

**UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION**

Constitution Pipeline Company, LLC)	Docket No. CP13-499
)	
Iroquois Gas Transmission System, L.P.)	Docket No. CP13-502
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**REQUEST FOR REHEARING
OF STOP THE PIPELINE**

Critical Energy Infrastructure Information (CEII)

and privileged information have been redacted.

Complete version was filed as CEII.

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Pursuant to Section 717r(a) of the Natural Gas Act (NGA),¹ and Rule 713 of the Federal Energy Regulatory Commission (FERC or Commission) Rules of Practice and Procedure,² Stop the Pipeline (STP) hereby requests rehearing and rescission of the Commission’s December 2, 2014 Order (Order) granting a certificate of public convenience and necessity (Certificate) to the Constitution Pipeline Company, LLC (Company) to construct the proposed Constitution pipeline (CP) and to Iroquois Gas Transmission System, L.P. (Iroquois) to construct the Wright Interconnect Project (Wright Compressor). STP seeks rehearing and rescission of the Commission’s Order because it is contrary to the requirements of the Clean Water Act (CWA),³ the Natural Gas Act (NGA),⁴ the Fifth and Fourteenth Amendments of the United States Constitution,⁵ the National Environmental Policy Act (NEPA),⁶ and NEPA’s implementing

¹ 15 U.S.C. § 717r(a) (2012).

² 18 C.F.R. § 385.713 (2014).

³ 33 U.S.C. 1251 *et seq.* (2012).

⁴ 15 U.S.C. 717 *et seq.* (2012).

⁵ U.S. Const. amend. V, XIV.

regulations.⁷ STP also requests a new order that mandates a potential reversal of all easement agreements signed since December 2, 2014, and stops all eminent domain proceedings that have been, or will be, initiated as a result of the Certificate. Finally, STP prospectively requests that the Commission not toll its decision while it considers this request for a rehearing, as the ensuing delay would likely violate the due process clauses of the United States Constitution.⁸

I. STATEMENT OF RELEVANT FACTS

On April 5, 2012, the Company requested, and was subsequently granted, pre-filing review of the proposed project, which would run 124-miles, from Susquehanna County, Pennsylvania, through Broome, Chenango, Delaware and Schoharie Counties, New York. On September 14, 2012 FERC published a Notice of Intent to prepare an Environmental Impact Statement, requested comments on environmental issues, and announced three scoping hearings.⁹ STP's comments: (1) pointed out potential due process violations; (2) requested studies on the need for the project and alternatives using existing pipelines and easements; and (3) requested a legal analysis of the right to take property if gas in the proposed pipeline would be exported.¹⁰ Many members of the public also requested an extension of the comment period and an additional scoping hearing, and FERC complied in a supplemental notice.¹¹ STP's second set of

⁶ 42 U.S.C. 4321 *et seq.* (2012).

⁷ 40 C.F.R. Pts. 1500-08 (2014).

⁸ U.S. Const. amend. V, XIV.

⁹ 77 Fed. Reg. 56,835 (Sept. 14, 2012).

¹⁰ STP, scoping comments (Oct. 9, 2012), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121009-5263; resubmitted [errata] http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121010-5028.

¹¹ 77 Fed. Reg. 63,309 (Oct. 16, 2012).

scoping comments requested interdisciplinary studies of social and environmental impacts.¹² State and federal agencies submitted comments that complemented and supplemented the public's call for a comprehensive environmental review, with information integrated in one EIS.¹³

On June 13, 2013, the Company submitted an application for a certificate of public convenience and necessity,¹⁴ and FERC issued a Notice of Application.¹⁵ Pace Environmental Litigation Clinic, Inc. (PELC) filed a timely motion to intervene on behalf of STP,¹⁶ and hundreds of STP's individual members also intervened. FERC issued Environmental Information Requests (EIR) for the data it needed, and also instructed the Company to respond to all of the other agencies' comments. In the following months PELC noted that the Company failed to respond to comments made by other agencies. On December 16, 2013 PELC submitted an analysis of the comments made by the New York State Department of Environmental Conservation (DEC) and the United States Army Corps of Engineers (ACE), and the Company's failure to respond to them.¹⁷

¹² STP, scoping comments (Nov. 9, 2012), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121109-5196.

¹³ See, e.g., Agency / Accession No: US Environmental Protection Agency / 20121016-0039; US Fish and Wildlife / 20121005-5132; US Army Corp of Engineers / 20121009-5285; NYS Department of Environmental Conservation / 20121106-5145; NY Public Service Commission / 20121031-5092.

¹⁴ Constitution Pipeline Company, LLC, Application (June 13, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130613-5078.

¹⁵ 78 Fed. Reg. 39,721 (July 2, 2013).

¹⁶ STP, Motion to intervene (July 17, 2013), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20130717-5045.

¹⁷ STP, Comment on lack of adequate responses to EIR (Dec. 17, 2013), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20131217-5017.

FERC issued a Draft Environmental Impact Statement (DEIS) on February 12, 2014, with an April 7, 2014 deadline for public comments.¹⁸ PELC submitted comments on behalf of STP, noted significant amounts of required information and analyses that were missing from the DEIS and asked FERC to issue a revised draft EIS that contained all of the missing information so the public could review a comprehensive DEIS.¹⁹ STP incorporated by reference comments made by the public, including a report on the need for the project by Garti.²⁰ A number of STP members, and their elected officials, commented on the need for a health impact assessment, which had been requested during the scoping process, but had not been included.²¹ At least six state and federal agencies stated the DEIS was insufficient and requested additional time to comment on a complete, revised, or supplemental environmental impact statement.²² (The US Army Corps of Engineers, a cooperating agency, granted additional time for comments on April 7, 2014, but its letter was removed from the public docket later that evening. A copy is attached as Exhibit 1.) Supplemental comments by STP, Garti, and the Center for Sustainable Rural Communities were filed as new information was discovered and reports were published.²³ FERC did not respond to the universal call for a revised DEIS, and instead issued a revised schedule for

¹⁸ 79 Fed. Reg. 9,735 (Feb. 20, 2014).

¹⁹ STP. Comment on DEIS, http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5024; corrected version http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

²⁰ Anne Marie Garti, *Report on the Need for the Proposed Constitution Pipeline*, p. 23-26 (April 7, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5237 [hereinafter Garti Report on Need].

²¹ Scoping and other comments, Name / Accession No. in Docket PF12-9: Sanders / 20120924-5008; Sanders / 20120927-5003; Huston / 20121009-5180; US House of Representative Chris Gibson letter re the 3/19/13 letter of Schoharie County Board of Supervisors requesting a comprehensive health impact assessment / 20130624-0014; Chairman Wellinghoff's response to Rep. Gibson in Docket CP13-499 / 20130718-0035.

²² Agency / Accession No: EPA / 20140409-5120; FWS / 20140408-5035; ACE / 20140408-5149; DEC / 20140407-5409; OAG / 20140416-5100; NYPSC / 20140407-5001.

²³ Name / Accession No: STP / 20140707-5086; 20140923-5016; 20141017-5152; Garti / 20140707-5082; Center for Sustainable Rural Communities / 20141119-5058.

the FEIS and Certificate.²⁴ FERC filed the FEIS on October 24, 2014,²⁵ and the Order on December 2, 2014.²⁶

II. STATEMENT OF ISSUES

1A. Question: Whether the Commission violated Section 401 of the Clean Water Act (CWA), 33 U.S.C. § 1341(a)(1), by issuing a Certificate, under the Natural Gas Act, 15 U.S.C. § 717f(c), before the New York State Department of Environmental Conservation (DEC) certified that the project would not violate New York State's water quality standards.

Answer: Yes. Section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), by its plain terms, requires that a 401 Certificate be issued prior to any federal license. "No license or permit shall be granted until the certification required by this section has been obtained" *Id.* Precedent: *S.D. Warren Co. v. Me. Bd. of Envtl. Prot.*, 547 U.S. 370, 374 (2006); *Pub. Util. Dist. No. 1 of Jefferson Cnty. v. Wash. Dep't of Ecology*, 511 U.S. 700, 707-8 (1994); *City of Tacoma v. F.E.R.C.*, 460 F.3d 53, 67 (D.C. Cir. 2006); *Ala. Rivers Alliance v. F.E.R.C.*, 325 F.3d 290, 396-7 (D.C. Cir. 2003); *Thompson v. Calderon*, 151 F.3d 918, 929 (9th Cir. 1998) (citing *2B Sutherland on Statutory Construction* § 51.02 (5th ed.1992)).

1B. Question: Whether the issuance of a certificate of public convenience and necessity, under the Natural Gas Act, 15 U.S.C. § 717f(c), prior to the issuance of a New York State water quality certificate, as required under the Clean Water Act, 33 U.S.C. § 1341(a)(1), violates the due process clauses of the Fifth and Fourteenth Amendments of the United States Constitution.

²⁴ FERC, revised schedule (Aug. 18, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140818-3023.

²⁵ 79 Fed. Reg. 64,765 (Oct. 31, 2014).

²⁶ 149 FERC ¶ 61,199 (2014).

Answer: Yes. The issuance of a Certificate by the Commission prior to the issuance of New York State water quality certificate violates STP's due process rights because citizens of this Nation are supposed to be heard before their property is taken from them, as guaranteed by the Fifth and Fourteenth Amendments of the United States Constitution. Public review of a 401 application is mandated under 6 N.Y.C.R.R. §§ 621.1(a), (e), 621.7, 621.8, and the NYSDEC is empowered to deny such an application. Precedent: *Mathews v. Eldridge*, 424 U.S. 319, 331-335 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1973); *Alec L. v. Jackson*, 863 F.Supp.2d 11, 13 (D.C. Cir. 2012); *Islander E. Pipeline Co., LLC v. McCarthy*, 525 F.3d 141, 164 (2d Cir. 2008).

2. Question: Whether the Commission violated the Natural Gas Act (NGA), 15 U.S.C. 717 *et seq.*, by failing to include substantial evidence on: (1) the need for the project; (2) how the project would increase reliability, reduce prices and price volatility, and eliminate known constraints in the Iroquois and Tennessee Gas Pipelines that inhibit the flow of gas between Wright, NY and the purported target markets in New York City and New England; and (3) why it deviated from its own certificate policy and prior precedent.

Answer: Yes. The Commission's decision was not based on substantial evidence, is unwarranted by the facts, and is contrary to the Commission's own policy and precedents.

Precedent: *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 477, 488 (1951); *Mich. Public Power Agency v. F.E.R.C.*, 405 F.3d 8, 12 (D.C. Cir. 2005); *Mo. Public Service Comm. v. F.E.R.C.*, 215 F.3d 1, 7 (D.C. Cir. 2000); *La. Ass'n of Indep. Producers & Royalty Owners v. F.E.R.C.*, 958 F.2d 1101, 1115-7 (D.C. Cir. 1992); *Turtle Bayou Gas Storage Co., LLC*, 135 F.E.R.C. ¶61,233, 61,299-301 (2011).

3. Question: Whether the Commission violated NEPA, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. Parts 1500-08, by segmenting the proposed project from other projects that would be required to move the gas to the purported markets.

Answer: Yes. The Commission violated NEPA and its implementing regulations by segmenting Tennessee Gas Pipeline's Northeast Energy Direct supply and market pipelines and Iroquois' South to North project, which are connected, cumulative, and similar actions. All four proposed projects must be studied in a single environmental impact statement. Precedent: *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989); *Vt. Yankee Nuclear Power Corp. v. Natural Resources Defense Council, Inc.*, 435 U.S. 519, 558 (1978); *Del. Riverkeeper Network v. F.E.R.C.*, 753 F.3d 1304 (D.C. Cir. 2014); *Taxpayers Watchdog v. Stanley*, 819 F.2d 294 (D.C. Cir. 1987); *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C. Cir.1987); *Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 88-89 (2d Cir. 1973).

4. Question: Whether the Commission violated NEPA by: (1) failing to issue a revised draft or supplemental environmental impact statement, (2) certifying the project based on an incomplete environmental review, and (2) certifying the project prior to obtaining a 401 certificate from NYSDEC, and required information on impacts to the state's water quality.

Answer: Yes. NEPA, and its implementing regulations, require the sharing of a complete environmental impact statement with the public, an opportunity for comment, deference to the expertise of other agencies, and compliance with other federal laws. Precedent: *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *Ala. Rivers Alliance v. F.E.R.C.*, 325 F.3d 290, 396-7 (D.C. Cir. 2003); *Cal. v. Block*, 690 F.2d 753, 761, 765, 770-772 (9th Cir. 1982); *Suffolk Cnty. v. Secretary of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977); *Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 990 (E.D. Cal 2005).

5. Question: In anticipation of a future tolling order, whether FERC will violate the Constitutional and statutory due process rights of citizens by not issuing an order on this request within 30 days, as prescribed by the Natural Gas Act, 15 U.S.C. § 717r(a), thereby denying citizens an effective remedy.

Answer: Yes, the Natural Gas Act, 15 U.S.C. § 717r(a), states that if the Commission does not act upon the request for rehearing within thirty days, it may be deemed denied. Precedent: *Mathews v. Eldridge*, 424 U.S. 319, 331-335 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1973); *Alec L. v. Jackson*, 863 F.Supp.2d 11, 13 (D.C. Cir. 2012); *AES Sparrows Point LNG, LLC Mid-Atlantic Express, LLC*, 129 FERC ¶ 61245, p 3 (2009).

III. ARGUMENT

1. Clean Water Act Violation

1A. *The Commission erred by issuing a Certificate before the New York State Department of Environmental Conservation (DEC) certified that the project would not violate New York State's water quality standards.*

In 1972 Congress passed the Clean Water Act so “that the discharge of pollutants into the navigable waters be eliminated by 1985.”²⁷ To achieve this lofty goal, it was mandated that “the discharge of any pollutant by any person shall be unlawful.”²⁸ Congress integrated an existing state role into the federal regime, granting states the authority to develop and enforce water quality standards.²⁹ State water quality standards were considered so critical to the success of cleaning up our nation’s waters that Congress provided states with an express, significant and

²⁷ Clean Water Act, 33 U.S.C. § 1251(a)(1) (2012).

²⁸ *Id.* at § 1311(a).

²⁹ *Id.* at § 1313.

meaningful decision-making role concerning projects with potential to negatively affect water quality.³⁰

Any applicant for a Federal license or permit to conduct any activity including, but not limited to, the construction or operation of facilities, which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate . . .³¹

The Commission is aware of this requirement, and the need to obtain a 401 Certificate is part of Condition 8 of the Order.³² The problematic issue here is one of timing. The Clean Water Act specifies that a 401 Certificate must be issued **before** a federal license or permit is issued. “No license or permit shall be granted **until** the certification required by this section has been obtained or has been waived . . .”³³ This statement is explicit and unambiguous, and gives states the right to block or condition federal projects that the State determines will violate state water quality standards.³⁴ Here, the Commission has issued a federal license – a certificate of public convenience and necessity – prior to the issuance of a 401 Certificate by the New York State Department of Environmental Conservation (DEC) in direct violation of Section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1).

Congress could have created an exception for pipelines when it enacted the Clean Water Act in 1970, or in any one of the subsequent amendments, but did not. Congress could also have created an exception in the Natural Gas Act of 1938, which was amended as recently as 2005, but did not. In the decades since the Clean Water Act was passed, Congress has repeatedly

³⁰ 33 U.S.C. § 1341. *See S.D. Warren Co. v. Me. Bd. of Env'tl. Prot.*, 547 U.S. 370, 374 (2006); *Pub. Util. Dist. No. 1 of Jefferson Cnty. v. Wash. Dep't of Ecology*, 511 U.S. 700, 707-8 (1994).

³¹ 33 U.S.C. § 1341(a)(1).

³² 149 FERC 61,199 (2014).

³³ 33 U.S.C. § 1341(a)(1) (emphasis added).

³⁴ *City of Tacoma v. F.E.R.C.*, 460 F.3d 53, 67 (D.C. Cir. 2006).

chosen not to reduce the power of states under CWA Section 401. “It is elementary that a more recent and specific statute is reconciled with a more general, older one by treating the more specific as an exception which controls in the circumstances to which it applies.”³⁵

While the Commission has authority to impose conditions in its certificates, that power does not extend to overriding an explicit Congressional mandate. The Natural Gas Act grants the Commission a much more modest right, an ability to attach “reasonable terms and conditions as the public convenience and necessity may require.”³⁶ The words “reasonable terms and conditions” are not a *carte blanche*, and certainly do not empower the Commissioners to interpret or rewrite federal law to preempt the express rights of states under the Clean Water Act. The Commission’s actions plainly violate CWA Section 401(a), and are thus contrary to the law under the Administrative Procedure Act, 5 U.S.C. § 706(2)(A).

Upon judicial review, no deference will be given to FERC on water quality issues as it is DEC, not FERC, that is authorized to decide whether New York State water quality standards might be violated.³⁷ Any statements in the Final Environmental Impact Statement about the purported lack of impacts on water resources, and the mitigating effects of best management practices, such as those made by FERC’s environmental staff in response to STP’s comments on the DEIS, have little relevance to this rehearing, or any subsequent appeal.³⁸

In sum, the Commission erred by expanding its right to condition a Certificate to include actions required under other federal laws. The Natural Gas Act mandates that the Commission

³⁵ *Thompson v. Calderon*, 151 F.3d 918, 929 (9th Cir. 1998) (citing *2B Sutherland on Statutory Construction* § 51.02 (5th ed.1992)).

³⁶ 15 U.S.C. § 717f(e).

³⁷ *Alabama Rivers Alliance v. F.E.R.C.*, 325 F.3d 290, 396-7 (D.C. Cir. 2003).

³⁸ *See, e.g.* FERC, FEIS, Constitution Pipeline and Wright Interconnect Projects, Response to comments, S-529-33 (Oct. 24, 2014) available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141024-4001 [hereinafter FEIS].

“comply with applicable schedules established by Federal law.”³⁹ One of those federal laws is the Clean Water Act, which expressly states that a 401 certificate must be obtained before any federal license is issued. Therefore the December 2, 2014 Certificate must be rescinded.

1B. *The Commission erred by prematurely issuing a Certificate, which violates the due process clauses of the Fifth and Fourteenth Amendments. All actions that took place as a result of the illegal Order must be reversed.*

A certificate of public convenience and necessity enables other actions, including the right of a private corporation to initiate eminent domain proceedings. However, the Fifth Amendment of the United States Constitution states that “No person shall be . . . deprived of life, liberty, or property, without due process of law.” In turn, Section 1 of the Fourteenth Amendment of the United States Constitution guarantees the right to due process under state law. By issuing the certificate without waiting for a mandatory step in the process – the issuance of a 401 certificate by the DEC – the Commission deprives landowners, and the public, of their due process rights.⁴⁰ Holding a DEC hearing after the Commission has issued a Certificate, or after eminent domain proceedings have been initiated (as is happening in this case), is not sufficient to protect citizens’ due process rights as full relief can no longer be obtained.⁴¹

Here, Saul Ewing, a law firm representing the Company in eminent domain matters, sent a threatening letter to landowners who had not signed easement agreements. See Exhibit 2. The letter was delivered via Federal Express less than 24 hours after the Commission issued its Order, and demanded that landowners sign easement agreements within days, or other legal actions would quickly follow. The law firm stated that the Company had obtained the power of

³⁹ 15 U.S.C. § 717n(c)(1)(B).

⁴⁰ *Mathews v. Eldridge*, 424 U.S. 319, 334-5 (1976).

⁴¹ *Id.* at 331-2.

eminent domain, via the Commission's Certificate, and would be entering their property in ten days. A day later the Pace Environmental Litigation Clinic, Inc. (PELC), on behalf of STP, objected to the Company's letter, and complained to FERC.⁴² See Exhibit 3. The Office of the New York State Attorney filed a landowner's complaint on December 23, 2014.⁴³

The threats in the Saul Ewing letter, which were obviously meant to pressure landowners to give up their property rights, could not have been made without the Commission's premature issuance of a Certificate. While FERC cannot be held responsible for the specific words in the Saul Ewing letters, it is responsible for issuing a certificate prior to obtaining a 401 water quality certificate from NYSDEC, and for colluding with the Company in statements to the press and thus bolstering the belief that the pipeline was a *fait accompli*.⁴⁴ The Commission's actions are a violation of the due process rights of both the directly affected landowners and the general public as the DEC had not yet even issued a notice that the Company's application for a 401 certificate was complete, or opened a comment period to review it.⁴⁵ DEC has the right to deny this 401 certificate, so participation in its public review is a critical component of STP's due process rights.⁴⁶

⁴² STP, Complaint to FERC (Dec. 5, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141205-5307.

⁴³ Office of New York State Attorney General, Complaint against the Company and its counsel, Saul Ewing (Dec. 11, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141223-0039.

⁴⁴ Allison Dunne, *Constitution Pipeline Contacts NY Landowners*, WAMC (Dec. 9, 2014), *available at* <http://wamc.org/post/constitution-pipeline-contacts-ny-landowners>. (“A FERC spokesman says it is not unusual for the Commission to grant a pipeline certificate subject to conditions. He adds that FERC having granted the requested authority to build the pipeline subject to conditions allows Constitution Pipeline to exercise eminent domain with those landowners who have not signed easement agreements.”)

⁴⁵ 6 N.Y. COMP. CODES R. & REGS. §§ 621.1(a), (e), 621.7, 621.8.

⁴⁶ *Islander E. Pipeline Co., LLC v. McCarthy*, 525 F.3d 141, 164 (2d Cir. 2008).

It is fundamental that the opportunity to be heard must happen **before** a citizen is deprived of a property interest.⁴⁷ In the case of landowners, property rights may be taken on both a temporary and permanent basis because the Commission violated Section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1). These concerns are real. According to statements made to the press by the Company's spokesman, approximately twenty-five percent of the landowners signed easement agreements between December 3 and December 9, and another five percent by December 22.⁴⁸ These deeded transfers were coerced under false pretenses, and were a direct result of the Commission's illegal Order. We ask the Commission to make these landowners whole by voiding all easement agreements executed after December 2, 2014, unless the landowner opts to keep the deed restriction in place. Ten days after sending the letters the Company initiated eminent domain proceedings in the Northern District of New York, and over 120 cases have been filed in the ensuing weeks. This represents between twenty and twenty-five percent of the directly affected landowners in New York State. The Commission must rescind its Order, enjoin the eminent domain proceedings, and void any actions that have taken place in the interim, such as entering citizens' properties for tests or surveys.

The Commission has also violated STP's due process rights by forcing the public to participate in the DEC's public comment period after it issued a Certificate. According to federal law, a decision by the state is supposed to determine whether the federal government can proceed

⁴⁷ *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1973).

⁴⁸ Julia Reischel, Constitution Pipeline receives federal approval, eminent domain power, WATERSHED POST (December 3, 2014), *available at* <http://www.watershedpost.com/2014/constitution-pipeline-receives-federal-approval-eminant-domain-power>; Allison Dunne, Constitution Pipeline Contacts NY Landowners, WAMC (Dec. 9, 2014), *available at* <http://wamc.org/post/constitution-pipeline-contacts-ny-landowners>; Julia Reischel, Constitution Pipeline files 55 eminent domain lawsuits against Catskills landowners, WATERSHED POST (December 22, 2014), *available at* <http://www.watershedpost.com/2014/constitution-pipeline-files-55-eminant-domain-lawsuits-against-catskil>.

to issue a license or permit, not the other way around.⁴⁹ The Commission's subversion of the proper statutory order violates due process by inhibiting participation and diminishing states' rights. The property interests of STP's members are directly implicated as the project would harm the water, wildlife, and aquatic species that belong to the citizens of New York State.⁵⁰

2. Natural Gas Act Violation

The Commission erred by failing to provide substantial evidence on: (1) the need for the project, (2) how the project would increase reliability, reduce prices and price volatility, and eliminate known constraints in the Iroquois and Tennessee Gas Pipelines that inhibit the flow of gas between Wright, New York and the purported target markets in New York City and New England; and (3) why it deviated from its own certificate policy and precedents.

The Commission has two main roles as it considers an application for an interstate gas pipeline. The first is to determine whether the project qualifies for a certificate of public convenience and necessity under Section 7(c) of the Natural Gas Act, 15 U.S.C. § 717f(c). The application for a federal license also triggers an environmental review under the National Environmental Policy Act (NEPA), 42 U.S.C. § 4332(2)(C), with FERC designated as lead agency, 15 U.S.C. § 717n(b)(1). The issue here is whether the Commission erred in its role under the Natural Gas Act, which mandates that decisions be based on substantial evidence, 15 U.S.C. § 717r(b).⁵¹

The Commission failed to provide information and analysis about the need for the proposed pipeline, and instead relied on the self-serving claims made by the project proponents.

⁴⁹ 33 U.S.C. § 1341(a)(1). (“No license or permit shall be granted until the certification required by this section has been obtained or has been waived. . .”)

⁵⁰ See, e.g., N.Y. E.C.L. §§ 11-0101 to 11-0113; *Alec L. v. Jackson*, 863 F.Supp.2d 11, 13 (D.C. Cir. 2012).

⁵¹ *Mo. Public Service Comm. v. F.E.R.C.*, 215 F.3d 1, 7 (D.C. Cir. 2000).

The description of the need for the project in the FEIS is a mere two and a half pages long.⁵² See Exhibit 4. The first page and a half present the Company's claims about the purpose of the project, and are followed by disclaimers by FERC that its role is to study the environmental impacts of the proposed project, not determine whether there is a need for it. The final three-quarters of a page includes a summary on how the Commission evaluates the need for a project.

We also received comments on the draft EIS requesting additional information regarding need of the projects and whether it serves the public convenience and necessity. A project's need is established by the FERC when it determines whether a project is required by the public convenience and necessity, i.e., the Commission's decision is made.⁵³

However, the Commission failed to perform an analysis of the need for the project in its Order, or include a market study anywhere in the record, as required by its Certificate policy.⁵⁴ Instead it made a series of short statements that were again based on the Company's claims, and the existence of the purported precedent agreements.⁵⁵ This non-analysis does not meet the standard set in the Natural Gas Act, which states that FERC's decisions are to be based on substantial evidence.⁵⁶ The information and analyses provided by the Commission are more accurately characterized as nonexistent, or paltry.

STP and its members have commented on the lack of need for the proposed project, provided specific information, and requested a substantive analysis ever since the project was announced in the spring of 2012.⁵⁷ Numerous state and federal agencies also requested an

⁵² FEIS, Introduction 1.1 Project Purpose and Need.

⁵³ *Id.* at 1-3.

⁵⁴ 88 F.E.R.C. ¶ 61,227, 61,748.

⁵⁵ 149 FERC ¶ 61,199, at PP 8-9.

⁵⁶ *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *La. Ass'n of Indep. Producers and Royalty Owners v. F.E.R.C.*, 958 F.2d 1101, 1115-7 (D.C. Cir. 1992).

⁵⁷ *See, e.g.*, Comments in Docket No. PF12-9, Name / Accession numbers: Garti / 20120705-5019 and 20120706-5010; Rosen / 20120730-5011; STP / 20121009-5263 and 20121109-5196; Comments in

analysis of the need for the project.⁵⁸ It is FERC's responsibility to provide that analysis, and our responsibility to critique it.⁵⁹ However, after repeated requests for a full analysis of the need for the project, nothing of substance has ever been produced.

In the short section on project purpose and need in the FEIS, FERC lists five benefits the Company claims would be achieved by the proposed pipeline:

- deliver up to 650,000 dekatherms per day (Dth/d) of natural gas supply from Susquehanna County, Pennsylvania to the interconnect with the TGP and Iroquois systems at the existing Wright Compressor Station;
- provide new natural gas service for areas currently without access to natural gas;
- expand access to multiple sources of natural gas supply, thereby increasing supply diversity and improving operational performance, system flexibility, and reliability in the New York and New England market areas;
- optimize the existing systems for the benefit of both current and new customers by creating a more competitive market, resulting in enhanced market competition, reduced price volatility, and lower prices; and
- provide opportunities to improve regional air quality by utilizing cleaner-burning natural gas in lieu of fuel oil in existing and future residential, commercial, and industrial facilities, thereby reducing greenhouse gas (GHG) emissions and other pollutants.⁶⁰

There is no factual or analytical substantiation in the record of any of these claims. For example:

Bullet point 1: The Company has repeatedly stated that the pipeline is fully subscribed, yet the FEIS states that they will “deliver **up to** 650,000 dekatherms per day (Dth/d).” “Up to” a set amount does not mean the pipeline is subscribed at all. On the following page, FERC states “the proposed pipeline is fully subscribed.”⁶¹ However, this is contradicted by information taken from the precedent agreements in the chart that immediately follows the statement. In “TABLE 1.1-1;

Docket No. PF13-499: Garti / 20140407-5237, 20140407-5252, and 20140707-5082; STP / 20140408-5088, 20140923-5016, and 20141113-5025; Rosen / 20140313-5032.

⁵⁸ See, e.g., Name / Accession numbers: USEPA / 20121016-0039; USACE / 20121009-5285 and 20141015-5134; USFWS / 20121005-5132; NYSPSC / 20121031-5092.

⁵⁹ *La. Ass'n of Indep. Producers and Royalty Owners v. F.E.R.C.*, 958 F.2d 1101, 1115 (D.C. Cir. 1992).

⁶⁰ FEIS, Introduction, 1.1 Project Purpose and Need, p 1-2.

⁶¹ *Id.* at 1-3.

Constitution Pipeline Project Precedent Agreements”, the column heading reads: “**Maximum** Daily Transportation Quantity (Dth/d).” Again, a “maximum quantity” does not require the shipment of any gas at all.

The Pace Environmental Litigation Clinic, Inc. received the precedent agreements from the Company on November 21, 2014.

[The rest of this short paragraph was redacted as it contains Privileged information.]

Bullet point 2: The Company claims the pipeline would provide gas service in areas where that possibility does not currently exist. FERC discusses this possibility in one paragraph, on pages 1-2 and 1-3 of the FEIS, and mentions that agreements have been signed between a newly formed local distribution company and several local communities. However, FERC fails to include those agreements or to note that they are not binding, even though this was pointed out in comments on the DEIS.⁶² In addition, Leatherstocking, the referenced startup that has never delivered any gas in New York State, says it would only be capable of delivering 0.6% of Constitution's total throughput.

To provide some perspective, Leatherstocking Gas has estimated that throughput for the Village and Town of Sidney would be less than 1,000 Mcf/day even when the distribution system is fully built out. This amount is approximately 0.3% of the total Constitution throughput. . . . Even if the other distribution facilities that could follow the Sidney system were constructed, the total throughput for all Leatherstocking Gas distribution, including Sidney, would be in the range of 2,000 Mcf/day or approximately 0.6% of Constitution's total throughput. . . .⁶³

⁶² Anne Marie Garti, *Report on the Need for the Proposed Constitution Pipeline*, p. 23-26 (April 7, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5237 [hereinafter Garti Report on Need].

⁶³ Nixon Peabody LLP on behalf of Leatherstocking Gas Company LLC, Answer in Opposition to the Motion for Extension of Time, 5, Fn 8 (March 31, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140331-5183.

Such a small amount of gas that **might** be delivered along the route does not justify the construction of a pipeline that could purportedly carry up to 850,000 Dth/day of gas.

There is also a question of whether local delivery is a real possibility in these rural areas due to their low population density. If local gas distribution is economically feasible, then why don't these sparsely populated communities have gas now, as NYSEG delivers gas just a few miles from the proposed route in Otsego County? Whether it would be economically feasible to deliver gas locally was not even mentioned in the FEIS, or in the Commission's Order, even though an analysis of the exorbitant costs for building a local delivery system was discussed in comments.⁶⁴

Bullet point 3: The Company claims the proposed pipeline would increase access to new sources of gas, and increase system reliability and flexibility. However, FERC did not provide any information or analysis about how this proposed pipeline would provide these benefits. In fact, the Commission completely ignored the well-known constraints in the system between Wright, New York and the purported markets in New York City and New England, even though this problem had been made in letters and comments.⁶⁵ FERC does mention these system constraints in another environmental impact statement, using them to dismiss alternatives and bolster the need for the expansion of the Algonquin pipeline.

In addition to the existing Algonquin system, two other existing interstate pipelines provide natural gas transmission service into southern New England: Tennessee Gas Pipeline (Tennessee) and Iroquois Gas Transmission (Iroquois) (see figure 3.3.1-1). Like the Algonquin system, each of these pipelines currently are at or near capacity. Consequently, use of either of these systems would require modifications, including the construction of new pipelines, to

⁶⁴ See, e.g., Bob Rosen, Comment on DEIS (March 13, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140313-5032; Anne Marie Garti, *Report on the Need for the Proposed Constitution Pipeline*, p. 23-26 (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5237.

⁶⁵ *Id.*; Garti Report on Need, p. 6-10.

transport the volume of gas to the delivery points required by the Project Shippers.⁶⁶

The FEIS for this project was completely silent about system constraints. Nor is there any discussion of how the proposed pipeline would increase reliability and flexibility.

Exhibits G and GII of the application shed some light on the situation.

[Four paragraphs were redacted as they include CEII information. Footnotes 67 – 72 are included to keep the numbers consistent between the two versions. ⁶⁷; ⁶⁸; ⁶⁹; ⁷⁰; ⁷¹; ⁷².]

Bullet point 4: The Company claims the proposed pipeline would increase competition and reduce prices and price volatility. Again FERC offered no supporting data on this subject and failed to explain how a new pipeline that terminates in Wright, New York could provide this benefit given the well-known constraints in the system between Wright, New York and the purported market.

Bullet point 5: The Company claims that gas will reduce greenhouse gas emissions.

There is no substantiation of the claim that takes into account the countless comments submitted

⁶⁶ FERC, DEIS, Algonquin Incremental Market Project, Section 3.3.1 Status of Existing Systems (Aug. 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140806-4001.

⁶⁷ Constitution Pipeline Company, LLC, Application, Exhibit G and G-II (June 13, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130613-5078.

⁶⁸ Levitan and Associates, Inc., NYCA Pipeline Congestion and Infrastructure Adequacy Assessment, New York Independent System Operator, 60, 62, 66, 77 (September 2013), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5252 [hereinafter Levitan].

⁶⁹ Dominion Transmission, Inc., New Market Project, Abbreviated Application, 1-2 (June 2, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140602-5238.

⁷⁰ Application, Exhibit G-II, 2, note 3.

⁷¹ Iroquois, South-to-North Open Season Brochure, 1 (Dec. 2013), *available at* <http://www.iroquois.com/documents/SoNoOSBrochureFinal.pdf>.

⁷² EIA, U.S. Natural Gas Net Imports, *available at* <http://www.eia.gov/dnav/ng/hist/n9180us1m.htm>.

by the public and agencies on the greenhouse gas impacts of methane extraction, transmission, and consumption, and the significance of those emissions to climate change.⁷³

FERC erroneously chose to limit the discussion in the FEIS to the purported purpose of the project, and ignore the issue of need, even though the section is entitled “**1.1 PROJECT PURPOSE AND NEED.**” To justify the lack of analysis of the need for the project in the FEIS, FERC stated, “While this EIS will briefly discuss the Applicant’s purpose, it will not determine whether the need for the projects exists, as this will later be determined by the Commission.”⁷⁴

Unfortunately that statement was misleading, as the Commission’s justification for the project amounts to less than two pages in the Order. Following is the entire discussion:

II Proposals

8. Constitution states that it held an open season for service on the Constitution Pipeline Project from February 21 through March 12, 2012. As a result of the open season, Constitution states that it has executed binding precedent agreements with Cabot Oil & Gas Corporation (Cabot) for 500,000 dekatherms (Dth) per day of firm transportation service and with Southwestern Energy Services Company (Southwestern) for 150,000 Dth per day of firm transportation service, together equal to the full design capacity of the project. Both shippers elected to pay a negotiated rate.

IV Discussion

1. Constitution Pipeline Project

24. Constitution is a new pipeline entrant with no existing customers. Thus, there is no potential for subsidization on Constitutions system or degradation of service to existing customers.

25. We also find that the Constitution Pipeline Project will have no adverse impact on existing pipelines or their captive customers. The Constitution Pipeline

⁷³ See, e.g., New York State Office of Attorney General, Comment on DEIS (April 16, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140416-5100.

⁷⁴ FEIS, Introduction, 1.1 Project Purpose and Need, p 1-3.

Project is designed to transport domestically sourced of gas from Northern Pennsylvania to markets in New England and New York. No transportation service provider or captive customers in the same market have protested this project.

26. Regarding impacts on landowners and communities along the route of the project, Constitution has proposed to locate the pipeline within or parallel to existing rights-of way where feasible. In addition, Constitution participated in the Commissions pre-filing process and has been working to address landowners concerns and questions. Constitution has made changes to over 50 percent of the proposed pipeline route in order to address concerns from landowners and to negotiate mutually acceptable easement agreements. In comments filed on September 23, 2014, Stop the Pipeline states that Constitution has not signed easement agreements with many landowners and therefore the benefits of the project do not outweigh harm to these landowners. We disagree. While we are mindful that Constitution has been unable to reach easement agreements with many landowners, for purposes of our consideration under the Certificate Policy Statement, we find that Constitution has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities.

27. The Constitution Pipeline Project will increase transportation capacity from supply sources in Pennsylvania to interconnections with Iroquois and Tennessee. All of the proposed capacity has been subscribed under long-term precedent agreements. In comments filed on September 23, 2014, Stop the Pipeline questions the need for the project. Stop the Pipeline claims that the contracts are speculative because the largest shipper, Cabot, is affiliated with Constitution.⁷⁵

28. We disagree. There is no evidence of self-dealing to support the need for the project. Cabot is an existing exploration and production company with operations in producing regions, including Pennsylvania. Moreover, we are requiring Constitution to execute firm contracts for the capacity levels and terms of service represented in the signed precedent agreements, prior to commencing construction. We are also requiring Constitution to calculate its recourse rates based on the designed capacity of the pipeline, thereby placing Constitution at risk for any unsubscribed capacity. Under these circumstances, we find that the precedent agreements demonstrate a need for the project.

29. We find that the benefits that the Constitution Pipeline Project will provide to

⁷⁵ The Commission is referring to STP's letter in opposition to an expedited decision (Sept. 23, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140923-5016.

the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities. Consistent with the criteria discussed in the Certificate Policy Statement and subject to the environmental discussion below, we find that the public convenience and necessity requires approval of Constitutions proposal, as conditioned in this order.⁷⁶

Thus, in less than two pages of discussion, with no supporting evidence, the Commission decided that a 124-mile long greenfield pipeline is in the public interest, and purports to justify the taking of private property for corporate use.

Following is a list of the unsubstantiated conclusions made by the Commission, with short rebuttals meant to point out the lack of information and analysis in the record (the numbers are from the paragraphs in the Order):

(25) The Commission states that there is a market need, without including any evidence of that need, without showing how the gas will get to the purported markets, and without mentioning a single supporter of the pipeline or mentioning a single end user of the gas;

(26) The Commission states the Company “has proposed to locate the pipeline within or parallel to existing rights-of way where feasible,” but fails to mention this amounts to a mere nine percent of the entire route;⁷⁷

(26) The Commission states the Company “has taken sufficient steps to minimize adverse economic impacts on landowners and surrounding communities” but fails to mention that approximately fifty percent of the landowners along the entire route refused to sign easement

⁷⁶ 149 FERC ¶ 61,199, at PP 8-9.

⁷⁷ FEIS at 2-8.

agreements with the Company, and fails to perform the balancing test required by its certificate policy;⁷⁸

(27) The Commission states the pipeline is fully subscribed, and the contracts are not speculative, even though, according to the information in the FEIS, there is no requirement that Cabot and Southwestern ship any gas as they have only agreed to deliver **up to** 500,000 and 150,000 Dth/day of gas, respectively;

(28) The Commission states there is no self-dealing as the Company will have to execute firm contracts according to the terms of the contract, and that this proves a need for the pipeline, but fails to mention that, according to information in the FEIS, there is no requirement to ship any gas in those contracts;

The Commission's Order is contrary to its own policy, which states "the evidence necessary to establish the need for the project will usually include a market study."⁷⁹ No market study has been done for this project. The certificate policy also says "a project built on speculation (whether or not it will be used by affiliated shippers) will usually require more justification than a project built for a specific new market when balanced against the impact on the affected interests."⁸⁰ Here, according to the information in the FEIS, there is no firm commitment to ship any gas, so the entire venture is speculative. In addition, it would not be serving a new market. Yet the Commission has not required any substantiation of the need for the project, while its policy says it should be requiring "more justification." Finally, the certificate policy says the required showing of need increases with the increased use eminent domain.

⁷⁸ 88 F.E.R.C. ¶ 61,227, 61,748-50 (1999); *Turtle Bayou Gas Storage Co., LLC*, 135 F.E.R.C. ¶61,233, 61,299-301 (2011).

⁷⁹ 88 F.E.R.C. ¶ 61,227, 61,748.

⁸⁰ *Id.* at 61,749.

The strength of the benefit showing will need to be proportional to the applicant's proposed exercise of eminent domain procedures.⁸¹

Once again, even though almost fifty percent of all the landowners did not sign easement agreements prior to the issuance of the Certificate, no increased showing of need for the project has been required nor demonstrated.⁸² In fact, not even a basic market study has been performed, which is supposed to be required for all projects.

The Commission describes how it should weigh these factors in its policy, but has not performed such an analysis in its Order and has not included any discussion as to why it has deviated from its own policy.⁸³ In this case, the Company has no firm commitments from Shippers in its precedent agreements (according to the FEIS), has not provided a market study, has not shown how the project would increase reliability, has not shown how the project would decrease costs for consumers, has not shown how the project will relieve downstream bottlenecks, and has **not obtained easement agreements for approximately half of the landowners as of the date of the Order**. According to the analysis in *Turtle Bayou Gas Storage Co., LLC*, this level of adverse impact is sufficient to deny the project.⁸⁴ Yet the Commission ignored its own policy, the lack of evidence in the record, and its own precedent by issuing a Certificate on December 2, 2014.⁸⁵

⁸¹ 88 F.E.R.C. ¶ 61,227, 61,749.

⁸² Julia Reischel, *Constitution Pipeline receives federal approval, eminent domain power*, WATERSHED POST (December 3, 2014), available at <http://www.watershedpost.com/2014/constitution-pipeline-receives-federal-approval-eminant-domain-power>.

⁸³ *Mich. Public Power Agency v. F.E.R.C.*, 405 F.3d 8, 12 (D.C. Cir. 2005).

⁸⁴ *Turtle Bayou Gas Storage Co., LLC*, 135 F.E.R.C. ¶61,233, 61,299-301 (2011).

⁸⁵ In case the Commission plans to use new figures about the use of eminent domain in a new order, easement agreements obtained after the issuance of the Certificate cannot be used to justify the issuance of the Certificate.

In sum, the Commission made a decision without substantial evidence to support it. A review of the FEIS and the Order shows FERC failed to provide (1) information or analysis on the need for this gas in either New York City or New England, and whether this pipeline would alleviate such a need; (2) a discussion of the known constraints in the existing pipelines between Wright, New York and the purported markets and how this project would alleviate, or get past, those bottlenecks; (3) a discussion of how the proposed pipeline would increase reliability; and (4) a discussion about the impact of decreasing the use of Canadian gas, which would make the system less reliable. Finally, the Commission did not consider contrary evidence in the record, and therefore did not weigh that evidence against the need for the project.⁸⁶ These failures show that the Certificate is arbitrary and capricious, not based on substantial evidence and unwarranted by the facts. Thus the Commission has violated the Natural Gas Act, 15 U.S.C. § 717r(b), and the Administrative Procedure Act, 5 U.S.C. §§ 706(2)(A), (E), (F).

3. National Environmental Policy Act Violation – Illegal Segmentation

The Commission violated NEPA by illegally segmenting the proposed project from other connected, cumulative, and similar projects that would be required to move the gas to market.

The National Environmental Policy Act (NEPA), 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. Parts 1500-08, require agencies to evaluate the effects of a project in an environmental impact statement. The scope of the review should include all connected, cumulative, or similar actions.⁸⁷ Connected actions are closely related, and

⁸⁶ *Universal Camera Corp. v. NLRB*, 340 U.S. 474, 488 (1951); *La. Ass'n of Indep. Producers and Royalty Owners v. F.E.R.C.*, 958 F.2d 1101, 1115-6 (D.C. Cir. 1992).

⁸⁷ 40 C.F.R. § 1508.25(a).

“interdependent parts of a larger action and depend on the larger action for their justification.”⁸⁸

A cumulative impact “results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions”⁸⁹ If actions have “cumulatively significant impacts . . . [, they] should [] be discussed in the same impact statement.”⁹⁰ Projects are similar if they are reasonably foreseeable, or proposed, and have similarities that provide a basis for evaluating their environmental consequences together, such as common timing or geography.⁹¹ Connected, cumulative, or similar projects that are reviewed separately may violate NEPA if they are illegally segmented.

NEPA requires all procedures to be strictly followed to ensure all of the impacts that would result from a project are included and studied, and thus the goals of the statute are achieved.⁹² In a recent case brought by the Delaware Riverkeeper Network against FERC, the D.C. Circuit held that FERC had illegally segmented a series of pipeline projects proposed by the Tennessee Gas Pipeline Company in Pennsylvania.⁹³ The analytical framework laid out in *Delaware Riverkeeper* applied to the facts in this case show that the Commission has once again violated NEPA by not including impacts from connected, cumulative, and similar actions.

Here, the Company is proposing to construct a 124-mile long pipeline from Susquehanna County, Pennsylvania to Wright, New York, where it would interconnect with the Tennessee Gas Pipeline (TGP) and the Iroquois Gas Pipeline (Iroquois).⁹⁴ The Wright Interconnect Project

⁸⁸ *Id.* at § 1508.25(a)(1)(iii).

⁸⁹ *Id.* at § 1508.7.

⁹⁰ *Id.* at § 1508.25(a)(2).

⁹¹ *Id.* at § 1508.25(a)(3).

⁹² *Vt. Yankee Nuclear Power Corp. v. NRDC*, 435 U.S. 519, 558 (1978); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 350 (1989).

⁹³ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1318 (D.C. Cir. 2014).

⁹⁴ FEIS, Project Description, 2-5.

physically and financially connects the proposed Constitution Pipeline (CP) with the two existing pipelines as the Company is leasing capacity in the compressor station that would push gas into both pipelines.⁹⁵ The purported markets for this project are in New England and New York City. Gas in the TGP 200 line flows from western New York State to eastern Massachusetts, and gas in the Iroquois flows from Canada south to New York City.⁹⁶ The proposed Constitution Pipeline (CP) would purportedly be transporting 650,000 Dth/day of gas, and is purportedly fully subscribed.⁹⁷ However, the TGP pipeline is constrained for most of the year at station 245, near Wright, New York,⁹⁸ and therefore would not be able to transport additional gas from CP to New England. The Iroquois is also constrained downstream of Wright, New York during the winter and summer months,⁹⁹ and therefore would not be able to transport additional gas from CP to New York City when it is needed. These constraints are well-known, and FERC has admitted that the TGP and Iroquois pipelines are incapable of transporting additional quantities of gas to meet market need without being expanded.¹⁰⁰

There are two connected projects that could rectify these constraints. The first is a proposed pipeline project by TGP, called the Northeast Energy Direct (NED), which in turn has two segments: (1) a supply segment from Pennsylvania to Wright, New York; and (2) a market segment from Wright, New York to Dracut, Massachusetts. The other connected project is the proposed reversal of the flow of gas in the Iroquois. Once these projects are completed, then TGP and Iroquois would theoretically be able to accept and transport the gas from CP. However,

⁹⁵ 149 FERC ¶ 61,199 at PP 3-6.

⁹⁶ Levitan, 58, 72-73.

⁹⁷ FEIS, Introduction, 1.1 Project Purpose and Need.

⁹⁸ Levitan at 77.

⁹⁹ Levitan at 61-67.

¹⁰⁰ FERC, DEIS, Algonquin Incremental Market Project, Section 3.3.1 Status of Existing Systems (Aug. 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140806-4001.

these projects were not adequately studied in the FEIS even though STP and its members requested such studies.¹⁰¹

On September 15, 2014, TGP prefiled an application for the NED project, stating that it would provide up to 2.2 billion cubic feet / day (Bcf/day) of gas to Dracut, Massachusetts, just northwest of Boston.¹⁰² According to these plans, the market segment would originate in Wright, New York, where the CP would terminate, and run over 175 miles to Dracut, Massachusetts.¹⁰³ Once constructed, the Wright Interconnect Project would pump gas into the NED pipeline. TGP expects to start construction in January 2017, and expects the pipeline to become operational in 2018.¹⁰⁴ NED's market segment, with its 2.2Bcf/day capacity, would be able to transport CP's gas to New England, and thus overcome the system constraints that currently foreclose the purpose of the CP project.¹⁰⁵ The time is in close proximity to the project under review as the Commission issued a conditional certificate on December 2, 2014, and it is likely to take a year to fulfill those conditions (assuming they are fulfilled) and start construction. As such, CP and the market segment of NED are "connected actions because they are closely related and interdependent."¹⁰⁶ Therefore the impacts of TGP's proposed market segment of the NED project should have been included in the EIS for the proposed Constitution Pipeline.

¹⁰¹ See, e.g., Garti Report on Need, p. 26; STP comments on DEIS (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088; STP, Letter in opposition to an expedited decision (Sept. 23, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140923-5016.

¹⁰² TGP, Request for prefilings, cover letter, 1 (Sept. 15, 2014), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20140915-5200. (Draft Resource Reports, with a new proposed route, were filed on December 8, 2014.)

¹⁰³ *Id.*

¹⁰⁴ *Id.* at 5.

¹⁰⁵ *Id.* at 3. ("This Project will add significant new pipeline capacity, alleviating the transportation constraint in the region. . .")

¹⁰⁶ 40 C.F.R. § 1508.25(a)(1)(iii).

TGP is also proposing a supply segment as part of NED that would run from Susquehanna County, Pennsylvania to Wright, New York. It would be collocated with the proposed CP for much of its length.¹⁰⁷ This 135-mile project would be built almost as soon as CP had been completed, if the two projects continue to be illegally segmented, and constructed as planned. In that scenario, it is possible that the already significant impacts of the proposed CP, combined with NED's, could not be mitigated. However this is impossible to determine as FERC limited its discussion of the cumulative impacts of the supply segment of NED to a single page of the FEIS.¹⁰⁸ This is a blatant violation of NEPA, which defines cumulative impact as follows:

Cumulative impact is the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency (Federal or non-Federal) or person undertakes such other actions.¹⁰⁹

Here, we clearly have an incremental project as TGP is choosing to site its proposed pipeline where another proposed pipeline would also be constructed. This will enable TGP to claim it is collocating the supply pipeline, and make the environmental review less burdensome.¹¹⁰ NED is a “reasonably foreseeable future action[.]” as TGP has already prefiled an application, under docket number PF14-22. The supply segment is a “similar action” as NED is reasonably foreseeable, and the two pipelines would be constructed close in time and geography.¹¹¹ Therefore the cumulative impacts of the two pipelines should be studied in a single environmental impact statement.¹¹²

¹⁰⁷ TGP, Draft Resource Report 1, 1-11 – 1-12, Attachment 1a, Project Location Map (Dec. 8, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141208-5217.

¹⁰⁸ FEIS, 4.13 Cumulative Impacts, 4-238 – 4-239.

¹⁰⁹ 40 C.F.R. § 1508.7.

¹¹⁰ *Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 89 (2d Cir. 1973).

¹¹¹ *Id.* at § 1508.25(a)(3).

¹¹² *Natural Resources Defense Council, Inc. v. Callaway*, 524 F.2d 79, 88 (2d Cir. 1973).

The Commission mentioned the TGP NED project in its Order, but did not discuss it. Instead it simply stated the TGP NED would be assessed in separate environmental impact statement.¹¹³ The Commission concluded, erroneously, that it was not a connected action because CP would be operational three years before NED.

Significantly, the Constitution Pipeline is proposed to be placed in service in 2015, three years earlier than the 2018, in-service date planned for Tennessee's project.¹¹⁴

This is not true. Even the Company has admitted that construction “**is scheduled to begin as early as 2015**”,¹¹⁵ which means construction may not begin until 2016, if at all. The Commission included ten pages of environmental conditions in its Order and many of them have to be completed in advance of the commencement of construction.¹¹⁶ Almost fifty percent of the landowners had not signed easement agreements at the time the Commission granted the Certificate, and eminent domain proceedings are lengthy. In addition, there is a complicated construction schedule. Over 1000 acres of land needed for this project are forested, and most tree-clearing can only take place from September through March.¹¹⁷ Cold-water trout streams, which are usually located in forested areas, can only be crossed from June through September.¹¹⁸ These restrictions foreclose any possibility of construction beginning before fall 2015. More importantly, FERC approved the project before DEC granted a 401 certificate, which has its own lengthy review process and easily could push construction into 2016. If the project obtains the required approvals, and does move forward, its in-service date would actually be much closer to

¹¹³ 149 FERC ¶ 61,199, at PP 36-37.

¹¹⁴ *Id.* at 36.

¹¹⁵ See Exhibit 2, Saul Ewing letter, 1 (Dec. 3, 2014) (emphasis added).

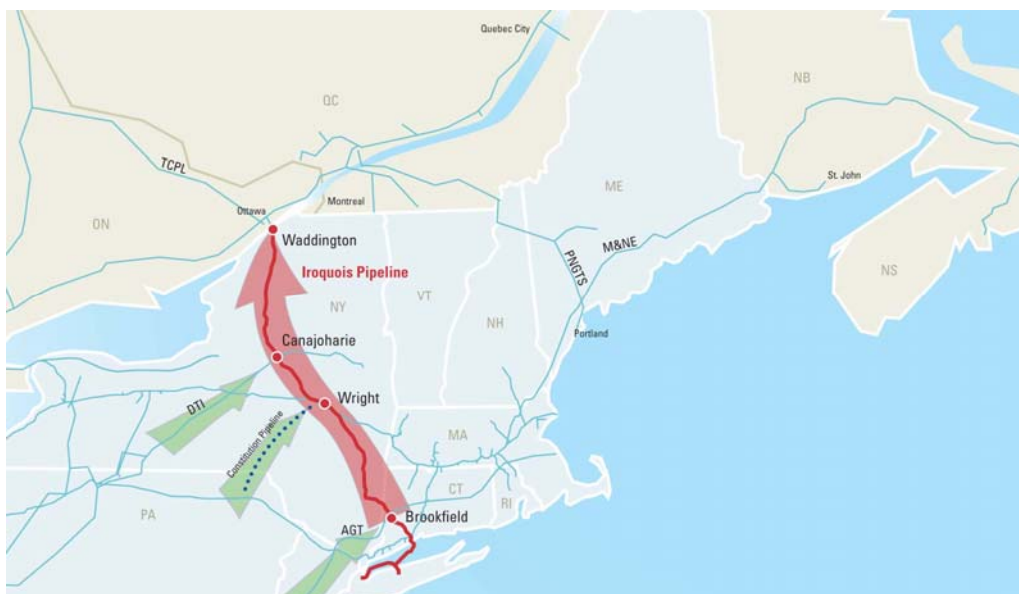
¹¹⁶ 149 FERC ¶ 61,199, at PP 48-57.

¹¹⁷ FEIS, 4-86.

¹¹⁸ FEIS, 4-94.

2018 than the Commission indicated. Therefore the two segments of the NED project are connected and similar to the proposed Constitution Pipeline, as they would be constructed close in time and geography. The two projects must be studied in a single environmental review.

The Commission also erred by not fully evaluating the potential reversal of the Iroquois pipeline in its FEIS. A year ago, Iroquois held an “Open Season” for bids to transport gas from Brookfield, Connecticut to Waddington, New York, where it would interconnect with the TransCanada Pipeline.¹¹⁹ Gas from the Algonquin, Constitution, and Dominion pipelines are shown as sources for this export scheme.¹²⁰



The “South to North” project is plainly a “connected action,” as the Iroquois cannot accept any additional gas as currently configured, and the reversal in the flow cannot happen unless the CP becomes operational.¹²¹ This makes the two projects “interdependent.”¹²² The exportation of gas

¹¹⁹ Iroquois, South-to-North Open Season Brochure, 1 (Dec. 2013), *available at* <http://www.iroquois.com/documents/SoNoOSBrochureFinal.pdf>.

¹²⁰ *Id.*

¹²¹ *See, e.g.*, Garti Report on Need, p. 9-18; STP comments on DEIS (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088; STP, Letter in opposition

to Canada, which could then be shipped overseas via the Saint Lawrence Seaway, raises many legal, social, and environmental questions that were not discussed in the FEIS or Order. In fact, export licenses require hearings, and not holding them prior to issuing the Certificate may violate property owners' due process rights as well as states' rights.¹²³ For all of these reasons, the Iroquois "South to North" project is another "connected action" that was illegally segmented from the FEIS. The revised order should require FERC to issue a supplemental DEIS that includes a complete study of these four interdependent and similar projects in one environmental review.

In *Delaware Riverkeeper*, the D.C. Circuit also conducted an analysis using *Taxpayers Watchdog*, as FERC relied on that case and failed to cite NEPA and its regulations in its briefs.¹²⁴ Even though "an agency's consideration of the proper scope of its NEPA analysis should be guided by the governing regulations," the D.C. Circuit nonetheless reviewed the first two factors listed in *Taxpayers Watchdog*, namely whether a "segment (1) has logical termini; [and] (2) has substantial independent utility."¹²⁵ While it appears the requirement to use NEPA and its regulations has been established by precedent, STP will also show that these two factors are not applicable, and therefore do not support the segmentation found in FERC's FEIS.

Wright, New York is not a logical terminus for the proposed pipeline because the market for the gas is in New York City and New England while the proposed pipeline would move the gas 125-miles in the wrong direction. If, instead, the proposed pipeline were to run due east from

to an expedited decision (Sept. 23, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140923-5016.

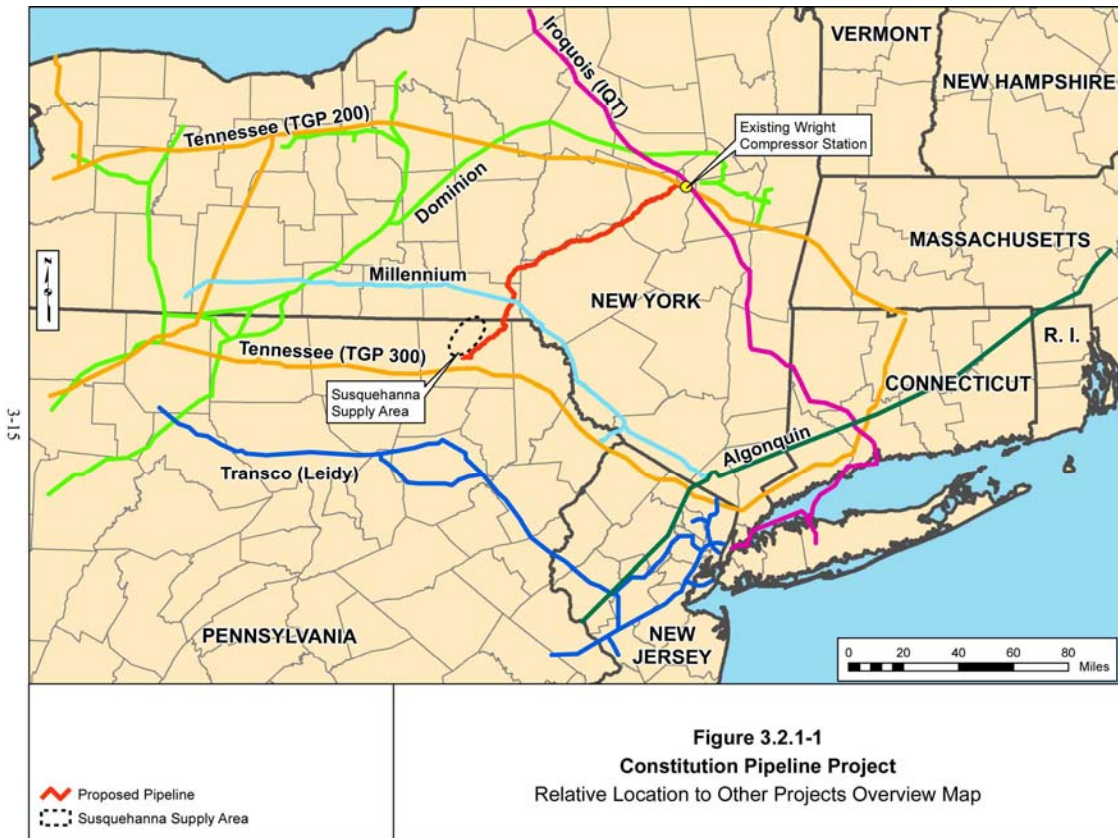
¹²² *Id.* § 1508.25(a)(1)(iii).

¹²³ 15 U.S.C. § 717b(a).

¹²⁴ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1315 (D.C. Cir. 2014); *Taxpayers Watchdog v. Stanley*, 819 F.2d 294 (D.C. Cir. 1987).

¹²⁵ *Del. Riverkeeper* at 1315.

Susquehanna County, Pennsylvania, then it would almost reach New York City. There it could interconnect with the existing Algonquin pipeline to bring the gas north to New England.



126

Wright, New York might be a logical terminus if the two interconnecting pipelines – TGP and Iroquois – had the capacity to transport 650,000 Dth/day of additional gas to the purported markets in New York City and New England, but they don't. The capacity to New England would only exist if the proposed market segment of NED were constructed, which is why the impacts of TGP's expansion project must be studied now. In addition, under current contracts and system configuration, Iroquois is not capable of transporting additional gas to New York City during the summer or winter months, which is when it is needed. While the capacity of the Iroquois could be expanded to overcome the current bottleneck, no such project has been proposed. Therefore it appears that the actual market for the additional gas that would be

¹²⁶ FEIS, 3.2 System Alternatives, p. 3-15.

transferred to the Iroquois would be in Canada, which is exactly – and not surprisingly – what Cabot’s marketing plans demonstrate.¹²⁷

[Three paragraphs were redacted as they include CEII information. Footnotes 128 - 130 are included to keep the numbers consistent between the two versions. ¹²⁸; ¹²⁹; ¹³⁰.]

The prior discussion also shows that the proposed pipeline does not have substantial independent utility. This situation could be overcome if there were a use for the gas along the route, but the amount of gas that could be consumed in this part of New York State is insignificant. The Company tried to establish a local market, and signed a nonbinding agreement with a start-up called Leatherstocking that would allow it to tap gas from the proposed pipeline.

To provide some perspective, Leatherstocking Gas has estimated that throughput for the Village and Town of Sidney would be less than 1,000 Mcf/day even when the distribution system is fully built out. This amount is approximately 0.3% of the total Constitution throughput. . . . Even if the other distribution facilities that could follow the Sidney system are constructed, the total throughput for all Leatherstocking Gas distribution, including Sidney, would be in the range of 2,000 Mcf/day or approximately 0.6% of Constitution's total throughput. . . .¹³¹

Even this small percentage might be unrealistically high as it is well-known that it is uneconomical to deliver gas to sparsely populated rural areas.¹³² Even if the projections are

¹²⁷ Garti Report on Need, p. 13.

¹²⁸ Constitution Pipeline Company, LLC, Application, Exhibit G and G-II (June 13, 2013), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20130613-5078.

¹²⁹ Levitan and Associates, Inc., NYCA Pipeline Congestion and Infrastructure Adequacy Assessment, New York Independent System Operator, 60, 62, 66, 77 (September 2013), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5252 [hereinafter Levitan].

¹³⁰ Dominion Transmission, Inc., New Market Project, Abbreviated Application, 1-2 (June 2, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140602-5238.

¹³¹ Nixon Peabody LLP on behalf of Leatherstocking Gas Company LLC, Answer in Opposition to the Motion for Extension of Time, 5, Fn 8 (March 31, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140331-5183.

¹³² *See eg.*, Bob Rosen, Comment on DEIS (March 13, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140313-5032; Anne Marie Garti, *Report on the Need for the Proposed Constitution Pipeline*, p. 23-26 (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5237.

accurate, 0.6% of the capacity of the pipeline for local delivery and consumption is not an indication of **substantial** independent utility.¹³³

In sum, the Constitution Pipeline does not have significant purpose unless the NED market pipeline is constructed and the Iroquois is reversed.¹³⁴ Wright, New York is not a logical terminus and the proposed project would not have substantial independent utility without these other proposed projects being approved and constructed. Therefore TGP's NED pipeline and Iroquois' South to North project are connected, cumulative, and similar actions and must be studied in one environmental review. The Commission should order the issuance of a supplemental draft environmental impact statement that includes the Constitution Pipeline, the supply and market segments of the proposed NED project, and the reversal of the flow in the Iroquois from south to north.

4. National Environmental Policy Act Violation – Insufficient EIS

The Commission violated NEPA by failing to: (1) issue a revised draft or supplemental environmental impact statement that incorporates the information required by all agencies; (2) provide sufficient evidence on the need for the project, depletion of shale gas reserves, and health impacts; and (3) defer to the New York State Department of Environmental Conservation (DEC) on water quality issues.

NEPA, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. Parts 1500-08, offer broad protections to the natural and human environment by requiring agencies to

¹³³ *Del. Riverkeeper Network v. FERC*, 753 F.3d 1304, 1315 (D.C. Cir. 2014); *Taxpayers Watchdog v. Stanley*, 819 F.2d 294 (D.C. Cir. 1987).

¹³⁴ *Coal. on Sensible Transp., Inc. v. Dole*, 826 F.2d 60, 69 (D.C.Cir.1987).

prepare detailed environmental impacts statements, provide that information to the public, and take comments on what they have compiled.¹³⁵ Specifically, NEPA requires

(2) all agencies of the Federal Government shall--

(A) utilize a systematic, interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts in planning and in decision-making which may have an impact on man's environment; . . .

(C) include in every recommendation or report on proposals for legislation and other major Federal actions significantly affecting the quality of the human environment, a detailed statement by the responsible official on--

(i) the environmental impact of the proposed action,

(ii) any adverse environmental effects which cannot be avoided should the proposal be implemented,

(iii) alternatives to the proposed action,

(iv) the relationship between local short-term uses of man's environment and the maintenance and enhancement of long-term productivity, and

(v) any irreversible and irretrievable commitments of resources which would be involved in the proposed action should it be implemented.

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved. Copies of such statement and the comments and views of the appropriate Federal, State, and local agencies, which are authorized to develop and enforce environmental standards, shall be made available to the President, the Council on Environmental Quality and to the public as provided by section 552 of title 5, United States Code, and shall accompany the proposal through the existing agency review processes;¹³⁶

As discussed below, FERC, other agencies, and the public all agreed that the draft environmental impact statement (DEIS) was incomplete, yet a revised DEIS was not compiled or submitted for review and comment. Instead, after the DEIS was issued, bits and pieces of

¹³⁵ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); 40 C.F.R. § 1503.1.

¹³⁶ 42 U.S.C. § 4332(2) (2012).

information were filed in the docket over a period of months, and meetings were held between the Company and the agencies, with no official public notice or comment period on information that may have been acquired. In addition, critical topics, such as the need for the project, the “irreversible and irretrievable” depletion of shale gas supplies, and public health impacts, were completely ignored. Finally, FERC usurped the critical role assigned to the New York State Department of Environmental Conservation (DEC) under the Clean Water Act to protect the water quality of the Empire State by not waiting for the DEC to issue, condition, or deny the Company’s application for a 401 water quality certificate prior to completing the FEIS and issuing the certificate of public convenience and necessity. Each of these sub-issues will be addressed separately.

Sub-Issue 1. *The Commission violated NEPA by failing to issue a revised draft or supplemental environmental impact statement that incorporated the information required by all agencies.*

FERC issued a Draft Environmental Impact Statement (DEIS) on February 12, 2014, with an April 7, 2014 deadline for public comments.¹³⁷ The document was riddled with missing information, analyses, and reports. Despite hundreds of requests from agencies, organizations, and individuals, FERC refused to extend the comment period so the public could respond to a complete, integrated statement of environmental impacts.¹³⁸ PELC, on behalf of STP, compiled a five-page, single-spaced list of all of the information that FERC itself stated was missing.¹³⁹ Some documents, such as the critical Upland Forest Plan, were supposed to be submitted prior to

¹³⁷ 79 Fed. Reg. 9,735 (Feb. 20, 2014).

¹³⁸ See, e.g., Name / Accession No: USFWS / 20140325-5067; USEPA / 20140325-0027; NYSDEC / 20140324-5129; Earthjustice on behalf of 6 clients / 20140325-5063; STP / 20140328-5013; Trout Unlimited / 20140403-5071.

¹³⁹ STP, Comments on DEIS, Exhibit 1 (April 8, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

the end of the public comment period, but were not.¹⁴⁰ Instead the Draft Migratory Bird and Upland Forest Plan was filed four weeks after the comment period closed.¹⁴¹ The United States Environmental Protection Agency (EPA) responded by advising FERC this late submission was a violation of NEPA,¹⁴² but FERC ignored EPA, and never corrected the error by issuing a revised or supplemental DEIS and opening a new public comment period.

New information was also added near the very end of the public comment period. For example, the day the comment period ended the Company submitted supplemental information about waterbodies located outside of the right of way that could be impacted by construction and information about access roads, some of which were over a mile long.¹⁴³ This information was supposed to have been submitted prior to the end of the public comment period.¹⁴⁴ A week and a half before the end of the public comment period the Company added eleven, one-hundred-foot tall communication towers to its proposal, but did not indicate where they would be sited.¹⁴⁵ The public comment period closed, as noticed in the Federal Register, on April 7, 2014.¹⁴⁶

No less than six federal and state agencies submitted comments that the DEIS was inadequate:

1. The United States Environmental Protection Agency letter included the following:

¹⁴⁰ FERC, DEIS, § 4.5.3 (Feb. 12, 2014), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20140212-4002.

¹⁴¹ Company, Draft Migratory Bird and Upland Forest Mitigation Plan (May 5, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140506-5186.

¹⁴² USEPA, Letter regarding late submission of the Migratory Bird Plan (June 10, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140616-0289.

¹⁴³ Company, Supplemental information on waterbodies and access roads (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5368.

¹⁴⁴ DEIS at §§ 4.5.1 and 4.5.3,

¹⁴⁵ Company, Radio tower proposal (March 26, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140326-5065.

¹⁴⁶ 149 FERC ¶ 61,199 at pp 22-23.

EPA has rated the DEIS EC-2 Environmental Concerns, Insufficient Information (see attached sheet) primarily due to the incomplete discussion of a collocated alternative on Route 1-88, and lack of an upland forest plan, direct impacts from access roads to wetlands, slope stability analysis, indirect impacts from local sales of natural gas, and an incomplete general conformity applicability analysis. Our detailed comments are enclosed.

EPA does note Constitution's access to 24 percent (approximately 30 miles) of the project area has been denied. Therefore, the impacts reported in the DEIS may be higher than reported for many resources. This lack of information may necessitate supplements as this information becomes available.¹⁴⁷

2. The United States Department of Interior, Fish and Wildlife Services (FWS) submitted an 18-page comment letter. The agency stated, “For reasons detailed herein, we believe the DEIS is deficient in many respects, and should be revised and recirculated for comment. In addition, some sections may benefit from incorporating provisions for well-defined supplements.”¹⁴⁸
3. The United States Army Corps of Engineers (ACE) noted the lack of required information on Alternative M and stated reliance on national wetlands maps was not sufficient to identify wetlands as the ACE requires surveys that are performed on the ground.¹⁴⁹
4. The New York State Department of Environmental Conservation (DEC) critiqued FERC’s analysis of Alternative M in the first five pages, and then offered another five pages of comments. These included the need for information from the 24 percent of the

¹⁴⁷ EPA, Comment on DEIS (April 9, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140409-5120.

¹⁴⁸ FWS, Comment on DEIS (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5035.

¹⁴⁹ ACE, Comment on DEIS (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5149.

parcels that had not been surveyed and the need for a cumulative impact analysis on the local distribution of gas.¹⁵⁰

5. The New York State Office of Attorney General (OAG) noted the lack of adequate study of greenhouse gas emissions and Alternative M. The OAG further stated that use of federal land that was already acquired to build I-88 would diminish the use of eminent domain for this project.¹⁵¹ Like FWS, the OAG said the cumulative impacts of the potential capacity of the pipeline need to be considered now.

6. The New York State Public Service Commission (NYPSC) stated a supplemental EIS was required to study the newly added communication towers. NYPSC also noted the lack of sufficient information of noise impacts at the Wright Compressor Station:

Analysis of routing alternatives should address the potential to provide gas to unserved municipalities, and the extent of secondary pipeline spurs needed to reach areas of potential use, such as villages or industrial areas not presently served by natural gas utilities.¹⁵²

STP, its individual members, other organizations, and the public also noted the lack of required information in the DEIS. These comments included, but are by no means limited to:

1. Lack of response to requests for information made by the ACE and DEC.

STP analyzed the Company's lack of response to requests for information made by the ACE and DEC.¹⁵³ FERC failed to include this information in the DEIS or FEIS even though both agencies stated in their comments that it should be so incorporated.¹⁵⁴

¹⁵⁰ DEC, Comment on DEIS (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5409.

¹⁵¹ OAG, Comment on DEIS (April 16, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140416-5100.

¹⁵² NYPSC, Comment on DEIS (April 4, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5001.

¹⁵³ STP, Comments on DEIS, Exhibit 2 (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

2. Lack of survey access on 24 percent of the route.

FERC admitted in the DEIS that only 534 of 707 of the parcels had been surveyed, and the remaining 24% of the route, which equaled 30 miles, had not been surveyed.¹⁵⁵ The inadequacy was not fixed in the FEIS as the percentage of unsurveyed land remained the same in the final assessment.¹⁵⁶

3. The information provided was generic, rather than site-specific.

Landowners and other members of the public complained that environmental assets unique to their land, or to specific micro ecosystems, received no consideration during the environmental review.¹⁵⁷

4. Much of the information provided was based on inadequate databases.

The Company relied on publicly available databases to generate much of the information in the DEIS, resulting in a generic, rather than site-specific environmental review. Many of these databases specifically state they are based on sketchy and partial information, with no, or limited, research to substantiate them.¹⁵⁸ This is particularly troubling in regards to endangered species, or species of concern, as the Company only looked for species where the databases indicated they might be present. In turn FERC made

¹⁵⁴ ACE, Scoping Comments (Oct. 9, 2012), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121009-5285; DEC, Scoping Comments (Nov. 7, 2014) *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121109-5186.

¹⁵⁵ DEIS, § 1.2.

¹⁵⁶ FEIS, p 1-5.

¹⁵⁷ STP, Comment on DEIS, 3, 40-41, 44, 63 (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

¹⁵⁸ *Id.* at 49-51.

conclusory statements that there would be no adverse impact to many of these species even though no field studies were made to determine whether they might be present.¹⁵⁹

5. The study areas were too small.

There was no justification for the narrow width of the study corridors, which began at 600 feet, and then narrowed to 300 feet.¹⁶⁰ According to FERC, the Company determined the width of the study area so that they could adjust the location of the pipeline.¹⁶¹ The width was never expanded to capture required information for downstream impacts.¹⁶²

6. There was no analysis of the need for the project.

This is discussed both above and below, and incorporated by reference here.

7. There was no discussion of health impacts.

This is discussed below, and incorporated by reference here.

8. Privileged information could not be obtained in a timely manner.

According to FERC's Rules of Practice and Procedure, 18 C.F.R. § 385.212, the Company was supposed to file a protective agreement form in Docket No. CP13-499. However, the Company failed to do so, and the Commission failed to enforce its own rule. Signing a protective agreement would have enabled intervenors a means to obtain privileged and CEII information, which is critical for critiquing the DEIS. FERC was aware of the problem as STP attempted to obtain privileged information through a

¹⁵⁹ See, e.g., FEIS, TABLE 4.7.3-1, State-Listed Species Potentially Occurring in the Constitution Pipeline Project Area.

¹⁶⁰ STP, Comments on DEIS, 17, 48-49 (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

¹⁶¹ FEIS, p. S-559.

¹⁶² See, e.g., FWS, Comment on DEIS, 9 (April 7, 2014), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20140408-5035; STP, Comments on DEIS, Hudsonia report, Exhibit 3 (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

Freedom of Information Request, and appealed the withholding of the request prior to the issuance of the DEIS.¹⁶³ Since the Commission failed to enforce its own rule, which would have made this information available to interested parties, it kept critical information from the public.

STP, and many members of the public, repeatedly called for a revised DEIS to address these deficiencies, but all of these requests were ignored by FERC.¹⁶⁴

FERC issued the FEIS on October 24, 2014 without another round of public comments on a complete environmental impact statement, thus failing to follow NEPA's mandatory regulations.¹⁶⁵ For example, a "draft statement must fulfill and satisfy to the fullest extent possible the requirements established for final statements in section 102(2)(C) of the Act."¹⁶⁶ Here, FERC knowingly issued an incomplete DEIS, and did not reissue a revised DEIS once it had obtained more information. The regulations also require the EIS, and all supporting documents, to be accessible to public.¹⁶⁷ While the DEIS was properly noticed, none of the material submitted afterwards was available to the public during the official public comment period, which closed on April 7, 2014.¹⁶⁸ Another regulation states that the process of disclosing

¹⁶³ STP, Motion for Precedent Agreements, Appendix A (Nov. 11, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141113-5025.

¹⁶⁴ STP, Comments on DEIS, 4, 8, 11, 17, 48, 51, 62, 63 (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088; STP, Letter regarding TGP NED proposal (July 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140707-5086; STP, Letter opposing request for expedited decision (Sept. 23, 2014) *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140923-5016.

¹⁶⁵ 40 C.F.R. § 1506.6 (2014).

¹⁶⁶ 40 C.F.R. § 1502.9(a) (2014).

¹⁶⁷ *See* 40 C.F.R. § 1506.6 (2014) (providing that federal agencies must make diligent efforts to involve the public in preparing environmental documents, give public notice of the availability of environmental documents so as to inform those persons who may be interested or affected, and solicit appropriate information from the public).

¹⁶⁸ 149 FERC ¶ 61,199 at pp 22-23.

information to the public must occur before the agency has reached its final decision on whether to go forward with the project.¹⁶⁹ Here FERC has finalized the EIS, and issued its Order, yet there is **still** much information that has not been disclosed to the public. In addition, NEPA specifically states all agency comments are to be part of the record and travel with the process.¹⁷⁰ Here FERC claims that it did “consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved,”¹⁷¹ but it then erred by ignoring or dismissing what was said, even when the agency’s comments were authorized by law.¹⁷² Upon review, it will be those agencies, not FERC, who will be given deference in their areas of expertise.¹⁷³ Finally, between the issuance of the DEIS and FEIS many meetings were held between the Company and agency staff, but the public had no access to comments and decisions that may have been made. While FERC appears to think other agency actions can take place outside of the EIS framework, there is nothing in NEPA that allows deficiencies to be fixed in bureaucratic hallways around the Nation, far from public scrutiny. All of these actions violate the procedural requirements of NEPA, 42 U.S.C. § 4321 *et seq.*, and its implementing regulations, 40 C.F.R. Parts 1500-08.¹⁷⁴

¹⁶⁹ *Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 990 (E.D. Cal 2005) (citing 40 C.F.R. § 1500.1(b)).

¹⁷⁰ 42 U.S.C. § 4332(2).

¹⁷¹ *Id.*

¹⁷² 42 U.S.C. § 4332(1).

¹⁷³ *Ala. Rivers Alliance v. F.E.R.C.*, 325 F.3d 290, 396-7 (D.C. Cir. 2003).

¹⁷⁴ 42 U.S.C. § 4332(2) (2012); 40 C.F.R. §§ 1500.1(b), 1500.2(d), 1502.9(a), 1506.6 (2014); *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *Cal. v. Block*, 690 F.2d 753, 761, 765, 770-772 (9th Cir. 1982); *Suffolk Cnty. v. Secretary of Interior*, 562 F.2d 1368, 1375 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978); *Sierra Nevada Forest Prot. Campaign v. Weingardt*, 376 F. Supp. 2d 984, 990 (E.D. Cal 2005) (citing 40 C.F.R. § 1500.1(b)).

Sub-Issue 2. *The Commission violated NEPA by failing to provide sufficient evidence on the need for the project, depletion of shale gas reserves, and public health impacts.*

While the preceding section dealt with insufficient information in regards to the public's right to comment on a complete draft EIS, a related, but distinct error is the omission of required information in the FEIS. Here, the Commission violated NEPA by omitting the following topics from the environmental impact statement: (1) the need for project, (2) depletion of shale gas reserves, and (3) public health impacts.

As discussed at length above, and incorporated by reference here, the FEIS did not include any discussion of the need for the project.¹⁷⁵ This omission defeats the purpose of NEPA, as the point of the process is to weigh the project's benefits against its environmental impacts.¹⁷⁶ NEPA's regulations also mandate a discussion of need, so omitting it, as the Commission has done, is a direct violation of law.¹⁷⁷ In addition, a discussion of need is required by the ACE and DEC in order to conduct their respective public interest reviews.¹⁷⁸ Since FERC, as lead agency, did not provide the required information, these two agencies will now have to conduct their own environmental reviews.¹⁷⁹ Thus FERC's intentional exclusion of any discussion or evidence of the need for the project in the FEIS is arbitrary and capricious and contrary to law.¹⁸⁰

¹⁷⁵ FEIS, Introduction, 1.1 Project Purpose and Need, p 1-3.

¹⁷⁶ *Robertson v. Methow Valley Citizens Council*, 490 U.S. 332, 349 (1989); *Suffolk Cnty. v. Secretary of Interior*, 562 F.2d 1368, 1389 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978).

¹⁷⁷ 40 C.F.R. § 1502.3 (2014). "The statement shall briefly specify the underlying purpose and need to which the agency is responding in proposing the alternatives including the proposed action."

¹⁷⁸ 33 C.F.R. § 320.4 (2014); 40 CFR Part 230 (2014); 6 N.Y. COMP. CODES R. & REGS. § 608.8.

¹⁷⁹ 79 Fed. Reg. 64765 (Oct. 31, 2014) (FERC acknowledges ACE may not accept the FEIS.); 6 NYCRR § 617.15 ("provided that the federal EIS is sufficient to make findings under section 617.11 of this Part.").

¹⁸⁰ 42 U.S.C. § 4332(2)(C) (2012).

STP requested an analysis of shale gas reserves in Pennsylvania its scoping comments, and pointed out this had not been done in its comments on the DEIS.¹⁸¹ Comments were also submitted by STP members on the accuracy of the estimates of those reserves and the extensive build-out of pipelines over the past few years.¹⁸² Taken together, these requests go to the heart of whether “any irreversible and irretrievable commitments of resources . . . would be involved in the proposed action should it be implemented.”¹⁸³ Shale gas is a finite resource, and its extraction and transport is an “irreversible and irretrievable commitment[] of resources,” yet no mention of this has been made in the FEIS. In fact, FERC has been approving pipeline projects to transport huge volumes of gas from Pennsylvania at an accelerating rate without any analysis of whether there are sufficient reserves to keep the gas flowing for the lifespan of the pipes. This information needs to be discussed in the FEIS, and balanced with the rest of impacts and benefits of the proposed project. The lack of analysis of these “irreversible and irretrievable commitments of resources” is another violation of NEPA.¹⁸⁴

The Commission also failed to include a comprehensive health impact assessment, as requested by individuals, nonprofit organizations and elected officials.¹⁸⁵ After reviewing the

¹⁸¹ STP, Scoping comments, 9-11 (Oct. 9, 2012), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20121009-5263; STP, Comments on DEIS, 59-60 (April 8, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

¹⁸² Garti, Comment (July 4, 2012), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20120705-5019; Garti Report on Need, p. 14-23 (April 7, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140407-5237.

¹⁸³ 42 U.S.C. § 4332(2)(C)(v).

¹⁸⁴ 42 U.S.C. § 4332(2)(C); *Suffolk County v. Secretary of Interior*, 562 F.2d 1368, 1390 (2d Cir. 1977), cert. denied, 434 U.S. 1064 (1978).

¹⁸⁵ Scoping and other comments, Name / Accession No. in Docket PF12-9: Sanders / 20120924-5008; Sanders / 20120927-5003; Huston / 20121009-5180; US House of Representative Chris Gibson letter re the 3/19/13 letter of Schoharie County Board of Supervisors requesting a comprehensive health impact

DEIS, the Center for Sustainable Rural Communities noted that there was no mention of a comprehensive health impact assessment in it.¹⁸⁶ However, the FEIS also failed to mention a health impact assessment. In November 2014, prior to the issuance of the Certificate, the Center for Sustainable Rural Communities submitted an addendum to its comment on the DEIS.¹⁸⁷ Attached were three appendices of recent scientific studies of health impacts associated with the extraction and transport of oil and gas. The significance of the first study was noted:

The key finding of this study is that short-term spikes in toxic emissions within a half-mile of gas production and transportation infrastructure often exceed federal emission guidelines by several orders of magnitude. These short-term spikes represent a causal mechanism for recently reported correlations between proximity to gas infrastructure and negative health status.¹⁸⁸

In other words, compliance with air emissions does not mean there are no health impacts. The assessment that was requested is a formal set of protocols developed by the U.S. Center for Disease Control and the World Health Organization that are used to forecast, and thus avoid, harm. Recent studies show a correlation between gas infrastructure and health impacts, and FERC violated NEPA by ignoring them.¹⁸⁹

Sub-Issue 3. The Commission violated NEPA by failing to defer to the New York State Department of Environmental Conservation (DEC) on water quality issues.

assessment / 20130624-0014; Chairman Wellinghoff's response to Rep. Gibson in Docket CP13-499 / 20130718-0035.

¹⁸⁶ Center for Sustainable Rural Communities, Comment on DEIS (April 4, 2014), *available at* http://elibrary.ferc.gov/idmws/file_list.asp?accession_num=20140404-5051.

¹⁸⁷ Center for Sustainable Rural Communities, Addendum to comment on need for health impact assessment (Nov. 18, 2014), *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141119-5058.

¹⁸⁸ *Id.* Statement in letter regarding Appendix A: Air concentrations of volatile compounds near oil and gas production: a community-based exploratory study, Gregg P. Macey, Ruth Breech, Mark Chernaik, Caroline Cox, Denny Larson, Deb Thomas and David O. Carpenter.

¹⁸⁹ 42 U.S.C. § 4332(2)(C).

As discussed at length in the first section of this request for rehearing, and incorporated by reference here, it is DEC, not FERC, that has the authority to decide how the project should be configured to comply with New York State water quality standards. Under section 401 of the Clean Water Act, 33 U.S.C. § 1341(a)(1), that decision should have been made prior to the issuance of a Certificate by the Commission.

The Commission's premature issuance of a Certificate also violated NEPA as the statute requires the interpretation and administration of all federal laws, such as the Natural Gas Act, to comply with NEPA, and with all other laws.

The Congress authorizes and directs that, to the fullest extent possible: (1) the policies, regulations, and public laws of the United States shall be interpreted and administered in accordance with the policies set forth in this Act.¹⁹⁰

To do that, FERC must recognize the authority of other agencies:

Prior to making any detailed statement, the responsible Federal official shall consult with and obtain the comments of any Federal agency which has jurisdiction by law or special expertise with respect to any environmental impact involved.¹⁹¹

Here DEC has both "jurisdiction by law" and "special expertise" in maintaining the State's water quality, and is acting under federal authority, granted under the Clean Water Act.

Any applicant for a Federal license or permit to conduct any activity . . . which may result in any discharge into the navigable waters, shall provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate. . .that any such discharge will comply with the applicable provisions of sections 1311, 1312, 1313, 1316, and 1317 of this title.¹⁹²

While FERC has consulted with DEC, and filed DEC's comments in the docket, the Commission has not incorporated them in the FEIS. For example, in its scoping comments, DEC stated

¹⁹⁰ 42 U.S.C. § 4332(1).

¹⁹¹ 42 U.S.C. § 4332(2).

¹⁹² 33 U.S.C. § 1341(a)(1) (2012).

For streams and wetlands the preferred method for crossing is Horizontal Directional Drilling (HDD) because it has the advantages of minimizing land disturbance, avoiding the need for dewatering of the stream, leaving the immediate stream bed and banks intact, and reducing erosion, sedimentation and Project-induced watercourse instabilities. The draft EIS should also evaluate cases where other methods are proposed, for instance the Project Sponsor should explain why HDD will not work or is not practical for that specific crossing. Where HDD will be utilized, the Project Sponsor should: ensure that HDD staging areas remain outside of regulated boundaries (e.g., state-wetland 100 foot adjacent area and 50 feet from protected streams); describe the typical work area required and protective measures that will be used to limit runoff of sediment and HDD fluids into streams and wetlands; and develop contingency plans for any HDD failure that results in sediment and/or drilling fluid entering a wetland or stream.¹⁹³

However, this directive was not followed in the FEIS as only a handful of the 289 waterbodies would be crossed using the Direct Pipe method.¹⁹⁴ Instead, “Constitution would use a dry crossing method (i.e., dry open-cut, flume, dam and pump, or cofferdam crossing method) at 268 waterbodies.”¹⁹⁵ The name of that construction technique (“dry crossing method”) is misleading as it is unlikely in this wet area of New York State that the crossing would occur when the waterbodies are actually dry. Techniques that would be utilized to divert water around the crossings are exactly what DEC stated that it wants to avoid.

Unfortunately many of DEC’s comments on water quality were completely ignored in the FEIS. The Commission stated there will be no significant impacts, but DEC has not reached this conclusion, and this calls into question the validity of the findings in the FEIS. More importantly, the Commission has issued a Certificate before DEC has decided whether to grant a 401 water

¹⁹³ DEC, Scoping Comments (Nov. 7, 2012) *available at* http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20121109-5186.

¹⁹⁴ FEIS, pp 2-20 – 2-25.

¹⁹⁵ FEIS, p. 4-52.

quality certificate. Therefore the Commission has violated NEPA by not deferring to DEC's judgment in regards to water quality issues in New York State.¹⁹⁶

STP and its members also submitted many comments on the DEIS with respect to how the project would cause significant negative impacts on New York State's water quality. STP's comment, which is 185-pages long, is devoted almost entirely to this topic.¹⁹⁷ It includes a lengthy discussion on the requirements for meeting New York State water quality standards and the federal anti-degradation policies, which have been incorporated into the New York State water quality standards. Rather than repeat the arguments here, we instead incorporate by reference all of the comments made by STP and Hudsonia on the DEIS. The point is that FERC's refusal to defer to DEC, and to adequately consider New York State water quality requirements, shows that its findings in the FEIS are arbitrary and capricious and contrary to law.

5. Potential Due Process Violation If Order On Rehearing Is Not Timely

The Commission will violate the Constitutional and statutory due process rights of citizens if it does not issue an order on this request within the 30 days prescribed by the Natural Gas Act, so that a meaningful appeal, with an effective remedy, remains feasible.

The Natural Gas Act prescribes strict timelines for making a request for rehearing. “[A] party may apply for a rehearing within thirty days after the issuance of such order.”¹⁹⁸ When filed late, the Commission has stated, “The statute does not give the Commission the discretion to waive this requirement.”¹⁹⁹ In turn, the Commission is instructed by statute to respond within

¹⁹⁶ *Ala. Rivers Alliance v. F.E.R.C.*, 325 F.3d 290, 396-7 (D.C. Cir. 2003).

¹⁹⁷ STP, Comments on DEIS (April 8, 2014), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20140408-5088.

¹⁹⁸ 15 U.S.C. § 717r(a).

¹⁹⁹ *See, eg., AES Sparrows Point LNG, LLC Mid-Atlantic Express, LLC*, 129 FERC ¶ 61245, p 3 (2009).

thirty days, or the application is deemed denied.²⁰⁰ To get around this statutory requirement, the Commission regularly grants itself an indefinite extension.²⁰¹ In many cases, this makes the case against the Commission moot, and renders otherwise available remedies ineffective.

Here, eminent domain proceedings based upon the illegal Order have already begun in the Northern District of New York, which would permanently encumber property of many STP members. In addition, there is the looming threat of the destruction of 1800 acres of fields, forests, streams and wetlands. To protect its due process rights and preserve an effective remedy,²⁰² STP intends to initiate legal proceedings to appeal FERC's constructive "denial" if a decision is not rendered within thirty days.²⁰³

IV. COMMUNICATIONS

Communications and correspondence regarding this proceeding should be served upon the following individuals:

Daniel E. Estrin
Pace Environmental Litigation Clinic, Inc.
78 North Broadway
White Plains, NY 10603
Telephone: (914) 422-4343
Facsimile: (914) 422-4437
destrin@law.pace.edu

²⁰⁰ 15 U.S.C. § 717r(a). "Unless the Commission acts upon the application for rehearing within thirty days after it is filed, such application may be deemed to have been denied."

²⁰¹ See, e.g., FERC, Order Granting Rehearing for Further Reconsideration (July 9, 2012), available at http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20120709-3002. The final order was issued six months later, on January 11, 2013. See 142 FERC ¶ 61,025.

²⁰² *Mathews v. Eldridge*, 424 U.S. 319, 331-335 (1976); *Fuentes v. Shevin*, 407 U.S. 67, 80-81 (1973); *Alec L. v. Jackson*, 863 F.Supp.2d 11, 13 (D.C. Cir. 2012).

²⁰³ 15 U.S.C. § 717r(b).

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V. CONCLUSION

For the foregoing reasons, Intervenors respectfully request that the Commission grant this request for rehearing and rescission of the Order.

Respectfully submitted on the 2nd day of January, 2015,

/s/ Daniel E. Estrin and Anne Marie Garti
Daniel E. Estrin
Anne Marie Garti
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Attorneys for Stop the Pipeline

Exhibit 1

April 7, 2014
Letter Submitted
by United States
Army Corp of Engineers
to FERC, Docket CP13-499



DEPARTMENT OF THE ARMY
US Army Corps of Engineers, ATTN: CENAN-OP-RU
Upstate Regulatory Field Office
1 Buffington St., Building 10, 3rd Fl. North
Watervliet, New York 12189-4000

April 7, 2014

Regulatory Branch

SUBJECT: U.S. Army Corps of Engineers File Number NAN-2012-00449-UBR, by Constitution Pipeline Company, LLC, Federal Energy Regulatory Commission Docket No. CP13-499; USACE Comments on Draft Environmental Impact Statement Published February 2014.

Kimberly D. Bose, Secretary
Federal Energy Regulatory Commission
888 First Street, NE, Room 1A
Washington, DC 20426

Dear Secretary Bose:

The United States Army Corps of Engineers (USACE) respectfully submits the following comments on Constitution Pipeline Company's Draft Environmental Impact Statement (DEIS) for the Constitution Pipeline project.

In December 2013, the USACE provided pre-publication comments pertaining to the DEIS which was published in February 2014. Although inclusion and clarification of a number of USACE comments were included in the DEIS; the following comments were not included/addressed and we reiterate their importance for inclusion in the Final EIS.

Reference: Page 1-3, last paragraph currently reads: "Constitution has field surveyed approximately 534....."

Comment 1: The original comment requested that the number of miles for both figures 534 and 707 be stated. As presented, the amount of survey work still left to do is not clearly stated. The numbers should quantify the remaining miles to survey, the number of unsurveyed tracts, and the percent of unsurveyed tracts. These numbers should be changed to reflect the most up-to-date information that Constitution has provided subsequent to filing the FERC application and should be broken down accordingly.

Reference: Page 2-14, Survey and Staking, first paragraph, last sentence currently reads: "In association with COE requirements, Constitution may also use orange safety fencing to identify wetlands of high value."

Comment 2: The original comment requested a statement indicating that wetland boundaries and other environmentally sensitive areas identified in easement agreements or by federal and state agencies would be marked and fenced with orange construction fence for protection. The intention of this statement has been misinterpreted in the DEIS. Placing orange construction fencing around ALL wetlands and ALL environmental sensitive areas as determined by the Federal and State agencies is not optional. The quality of a wetland is not a jurisdictional determinant. The goal is to keep construction equipment out of those areas to prevent unauthorized activities and unauthorized fill. The

individuals operating equipment will not know where these areas are if they are not clearly fenced off. Therefore, we request that the statement be rewritten as follows:

“Wetland boundaries and other environmentally sensitive areas identified in easement agreements or by Federal and State agencies will be marked and fenced with orange construction fence to ensure unauthorized fill or work activities do not occur in these areas.”

Reference: Page 3-31, fourth full paragraph currently reads, “If Alternative M were subsequently proposed as the preferred route, the FHWA, along with the NYSDOT, stated that they would need to complete additional review of the plan sheets (with I-88 access control lines) of the segments where the pipeline could approach and ultimately impact the I-88 control of access areas.”

Comment 3: The original comment states that the USACE continues to have concerns that Alternative M has not been fully explored. To our knowledge, no formal approvals or denials have been issued by the NYSDOT and/or the FHWA for this Alternative. The USACE recommends the inclusion of any further documentation available regarding these approvals or the analysis of this Alternative.

Reference: Page 3-44, Minor Route Alternatives, first paragraph currently reads, “Although they can extend for several miles, minor route alternatives deviate from the proposed route less substantially than major route alternatives. Minor route alternatives are often designed to avoid large environmental resources or engineering constraints, and typically remain within the same general area as the proposed route.”

Comment 4: The original comment pertained to the preceding paragraph in which routing factors were considered. The USACE recommended that Constitution reevaluate Alternative M segments that were determined to be “buildable” to reduce the overall environmental impacts, including aquatic impacts and impacts to interior forests. The new added paragraph does not address the comment.

Reference: Page 4-44, first paragraph currently reads, “Appendix K lists the 277 waterbodies that Constitution would cross...”

Comment 5: The original comment stated that, “On December 13, 2013, Constitution submitted to the USACE, summary tables for wetland and waterbody crossings for the project. The total waterbody crossings from these tables number 333. The DEIS should be supplemented with all up-to-date information prior to release for public review and comment.” Information submitted by Constitution during preparation of the USACE Public Notice listed a total of 359 waterbodies crossed. The USACE recommends that the Final EIS include the most up-to-date information available from Constitution regarding all wetland and stream crossings.

Reference: Page 4-59, Existing Wetland Resources indicates that Constitution identified and delineated wetlands along the proposed pipeline route for which they had access during field surveys in 2012 and 2013. For areas that constitution was denied access, the National Wetlands Inventory (NWI) maps were used to determine approximate wetland locations and boundaries.

Comment 6: The USACE requested that Appendix K and K2 of the DEIS indicate which wetlands were identified through field survey and which were identified using the NWI maps. In a majority of instances, the NWI maps were “flown” in the 1970’s and 80’s by the U.S. Fish and Wildlife Service for use as habitat analysis and are not accepted as confirmation for the presence/absence of wetlands on a parcel. These maps may be helpful for indicating where wetlands may occur, but the absence of a mapped wetland cannot be interpreted to mean that no wetlands exist in those areas. The USACE reiterates the request to identify wetlands that have been ground surveyed and those identified by NWI maps, or other remote sensing methods.

Reference: Page 4-59, Existing Wetland Resources, same paragraph as above, sentence beginning with “Constitution submitted a wetland delineation report to the COE as part of its application for a Section 404/10 Individual Permit on August 26, 2013.”

Comment 7: This statement is incorrect. The applicant applied for a Nationwide Permit Number 12. To our knowledge, no permit pertaining to Section 10 of the Rivers and Harbors Act will be impacted by this project. The USACE requests that this sentence be rewritten as follows:

“As part of its application for a Department of the Army Nationwide Permit Number 12, Constitution submitted a wetland delineation report to the COE on August 26, 2013, requesting jurisdictional determination of the waterbodies and wetlands identified within the project right-of-way.”

Further, all references in the Final EIS to Section 404/10 Individual Permit should be revised to reflect that the application requested authorization under Nationwide Permit Number 12 and eliminate references to Section 10.

Reference: Page 4-59, Existing Wetland Resources, same paragraph as above, the sentence that begins, “A total of 91.8 acres of wetlands would be either crossed by Constitution’s project....”

Comment 8: The original comment stated, “The 91.8 acre figure is from the November 2013 supplemental filing to FERC. In figures supplied to the USACE (Wetland Mitigation Plan dated November 2013, Table 3-1), these figures are noticeably higher. The total estimated acres impacted for construction in PA and NY totals 128.35 acres and 24.54 acres affected for operation. The USACE recommended that Constitution provide updated numbers prior to the end of the DEIS comment period.” The USACE reiterates that Constitution provides updated numbers for inclusion in the Final EIS.

Reference: Page 4-60, first full paragraph, last sentence currently reads, “A full list of access roads and their impacts is provided in Appendix E.”

Comment 9: The original comment stated, “Constitution’s siting of access roads is ongoing. Their Section 404 permit application submitted on December 4, 2013 states, ‘Constitution continues to evaluate the need and location for access roads and will preferably select access roads where they will avoid wetland crossings, however, this will not always be feasible.’ The USACE recommended that an updated list of impacts be submitted prior to the end of the DEIS comment

period. The USACE reiterates the request that an updated list of access roads and associated impacts be submitted for inclusion in the Final EIS. Further, the above comment should be corrected to read, "the information contained in Constitution's supplemental permit information dated December 4, 2013 states...."

Reference: Page 4-61, Wetland Construction Procedures, first paragraph refers to a total of 91.8 acres of wetlands impacted by the project.

Comment 10: Comment 8.

Reference: Page 4-62, General Impacts and Mitigation, first paragraph and Table 4.4.3-1.

Comment 11: See Comment 8.

Reference: Page 4-65, last paragraph, sentence that currently reads, "Constitution proposes to restore wetlands with seed and mulch based upon specifications of the PADEP, the NYSDEC, and/or other applicable agencies.

Comment 12: The USACE requested that the USACE be included with the identified agencies so that the sentence reads, "...specifications of the PADEP, NYSDEC, COE, and/or...". The USACE reiterates the request to be included in the identified agencies.

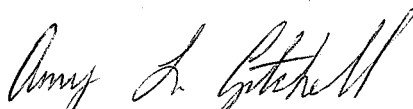
Reference: Page 4-66, Compensatory Mitigation, first paragraph currently reads, "Constitution provided a conceptual wetland mitigation plan as part of its applications for Section 404/10 Individual Permits to the COE, the PADEP, and the NYSDEC in August 2013.

Comment 13: See Comment 7.

In addition, the New York, Baltimore, and Buffalo District Corps of Engineers (Districts) are in receipt of requests to extend the public comment period for the Constitution Pipeline Company, LLC proposed 124.4 mile long, 30 inch diameter natural gas pipeline in the states of Pennsylvania and New York. FERC received requests to extend the comment period from the NYSDEC, USEPA, and USDOJ. The agencies have stated the complexity of the project, along with some very specific items by the NYSDEC, necessitate additional time for staff review. The Districts have considered these requests and have decided to grant a 30-day extension until May 7, 2014 for input on the Corps regulatory process.

We appreciate the opportunity to resubmit comments pertaining to the DEIS. Questions pertaining to this matter should be directed to Kevin Bruce at 518-266-6358, in writing to the U.S. Army Corps of Engineers, Upstate Regulatory Field Office, 1 Buffington Street, Building 10, 3rd Floor North, Watervliet, New York 12189-4000, or by e-mail at: kevin.j.bruce@usace.army.mil.

Sincerely,



Amy L. Gitchell
Chief, Upstate New York Section

cc: Kevin Bowman, FERC
Jodi McDonald, CENAN-OP-R
George Casey, CENAN-OP-R
Judy Robinson, CELRB-Auburn (LRB-2012-00746)
Mike Dombroski, CENAB-OP-RPA (2012-977-P12)
Wade Chandler, CENAB-OP-RPA
Steve Metivier, CELRB
Diane Koslowski, CELRB
James Haggerty, CENAD
Stephen Tomasik, NYSDEC
Greg Hufnagel, AECOM
Tim Sullivan, USFWS
John Cantilli, EPA
Lynda Schubring, Williams/Constitution Pipeline Company, LLC

Exhibit 2

December 3, 2014

Letter from

Saul Ewing to Landowners



Elizabeth U. Witmer
Phone: (610) 251-5062
Fax: (610) 408-4400
ewitmer@saul.com
www.saul.com

December 3, 2014

VIA FEDEX



RE: Constitution Pipeline Company, LLC
Tax Parcel No.: [Redacted]
Tract No. LL #: [Redacted]
FERC Docket No. CP13-499

Dear Landowner:

We represent Constitution Pipeline Company, LLC (“Constitution”). As you know, Constitution has been seeking to acquire certain property rights (the “Rights of Way”) on your property at the Tax Parcel Number above (the “Property”) in conjunction with an interstate natural gas pipeline project (the “Constitution Pipeline Project” or the “Project”). Constitution’s representatives have contacted you multiple times regarding the Project and its acquisition of the Rights of Way needed for the Project.

On December 2, 2014, the Federal Energy Regulatory Commission (“FERC”) determined that the Project is required by the public convenience and necessity and issued an Order approving the Constitution Pipeline and Wright Interconnect Projects. The FERC determined that the Project is in the public interest and will provide natural gas to meet the increased needs of customers in the Northeast. You may view the FERC Order at www.ferc.gov, under Docket No. CP13-499.

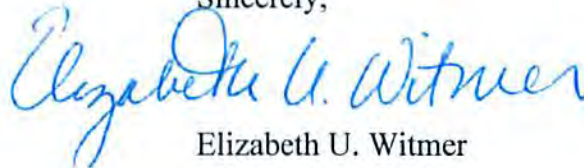
Construction on the Project is scheduled to begin as early as 2015. As a result, Constitution has an immediate need for the Rights of Way it is seeking to acquire on your property. Constitution’s representatives previously provided you with a written offer of compensation for the Rights of Way that was in excess of the appraised value of the Rights of Way as determined by a third party appraiser. You have not accepted that offer.

Constitution would like to reach an agreement with you and strongly prefers to avoid litigation. However, **if you do not accept this final offer and execute the documents enclosed with the prior written offer from Constitution's representative by Thursday, December 11, 2014, we will proceed to initiate suit under the Natural Gas Act, 15 U.S.C. §717, et seq., to condemn the Rights of Way sought on your Property and will offer only the appraised value as compensation. Should we initiate legal proceedings, we will seek injunctive relief asking the Court to grant Constitution immediate possession of the Right of Way by an Order to Show Cause.** This letter serves as notice pursuant to Local Rule 7.1(e) of the United States District Court for the Northern District of New York of Constitution's intent to apply for Orders to Show Cause.

If you have not previously allowed Constitution to access your Property for surveys, please consider this letter notice pursuant to New York E.D.P.L. § 404 that within ten (10) days of the date of this letter, Constitution may enter upon the Property for the purpose of making surveys, test pits and borings, or other investigations.

If you wish to accept this offer, or wish to discuss it further, please contact me IMMEDIATELY at 610-251-5062.

Sincerely,



Elizabeth U. Witmer

cc: Mr. Patrick McClusky
Daniel L. Merz, Esq.
John P. Stockli, Esq.

Exhibit 3

December 5, 2014
Letter from the
Pace Environmental
Litigation Clinic, Inc.
to Saul Ewing

PACE ENVIRONMENTAL LITIGATION CLINIC, INC.

PACE UNIVERSITY SCHOOL OF LAW

78 NORTH BROADWAY

WHITE PLAINS, NEW YORK 10603

PHONE: 914.422.4343

FAX: 914.422.4437

SUPERVISING ATTORNEYS

KARL S. COPLAN

DANIEL E. ESTRIN

ROBERT F. KENNEDY, JR.

ADMINISTRATOR

JENNIFER RUHLE

December 5, 2014

Via email (ewitmer@saul.com)

Elizabeth U. Witmer, Esq.
Saul Ewing
1200 Liberty Ridge Drive, Suite 200
Wayne, Pennsylvania 19087

Dear Ms. Witmer:

This office (“PELC”) represents Stop the Pipeline (“STP”) in the matter of the proposed Constitution pipeline. We are in receipt of a copy of your letter, dated December 3, 2014 (“Saul Ewing Letter”), which was apparently sent, via Federal Express, to many landowners along the proposed pipeline route who have not signed easement agreements with Constitution Pipeline Company (“CP”). A redacted copy of one of your letters is attached for your reference.

According to your firm’s website, you specialize in eminent domain proceedings. Therefore you must know that your letter is replete with misleading information. It is apparent to STP that the intent of your letter is to bully landowners—who are already under duress from the December 2, 2014 decision by FERC that granted your client a conditional certificate of public convenience and necessity (“CPCN”)—into waiving their property rights. While we expect such unconscionable tactics from shady bill collectors, we do not expect them from a prestigious law firm such as Saul Ewing.

You begin your letter by advising the recipient landowners that FERC just issued an order approving the pipeline project. However, you fail to mention the many mandatory conditions that must still be met before the certificate will be legally effective. STP does not believe that the conditional CPCN issued by FERC on December 2 is effective or sufficient to support Constitution’s claim of eminent domain authority, as there is no guarantee that the conditions set forth in the certificate will ever be met. Indeed, it is readily apparent that the issuance by FERC of the conditional CPCN violates federal law due to FERC’s utter failure to satisfy unambiguous federal statutory prerequisites prior to issuance. CP may not rely upon a legally defective and premature “conditional” CPCN as its legal authorization to exercise the awesome power of eminent domain to condemn the private property of landowners against their wills.

You also oddly claim that your letter “serves as notice pursuant to Local Rule 7.1(e) of the United States District Court for the Northern District of New York of Constitution’s intent to apply for Orders to Show Cause.” The proposition that your letter satisfies the requirements of the local rule fails the “straight-face test.” As you must know, eminent domain proceedings in federal court must begin with personal service of a notice of the complaint in accordance with Rule 4. *See* Fed. R. Civ. P. 71.1(d)(3)(A). And Local Rule 7.1(e) obviously envisions that an action must be commenced *prior to* “reasonable advance notice” being given, since none of the recipients of your letter are yet “parties” to an action pending in federal court.

Moreover, a generic statement that CP intends to seek injunctive relief by order to show cause in a phantom future action at some unspecified time in the future utterly fails to provide the recipients of your letter with “reasonable advance notice” of the application. You also fail to address in your letter the Local Rule’s explicit requirements that the moving party (1) show “good and sufficient cause why the standard Notice of Motion procedure cannot be used”; or (2) “demonstrate, in a detailed and specific affidavit, good cause and substantial prejudice that would result from the requirement of reasonable notice.” In sum, we have little doubt that the Northern District will conclude that your letter utterly fails to satisfy the explicit requirements of Local Rule 7.1(e).

Next you state “[i]f you have not previously allowed Constitution to access your Property for surveys, please consider this letter notice pursuant to New York E.D.P.L. § 404 that within ten (10) days of the date of this letter, Constitution may enter upon the Property for the purpose of making surveys, test pits and borings, or other investigations.” Saul Ewing Letter at 2 (emphasis in original). Once again, you cannot honestly state that such actions can take place before you have filed a complaint and personally served the landowners who have refused to sign easement agreements with your client. In addition, it is our understanding that the New York E.D.P.L. does not apply in federal condemnation cases as Section 717f(h) of the Natural Gas Act has been superceded by Rule 71.1 of the Federal Rules of Civil Procedure. *See Nat’l Fuel Gas Supply Corp. v. 138 Acres of Land in the Village of Springville*, 84 F. Supp. 2d 405, 411-415 (W.D.N.Y. 2000). While STP does not yet intend to argue the substance of these issues, you may wish to note that the court in *138 Acres* did not allow for immediate entry to private property. *See id.* at 415-16.

Please be advised that your misrepresentations of the facts and law to recipient landowners may violate the New York Rules of Professional Conduct. In particular, Rule 8.4, states that a “lawyer or law firm shall not: (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.”

We urge you to immediately retract the Saul Ewing Letter, also by use of Federal Express. We further urge CP to cease and desist from any additional misleading attempts to bully and intimidate New York citizens and landowners into giving up land that rightfully belongs to them. There is an express and specific legal process that must be utilized in order for CP to exercise eminent domain authority, if any, and we respectfully urge CP to utilize this process

Elizabeth U. Witmer, Esq.

December 5, 2014

Page 3

without resorting to the kinds of unethical and unconscionable tactics to which we have objected in this letter.

Very truly yours,



Daniel E. Estrin



Anne Marie Garti

Pace Environmental Litigation Clinic, Inc.
Attorneys for Stop the Pipeline

C: Hon. Andrew M. Cuomo, Governor of New York State
Hon. Joe Martens, Commissioner, NYSDEC
Patricia J. Desnoyers, Esq., Counsel, NYSDEC
Hon. Richard S. Hartunian, US Attorney for N.D.N.Y.
Hon. Eric T. Schneiderman, NYS Attorney General
Lemuel Srolovich, Esq., Office of NYS Attorney General
Isaac Cheng, Esq., Office of NYS Attorney General



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December 3, 2014

VIA FEDEX



RE: Constitution Pipeline Company, LLC
Tax Parcel No.: [Redacted]
Tract No. LL #: [Redacted]
FERC Docket No. CP13-499

Dear Landowner:

We represent Constitution Pipeline Company, LLC (“Constitution”). As you know, Constitution has been seeking to acquire certain property rights (the “Rights of Way”) on your property at the Tax Parcel Number above (the “Property”) in conjunction with an interstate natural gas pipeline project (the “Constitution Pipeline Project” or the “Project”). Constitution’s representatives have contacted you multiple times regarding the Project and its acquisition of the Rights of Way needed for the Project.

On December 2, 2014, the Federal Energy Regulatory Commission (“FERC”) determined that the Project is required by the public convenience and necessity and issued an Order approving the Constitution Pipeline and Wright Interconnect Projects. The FERC determined that the Project is in the public interest and will provide natural gas to meet the increased needs of customers in the Northeast. You may view the FERC Order at www.ferc.gov, under Docket No. CP13-499.

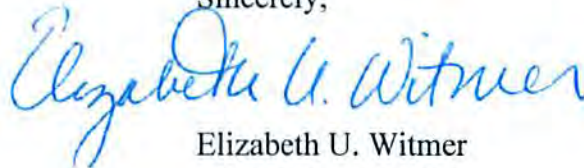
Construction on the Project is scheduled to begin as early as 2015. As a result, Constitution has an immediate need for the Rights of Way it is seeking to acquire on your property. Constitution’s representatives previously provided you with a written offer of compensation for the Rights of Way that was in excess of the appraised value of the Rights of Way as determined by a third party appraiser. You have not accepted that offer.

Constitution would like to reach an agreement with you and strongly prefers to avoid litigation. However, **if you do not accept this final offer and execute the documents enclosed with the prior written offer from Constitution's representative by Thursday, December 11, 2014, we will proceed to initiate suit under the Natural Gas Act, 15 U.S.C. §717, et seq., to condemn the Rights of Way sought on your Property and will offer only the appraised value as compensation. Should we initiate legal proceedings, we will seek injunctive relief asking the Court to grant Constitution immediate possession of the Right of Way by an Order to Show Cause.** This letter serves as notice pursuant to Local Rule 7.1(e) of the United States District Court for the Northern District of New York of Constitution's intent to apply for Orders to Show Cause.

If you have not previously allowed Constitution to access your Property for surveys, please consider this letter notice pursuant to New York E.D.P.L. § 404 that within ten (10) days of the date of this letter, Constitution may enter upon the Property for the purpose of making surveys, test pits and borings, or other investigations.

If you wish to accept this offer, or wish to discuss it further, please contact me IMMEDIATELY at 610-251-5062.

Sincerely,



Elizabeth U. Witmer

cc: Mr. Patrick McClusky
Daniel L. Merz, Esq.
John P. Stockli, Esq.

Exhibit 4

October 24, 2014

FEIS

Introduction 1.1

Project Purpose and Need

preparation of the EIS.³ The roles of the FERC and the cooperating agencies in the review process for both projects are described in section 1.2.

1.1 PROJECT PURPOSE AND NEED

According to Constitution, the proposed pipeline project was developed in response to market demands in New York and the New England area, and due to interest from shippers that require transportation capacity from Susquehanna County, Pennsylvania to the existing Tennessee Gas Pipeline Company LLC (TGP) systems in Schoharie County, New York. While this EIS will briefly discuss the Applicants' purpose, it will not determine whether the need for the projects exists, as this will later be determined by the Commission.

Based on information provided by Constitution and Iroquois, the purpose of the proposed projects is to:

- deliver up to 650,000 dekatherms per day⁴ (Dth/d) of natural gas supply from Susquehanna County, Pennsylvania to the interconnect with the TGP and Iroquois systems at the existing Wright Compressor Station;
- provide new natural gas service for areas currently without access to natural gas;
- expand access to multiple sources of natural gas supply, thereby increasing supply diversity and improving operational performance, system flexibility, and reliability in the New York and New England market areas;
- optimize the existing systems for the benefit of both current and new customers by creating a more competitive market, resulting in enhanced market competition, reduced price volatility, and lower prices; and
- provide opportunities to improve regional air quality by utilizing cleaner-burning natural gas in lieu of fuel oil in existing and future residential, commercial, and industrial facilities, thereby reducing greenhouse gas (GHG) emissions and other pollutants.

As noted in the second bullet above, Constitution has identified that the proposed pipeline could provide natural gas service to nearby municipalities that do not currently have access to natural gas. According to Leatherstocking Gas Company, LLC (Leatherstocking), Leatherstocking has entered into a Memorandum of Understanding with Constitution, which would allow Leatherstocking to interconnect with Constitution's pipeline at several delivery points (Leatherstocking 2013). In March 2014, Leatherstocking announced plans to install four delivery taps in Delaware, Otsego, and Susquehanna Counties and one tap to provide service to the Amphenol Aerospace Plant in Sidney, New York (Leatherstocking 2014). Specific tap locations are not available. Leatherstocking would then be able to deliver gas from Constitution's pipeline to homes and businesses within communities in Pennsylvania and New York. In New York, the Town of Bainbridge, the Village of Windsor, the Town of Windsor, the

³ A cooperating agency has jurisdiction by law or special expertise with respect to environmental impacts involved with the proposal and is involved in the NEPA analysis.

⁴ A dekatherm is a unit of heating value often used by natural gas companies instead of volume for billing purposes. A dekatherm is equivalent to 10 therms or one million British thermal units. For conceptualization purposes only, a natural gas capacity of 650,000 Dth/d would be sufficient to power roughly 6.2 million homes annually (if it were used solely for residential energy production). This estimate assumes an average household energy consumption of 11,000 kilowatt hours per year. If these projects are approved, the natural gas could be used in a variety of applications, not solely for residential energy generation.

Village of Bainbridge, the Town of Unadilla, the Village of Unadilla, the Town of Sidney, the Village of Sidney, and the Village of Delhi have granted Leatherstocking approvals for the opportunity to serve their communities (Leatherstocking 2013). Leatherstocking would evaluate the need for gas in these communities and construct the necessary infrastructure as part of the New York State Department of Environmental Conservation’s (NYSDEC) permitting process for natural gas gathering and local distribution lines and could be subject to other processes including review by the COE for impacts on waters of the United States.

In March 2012, Constitution executed binding precedent agreements⁵ for the entire proposed 650,000 Dth/d or about 0.65 billion cubic feet per day of additional firm transportation capacity. Prior to executing these agreements, the shippers typically already have the production capacity in place to supply the full volumes for the project. As a result, the proposed pipeline is fully subscribed. Table 1.1-1 lists Constitution’s shippers by contracted volumes. The non-jurisdictional facilities associated with the delivery of the proposed volumes are discussed in sections 1.4 and 4.13.

TABLE 1.1-1 Constitution Pipeline Project Precedent Agreements	
Shipper	Maximum Daily Transportation Quantity (Dth/d)
Cabot Oil & Gas Corporation	500,000
Southwestern Energy Services Company	150,000
Total Volume Contracted	650,000

The purpose of Iroquois’ project is to provide 650,000 Dth/d of leased firm capacity of natural gas from the terminus of Constitution’s project in Wright, New York to downstream customers in Iroquois’ existing system through the addition of system compression, interconnections (including TGP), and other necessary infrastructure. In addition, Iroquois’ proposed compressor transfer station has rendered Constitution’s originally planned greenfield⁶ compressor station unnecessary. This is discussed in detail in section 3.5.

We received several comments on the draft EIS questioning our acceptance of the applicants’ stated purpose. The Commission does not direct the development of the gas industry’s infrastructure regionally or on a project-by-project basis, or re-define an applicant’s stated purpose. The Commission analyzes the applicant’s filed application and stated purpose in order to disclose the impacts resulting from the proposed action to inform the decisionmakers.

We also received comments on the draft EIS requesting additional information regarding need of the projects and whether it serves the public convenience and necessity. A project’s need is established by the FERC when it determines whether a project is required by the public convenience and necessity, i.e., the Commission’s decision is made. The FERC’s Certificate Policy Statement provides guidance as to how the Commission evaluates proposals for new construction, as discussed below, and establishes criteria for determining whether there is a need for a proposed project and whether it would serve the public interest. The FERC environmental staff does not make that determination.

⁵ A precedent agreement is a binding contract under which one or both parties has the ability to terminate the agreement if certain conditions, such as receipt of regulatory approvals, are not met.

⁶ Greenfields are lands that do not contain existing utility rights-of-way.

The Commission's analysis of whether a proposed project is required by the public convenience and necessity consists of three steps. The Commission's Statement of Policy on the Certification of New Interstate Natural Gas Pipeline Facilities⁷ explains that in deciding whether to authorize the construction of major new pipeline facilities, the Commission must first balance the public benefits against the adverse effects on specific economic interests. If the conclusion is that the public benefits would not outweigh the adverse effects on the economic interests, the Commission will deny the proposal. If, however, the conclusion that the public benefits do outweigh the adverse effects on the economic interests, the Commission next takes a "hard look" at potential environmental impacts of the proposed action under the requirements of the NEPA. If the Commission finds the potential environmental impacts to be unacceptable, it will deny authorization. If, however, the Commission determines that, based on the environmental analysis, market analysis, evaluation of rates, engineering analysis, and consideration of all comments submitted, the proposed project can be constructed and operated in an environmentally acceptable manner, the Commission will issue an Order that finds the project is required by the public convenience and necessity. That order will contain the environmental conditions the Commission deems necessary and appropriate to ensure acceptable mitigation of potential environmental harms.

In summary, if the Commission finds the proposed projects to be environmentally unacceptable based on Commission staff-prepared NEPA documents, the Commission will not approve the projects. If the Commission finds the projects to be environmentally acceptable based on the NEPA documents, as well as market analysis, evaluation of rates, and engineering analysis, the Commission will approve it, typically with conditions, provided it is otherwise required by the public convenience and necessity.

1.2 PURPOSE AND SCOPE OF THE EIS

Our⁸ principal purposes for preparing the EIS are to:

- identify and assess the potential impacts on the natural and human environment that would result from the implementation of the proposed projects;
- describe and evaluate reasonable alternatives to the proposed projects that would avoid or substantially lessen adverse effects of the projects on the environment while still meeting the project objectives;
- identify and recommend specific mitigation measures, as necessary, to avoid or minimize environmental effects; and
- encourage and facilitate involvement by the public and interested agencies in the environmental review process.

The topics addressed in the EIS include alternatives; geology; soils; groundwater; surface waters; wetlands; vegetation; wildlife and aquatic resources; special status species; land use, recreation, special interest areas and visual resources; socioeconomics; cultural resources; air quality and noise; reliability and safety; and cumulative impacts. The EIS describes the affected environment as it currently exists based on available information, discusses the environmental consequences of the proposed projects, and compares the projects' potential impact to that of various alternatives. The EIS also presents our conclusions and recommended mitigation measures.

⁷ The Policy Statement can be found on our website at <http://www.ferc.gov/legal/maj-ord-reg/PL99-3-000.pdf>. Clarifying statements can be found by replacing "000" in the URL with "001" and "002."

⁸ "We," "us," and "our" refer to the environmental staff of the FERC's Office of Energy Projects.

CERTIFICATE OF SERVICE

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

January 2, 2015

/s/ Anne Marie Garti
Pace Environmental Litigation Clinic
Pace University School of Law
78 North Broadway
White Plains, NY 10603

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