6 (Apr. 13, 2026) (“Stay Opponents’ Opposition”),

<https://perma.cc/4NQU-Q4PP> (“More troubling, the story Eversource

affiant Moreira tells concerning the company’s financial state looks nothing like the version Eversource is presenting to the outside world.”).

Similarly, the Owners’ stay application asserts that, even with the 395-day extension, the “refund obligation would still force the [Owners] to delay planned capital projects and put essential infrastructure investments on hold.” Supp. Pet. 2; *see also* Pet. Exh. B, Attach. A (Moreira Aff.) ¶¶24, 26–27 (claiming that the “refund obligation ... increas[es] the likelihood that Eversource would be compelled to reduce capital expenditures,” “defer[] capital projects,” and “forego[]” building “needed infrastructure”). But such dire—and speculative—predictions are tempered by Eversource’s recent public statements. For example, in a May 7, 2026 Securities and Exchange Commission filing, Eversource proclaimed that it “expect[s] the future operating cash flows of Eversource [and its affiliates], along with our existing borrowing availability and access to both debt and equity markets, will be sufficient to meet any working capital and future operating requirements, and capital investment forecasted opportunities.” Eversource Energy U.S. Securities and Exchange Commission Form 10-Q, For the Quarterly Period Ended March 31, 2026, at 39 (May 7, 2026), <https://perma.cc/9JZJ-PKJ6>.

The Owners’ petition also observes that Eversource lost market capitalization within days of Opinion 594. Pet. 14–15 & Exh. B., Attach. A (Moreira Aff.) ¶17. But Eversource fails to prove that any such loss, even assuming it was wholly caused by Opinion 594, will persist absent a judicial stay—i.e., that it is irreparable. *See Wis. Gas*, 758 F.2d at 674. In fact, the available public data shows that, by May 1, Eversource had erased most of the loss incurred around the time of Opinion 594’s March 19 issuance. *Compare* Pet. 15 (claiming that Eversource’s “share price remains depressed”), *with* Stay Opponents’ Opposition at 8 n.20 (explaining that the difference between Eversource’s pre- and post-Opinion 594 share price reflects “a variation well within the norm of 30-day trading averages”); *see also* Eversource Energy (ES) Stock Price, <https://perma.cc/UQ22-RZVW> (last accessed May 15, 2026).

4. All of this shows why the Owners’ claimed business-impacts theory of irreparable harm fails. It is worth noting, however, that even if the Owners *had* proved imminent and concrete effects on their companies’ finances caused by Opinion 594’s refund obligation, their claim of irreparable harm would still lack merit. To show irreparable harm notwithstanding potential future “corrective relief,” a claimant must

demonstrate that any “monetary loss” pending judicial review “threatens the very existence of the movant’s business.” *Wis. Gas*, 758 F.2d at 674; *accord Clevinger*, 134 F.4th at 1235. Yet the Owners allege no looming insolvency, much less substantiate such a claim. Quite the opposite: Their forward-looking “statements all indicate that [the Owners] anticipate remaining in business and remaining responsible for operational stability, system planning and capital investments.” May 13 Stay Order P 40.

III. A stay is not in the public interest

The Owners’ failure to demonstrate irreparable harm is fatal to their stay request. *See supra* p.15; *see also supra* p.13 (indicating that the Owners’ likelihood-of-success-on-the-merits argument is premature given that the Commission is currently assessing the Owners’ merits arguments on agency rehearing). For the avoidance of doubt, the equities also strongly favor denying a stay. *See Nken*, 556 U.S. at 434. The third and fourth stay factors require the Court to consider whether issuing a stay would substantially injure other parties interested in the proceeding and where the public interest lies. *Id.* Where, as here, the Government is the opposing party, these considerations merge. *Id.* at 435.

1. The public interest plainly lies in preserving Opinion 594’s refund directive. *First*, the Commission is charged with “protect[ing] consumers from excessive rates and charges,” *NextEra Energy Res., LLC v. FERC*, 898 F.3d 14, 21 (D.C. Cir. 2018) (cleaned up), and here, the Commission determined that the “just and reasonable” Return it should have set in the 2014-issued Opinion 531-A was 9.57%, Opinion 594 P 44. Because the Commission is the “presumptive[] guardian of the public interest,” its views on the lawful Return “indicate[] the direction of the public interest” for purposes of deciding a stay request. *N. Atl. Westbound Freight Ass’n v. Fed. Mar. Comm’n*, 397 F.2d 683, 685 (D.C. Cir. 1968).

Second, Congress placed its thumb on the scale in favor of giving agency orders immediate effect. The Federal Power Act provides that neither “[t]he filing of an application for rehearing” nor “[t]he commencement of [judicial review] proceedings ... shall ... operate as a stay of the Commission’s order.” 16 U.S.C. §825l(c). Thus, the Owners’ paean to “preserv[ing] the status quo while judicial review proceeds” lacks persuasive force. *See* Pet. 3.

Third, as dozens of States, utilities, and consumer groups recently explained to the Commission, a stay would harm ratepayers. *See* May 13

Stay Order P 12 & n.37. For example, a stay would raise the risk that refunds owed to consumers, already deferred to May 2027, would be further delayed. *Id.* PP 17, 23, 25–26, 43 & n.104. That would exacerbate an expanding intergenerational inequity caused by the growing period between the date New England ratepayers began paying unlawfully high rates and the date they would receive corresponding refunds: The longer that refunds go unpaid, the less likely that ratepayers who paid excessive rates will benefit from the refunds. May 13 Stay Order PP 17 & n.44, 23, 25–26.

2. The Owners blithely dismiss any concerns with delaying refunds, asserting that, regardless of *when* they make payments (assuming the Court upholds Opinion 594), ratepayers will get the refunds *eventually*. *See* Pet. 27. But contending that such delay has “no negative impact on customers” (*id.*) elides ratepayers’ concrete, ongoing harms from paying higher rates in the interim. *See* May 13 Stay Order P 43 (finding that the Owners failed to demonstrate why ratepayers “would not be harmed if the stay was granted”). The Owners’ insouciance is particularly bold given their insistence that the refund obligation injures *them* and does so *regardless* of when it comes due. *See* Pet. 13–18; Supp. Pet. 2–3 (asserting that the “extension of the refund deadline has no bearing” on their irreparable harm

and is “not[] material” to their stay request). Apparently, the Owners believe that *they* suffer irreparable harm even before they owe ratepayers anything, yet ratepayers sustain “no negative impact” at all from being denied timely rate relief. *See* Pet. 27.

3. The Owners’ arguments defending a stay as serving the public interest are unpersuasive. They reason that denying a stay “risks the long-term stability” of their “operations,” with downstream effects on ratepayers (Pet. 26), but these assertions are rooted in speculative contentions and false facts. For example, the Owners argue that Opinion 594 saddles them with an “unexpected[] and massive financial burden.” *Id.* But the Owners’ avowed surprise is belied by their 2019 submission to FERC *anticipating* that the Commission would ultimately set a Return much lower than the 10.57% rate the Owners have charged in the interim. *See* Supplemental Filing of New England Transmission Owners at 28–29, 52; *supra* pp.6–7. Further, the Owners knew from the Commission’s 2018 Briefing Order that any such Return would be made effective as of 2014. 2018 Briefing Order PP 14, 60; *supra* pp.5–6.

The Owners also rely on the defunct fact that requiring them to pay refunds within 30 days is an “immediate” burden that FERC has imposed on

an “accelerated schedule.” Pet. 26, 28. But, again, given the Commission’s 395-day refund-payment extension, *see supra* p.11, the Owners’ anxiety over a “sudden” payment obligation is obsolete. *See id.* at 26. By the same token, the risk of “whiplash” in customers’ rates (*id.*) should the Court ultimately deem the refund payments unlawful is relatively low: Such payments will likely come due only after judicial review is completed and, in any event, state utility regulators “possess tools to address rate volatility.” May 13 Stay Order P 44 (cleaned up).

IV. The Owners’ All Writs Act petition violates this Court’s rules

Finally, the Owners’ All Writs Act petition violates this Court’s rules. This Court requires a stay applicant to first seek such extraordinary relief with the agency *and* await the agency’s determination. Specifically, D.C. Circuit Rule 18(a)(1) provides that “[a] motion for a stay of an order of an agency ... must state whether such relief was previously requested from the agency *and the ruling on that request.*” (emphasis added); *accord* D.C. Circuit Handbook of Practice and Internal Procedures, Part VIII.A, p.33 (“If the district court or agency denies the relief requested, an application may *then* be made to this Court.” (emphasis added)).

The Owners sought an agency stay of their Opinion 594 refund obligation on April 2. Refund Stay Request at 1. Yet just 12 days later, without waiting for agency action, the Owners filed their judicial All Writs Act petition. The petition does not explain the Owners' impatience, other than to note the obligation to pay refunds in 30 days—*urgency that vanished the same day as the Owners' filing with this Court. See supra* p.11 (April 14 FERC extension order, delaying refund obligation by 395 days). That the Commission has, in the meantime (on May 13), acted on the Owners' stay application to the agency "does not retroactively cure the prematurity of [the Owners'] request[] for relief" with this Court. *Cf. Reynolds*, 777 F.2d at 762.

Even if the original April 20, 2026 deadline to pay refunds, set forth in Opinion 594, justified the Owners' rush to court, any such rationale disappeared once the Commission extended the deadline to May 20, 2027. Yet instead of withdrawing their emergency petition, the Owners doubled down, insisting in a supplemental submission that "[n]othing material has changed." Supp. Pet. 3. That is an incredible statement. If deferring the Owners' refund obligation by more than a year is not material to a stay request that is *all about that obligation*, then it is difficult to imagine what

the Owners think *would* qualify as material short of FERC canceling the refund requirement altogether.

What is more, the Owners' approach effectively converts this Court's rules into non-binding guidance. Virtually any litigant could do what the Owners attempt here: assert potential business impacts that might have some nexus to agency action, characterize those impacts as irreparable harm, and blow past the agency proceeding by filing an All Writs Act petition demanding immediate judicial cessation of agency action. This Court should not condone such cavalier disregard of its rules and profound disruption of the orderly judicial review process that Congress prescribed. *See* 16 U.S.C. §825l(a)–(b); *see also Wis. Gas*, 758 F.2d at 672 (admonishing litigants to “learn the requirements for a stay” and to cease filing “frivolous” stay motions claiming harms “of a nature which clearly do[] not warrant the issuance of a stay”).

CONCLUSION

For the foregoing reasons, the Owners' All Writs Act petition should be denied.

Respectfully submitted,

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May 15, 2026

CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 32(g) and Circuit Rule 32(e), I certify that this brief complies with the type-volume limitation in Fed. R. App. P. 27(d)(2)(A), as modified by the Court's April 22, 2026 Order (Doc. 2169780), because this brief contains 7,452 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

I further certify that this brief complies with the type-face requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this brief has been prepared in Miller Text 14-point font using Microsoft Word 365.

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May 15, 2026

CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit by using the appellate CM/ECF system on May 15, 2026. Participants in the case will be served by the appellate CM/ECF system.

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