

No: 15-926

United States Court of Appeals
for the
Second Circuit

IN RE STOP THE PIPELINE

APPENDIX
PETITION FOR WRIT OF MANDAMUS

Volume 1 of 1 (Exhibits 1-8)

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Exhibit 1

FERC

Certificate of Public Convenience
and Necessity

December 2, 2014

149 FERC ¶ 61,199
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Chairman;
Philip D. Moeller, Tony Clark,
and Norman C. Bay.

Constitution Pipeline Company, LLC

Docket No. CP13-499-000

Iroquois Gas Transmission System, L.P.

Docket No. CP13-502-000

ORDER ISSUING CERTIFICATES AND APPROVING ABANDONMENT

(Issued December 2, 2014)

1. On June 13, 2013, Constitution Pipeline Company, LLC (Constitution) filed an application in Docket No. CP13-499-000, pursuant to section 7(c) of the Natural Gas Act¹ (NGA) and Part 157 of the Commission's regulations,² for authorization to construct and operate an approximately 124-mile-long, 30-inch diameter interstate pipeline and related facilities extending from two receipt points in Susquehanna County, Pennsylvania, to a proposed interconnection with Iroquois Gas Transmission System, L.P. (Iroquois) in Schoharie County, New York. The proposed pipeline is designed to provide up to 650,000 dekatherms (Dth) per day of firm transportation service. In addition, Constitution seeks authorization to enter into a capacity lease agreement whereby Iroquois will construct the compression necessary for Constitution to deliver the natural gas from the terminus of the proposed interstate pipeline into both Iroquois and Tennessee Gas Pipeline Company, L.L.C. (Tennessee) and Iroquois will lease to Constitution the incremental capacity associated with the proposed compression (together, the Constitution Pipeline Project). Constitution also requests a blanket certificate under Part 284, Subpart G of the Commission's regulations to provide open-access transportation services and a blanket certificate under Part 157, Subpart F of the Commission's regulations to perform certain routine construction activities and operations.

¹ 15 U.S.C. § 717f(c) (2012).

² 18 C.F.R. Pt. 157 (2014).

2. Concurrently, Iroquois filed an application in Docket No. CP13-502-000, pursuant to section 7(c) of the NGA and Part 157 of the Commission's regulations, for authorization to construct and operate compression facilities and modify existing facilities at its Wright Compressor Station in Schoharie County (Wright Interconnection Project). Iroquois also seeks authorization under section 7(b) of the NGA³ to abandon by lease to Constitution the incremental capacity associated with the project.

3. As explained herein, we find that the benefits the Constitution Pipeline Project and the Wright Interconnection Project will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities. Further, as set forth in the environmental discussion below, we agree with the conclusion in the Environmental Impact Statement (EIS) that, if constructed and operated in accordance with applicable laws and regulations, the projects will result in some adverse environmental impacts, but that these impacts will be reduced to less-than-significant levels with the implementation of Constitution's and Iroquois' proposed mitigation and staff's recommendations (now adopted as conditions in the attached Appendix A of the order. Therefore, for the reasons stated below, we grant the requested authorizations, subject to conditions.

I. Background

4. Constitution⁴ is a limited liability company organized and existing under the laws of the State of Delaware. Upon the commencement of operations proposed in its application, Constitution will become a natural gas company within the meaning of section 2(6) of the NGA⁵ and, as such, will be subject to the jurisdiction of the Commission. Constitution states that Williams Gas Pipeline Company, LLC will be the operator of the new proposed pipeline.

³ 15 U.S.C. § 717f(b) (2012).

⁴ The members of Constitution include Williams Partners Operating LLC (41 percent), Cabot Pipeline Holdings LLC (25 percent), Piedmont Constitution Pipeline Company, LLC (24 percent), and Capitol Energy Ventures Corporation (10 percent).

⁵ 15 U.S.C. § 717a(6) (2012).

5. Iroquois is a limited partnership existing under the laws of the State of Delaware. Iroquois is a natural gas company which owns pipeline facilities extending from the U.S.-Canadian border at Iroquois, Ontario, and Waddington, New York, through New York State, western Connecticut, and under the Long Island Sound to South Commack, New York, and then extending back under the Sound to a terminus at Hunts Point in the Bronx.

II. Proposals

A. Constitution Pipeline Project

1. Facilities and Services

6. The Constitution Pipeline Project will involve the construction of the following facilities:

- Approximately 124 miles of 30-inch-diameter pipeline extending from Susquehanna County, Pennsylvania, through Broome, Chenango, Delaware, and Schoharie Counties, New York;
- A receipt meter station located in Susquehanna County, Pennsylvania (Turnpike Road M&R Station);
- A receipt tap located in Susquehanna County, Pennsylvania;
- A meter, regulation, and delivery station located at Iroquois' Wright Compressor Station property in the Town of Wright, Schoharie County, New York (Westfall Road M&R Station);
- Mainline valve assemblies at 11 locations along the Constitution Pipeline;
- Pig launcher/receiver facilities and pig trap valves at the Turnpike Road M&R Station and the Westfall Road M&R Station; and
- Cathodic protection and other related appurtenant facilities.

Constitution estimates that the proposed facilities will cost approximately \$683 million.

7. Further, Constitution states that it has entered into a *pro forma* capacity lease arrangement with Iroquois that provides that Iroquois will (1) construct compression facilities so that gas delivered to the interconnection between Constitution and Iroquois at the Wright Compressor Station can be delivered into the Iroquois and Tennessee pipeline

systems in Schoharie County and (2) lease to Constitution the incremental capacity associated with the proposed compression.⁶ The details of the lease agreement between Constitution and Iroquois are discussed below.

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.

9. Constitution proposes to offer cost-based, firm transportation service, interruptible transportation service, and park and loan service under Rate Schedules FT, IT, and PAL, respectively. Constitution states that these services will be provided on an open-access, nondiscriminatory basis pursuant to Part 284 of the Commission's regulations and the terms and conditions of its proposed FERC Tariff.

2. Blanket Certificates

10. Constitution requests a blanket certificate of public convenience and necessity pursuant to section 284.221 of the Commission's regulations authorizing Constitution to provide transportation service to customers requesting and qualifying for transportation service under Constitution's FERC Gas Tariff, with pre-granted abandonment authorization.

11. Constitution requests a blanket certificate of public convenience and necessity pursuant to section 157.204 of the Commission's regulations authorizing future facility construction, operation, and abandonment as set forth in Part 157, Subpart F of the Commission's regulations.

B. Wright Interconnect Project

12. Iroquois requests authority to construct and operate compression facilities at its existing Wright Compressor Station in order to establish a point of interconnection with Constitution and provide capacity to support delivery of 650,000 Dth per day of firm transportation service to Iroquois' existing mainline and the Tennessee pipeline system.

⁶ The proposed interconnection between Constitution and Iroquois and the delivery points into Iroquois and Tennessee will be located within Iroquois' existing Wright Compressor Station property.

Specifically, Iroquois proposes to (1) construct a new receipt point interconnection with Constitution; (2) construct a new transfer compressor station and natural gas cooling facilities, including two natural gas-fired turbine compressors of approximately 10,900 hp each (Constitution Transfer Compressor Station);⁷ (3) modify Iroquois' existing Wright Compressor Station to facilitate cooperation with the new Constitution Transfer Compressor Station, including the installation of a blend valve and upgraded piping; (4) modify Iroquois' existing Tennessee metering facilities; and (5) augment Iroquois' existing odorization facilities in order to accommodate the new deliveries of natural gas from Constitution. Iroquois states that all of the Wright Interconnect Project facilities will be on property already owned by Iroquois. Iroquois estimates the costs of the proposed facilities will be approximately \$75 million.

C. Lease Agreement

13. Iroquois and Constitution have entered into a *pro forma* Capacity Lease Agreement⁸ that provides that Iroquois will construct, own, and operate the Wright Interconnection Project facilities and abandon by lease to Constitution all of the incremental capacity associated with the proposed facilities. In turn, Constitution proposes to acquire that capacity to provide transportation service under its open-access tariff. The *pro forma* Capacity Lease Agreement is structured as an operating lease under which Iroquois will lease capacity sufficient to provide 650,000 Dth per day of primary firm transportation service from Iroquois' new interconnection with Constitution to interconnections with Iroquois' and Tennessee's systems.

⁷ Upon completion of the proposed project, the Wright Compressor Station will have more than 15,000 hp of turbine compression. Iroquois states that it considered the potential for recovery of waste heat energy at its Wright Compressor Station, as discussed in the Interstate Natural Gas Association of America White Paper entitled "*Waste Energy Opportunities for Interstate Natural Gas Pipelines*" (February 2008). However, Iroquois concluded that, due to the expectation that the turbines at the Wright Compressor Station will operate less than 5,250 hours per year, the specified minimum in the White Paper, installing waste heat recovery facilities is uneconomical at this time. Accordingly, Iroquois shall monitor this station and evaluate the potential for adding waste heat generation to the facilities and post this information to its electronic bulletin board.

⁸ A copy of the *pro forma* Capacity Lease Agreement is provided in Exhibit I to Iroquois' application.

14. The Capacity Lease Agreement provides for an initial 15-year primary term with an option for Constitution to extend the lease for a subsequent 5-year period. At the conclusion of the Capacity Lease Agreement, the leased capacity will revert to Iroquois' control for use as part of its own interstate pipeline system.

15. Article III of the Capacity Lease Agreement provides that Constitution will pay a fixed monthly lease rate of \$1,083,333 during its initial 15-year term. Constitution and Iroquois explain that this monthly lease payment will recover both capital and operating costs associated with the Wright Interconnection Project during the lease term and that the lease payment is no higher than a maximum recourse rate would be if Iroquois were to provide transportation service through the project facilities on a stand-alone basis.⁹

16. Under Article IX of the Capacity Lease Agreement, Iroquois will also assess a measurement variance/fuel use (MV/FU) factor to account for and recover lost and unaccounted-for gas on the Iroquois system and fuel requirements associated with the project facilities. Iroquois explains that the formula to derive the MV/FU factor that is set forth in the lease agreement is analogous to the current Iroquois system-wide MV/FU.

III. Procedural Issues

A. Notice, Interventions, Protests, and Comments

17. Notice of Constitution's application in Docket No. CP13-499-000 was published in the *Federal Register* on July 2, 2013 (78 Fed. Reg. 39,721). Notice of Iroquois' application in Docket No. CP13-502-000 also was published in the *Federal Register* on July 2, 2013 (78 Fed. Reg. 39,717). Timely, unopposed motions to intervene are granted in each proceeding by operation of Rule 214 of the Commission's Rules of Practice and Procedure.¹⁰

18. In addition, several individuals/entities filed late, unopposed motions to intervene in both the Constitution and Iroquois proceedings. All of the individuals filing late motions to intervene have shown an interest in the respective proceeding and their intervention at this stage of the proceedings will not cause undue delay or unfairly

⁹ If Constitution chooses to extend the Capacity Lease Agreement beyond the primary term, the monthly lease rate will decrease to \$791,667.

¹⁰ 18 C.F.R. § 385.214 (2014).

prejudice the rights of any other party. Accordingly, we will permit the late, unopposed motions to intervene filed in each respective proceeding.¹¹

19. We received numerous comments in support of the proposed projects, asserting they would, among other things, bring jobs to the area. On the other hand, a large number of comments or protests were filed raising concerns over the environmental impacts of the proposed projects. These concerns are addressed in the Environmental Impact Statement (EIS), as well as the environmental section of this order.

B. Requests for Evidentiary Hearing

20. Catskill Mountainkeeper, Clean Air Council, Delaware-Otsego Audubon Society, Delaware Riverkeeper Network, and Sierra Club (collectively, Sierra Club); and Rebecca Roter request a formal evidentiary hearing for the proposed projects. The parties have raised no issues of material fact that cannot be resolved on the basis of the written record in these proceedings and all interested parties have had a full opportunity to present their views through multiple written submissions.¹² Therefore, we will deny the requests for a trial-type evidentiary hearing.

IV. Discussion

21. Since the proposed facilities will be used to transport natural gas in interstate commerce, subject to the jurisdiction of the Commission, the construction and operation of the facilities are subject to the requirements of subsections (c) and (e) of section 7 of the NGA. In addition, Iroquois' proposed abandonment of capacity by lease to Constitution and Constitution's acquisition of that capacity are subject to the requirements of sections 7(b) and 7(c) of the NGA, respectively.

A. Application of Certificate Policy Statement

22. The Certificate Policy Statement provides guidance for evaluating proposals to certificate new construction.¹³ The Certificate Policy Statement establishes criteria for

¹¹ 18 C.F.R. § 385.214(d) (2014).

¹² See, e.g., *Florida Gas Transmission Co., LLC*, 143 FERC ¶ 61,215, at P 27 (2013).

¹³ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 (1999), *clarified*, 90 FERC ¶ 61,128, *further certified*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

determining whether there is a need for a proposed project and whether the proposed project will serve the public interest. The Certificate Policy Statement explains that in deciding whether to authorize the construction of major new facilities, the Commission balances the public benefits against the potential adverse consequences. The Commission's goal is to give appropriate consideration to the enhancement of competitive transportation alternatives, the possibility of overbuilding, subsidization by existing customers, the applicant's responsibility for unsubscribed capacity, the avoidance of unnecessary disruptions of the environment, and the unneeded exercise of eminent domain in evaluating new pipeline construction.

23. Under this policy, the threshold requirement for pipelines proposing new projects is that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. The next step is to determine whether the applicant has made efforts to eliminate or minimize any adverse effects the project might have on the applicant's existing customers, existing pipelines in the market and their captive customers, or landowners and communities affected by the route of the new pipeline. If residual adverse effects on these interest groups are identified after efforts have been made to minimize them, the Commission will evaluate the project by balancing the evidence of public benefits to be achieved against the residual adverse effects. This is essentially an economic test. Only when the benefits outweigh the adverse effects on economic interests will the Commission proceed to complete the environmental analysis where other interests are considered.

1. Constitution Pipeline Project

24. Constitution is a new pipeline entrant with no existing customers. Thus, there is no potential for subsidization on Constitution's 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 Project is designed to transport domestically sourced 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 Commission's 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.

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 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 Constitution's proposal, as conditioned in this order.

2. Wright Interconnect Project

30. Iroquois' proposal satisfies the threshold requirement that the pipeline must be prepared to financially support the project without relying on subsidization from its existing customers. As discussed below, the monthly lease payments Iroquois will charge Constitution will recover the full costs of the project. Moreover, as discussed below, Iroquois will file to revise its fuel retention mechanism in its current tariff to ensure that gas requirements at the Wright Compressor Station are properly allocated between Constitution and Iroquois' mainline shippers. As such, the proposed project will not result in any subsidization by Iroquois' existing shippers.

31. The proposed project will not adversely impact Iroquois' existing customers or other pipelines and their customers. The proposed facilities are designed to increase the capacity of the Iroquois system to accommodate the lease agreement with Constitution without degradation of service to Iroquois' existing customers. There is no evidence that service on other pipelines will be displaced or bypassed, and no pipeline companies have

objected to the proposed project. We conclude that Iroquois' proposal will not have adverse impacts on existing pipelines or their captive customers.

32. Iroquois states that the proposed project will be constructed on property it owns and on which an Iroquois compressor station and other aboveground facilities already exist. For this reason, we find that any adverse impacts on landowners and communities will be minimal.

33. Iroquois has entered into a *pro forma* lease agreement to abandon and lease the incremental capacity to Constitution for a 15-year primary term.¹⁴ Thus, Iroquois has demonstrated a need for the project. Based on the benefits that the proposed project will provide to the market and the minimal adverse effects on existing customers, other pipelines, and landowners and surrounding communities, we find that approval of the Wright Interconnect Project is required by the public convenience and necessity.

3. Lease Agreement

34. As explained above, Constitution and Iroquois have entered into a Capacity Lease Agreement whereby Iroquois will abandon the firm capacity that will be created by Iroquois' proposed Wright Interconnect Project to Constitution. In turn, Constitution proposes to acquire that capacity from Iroquois and use the leased capacity to provide service under the terms of its FERC Tariff.

35. Historically, the Commission views lease arrangements differently from transportation services under rate contracts. The Commission views a lease of interstate pipeline capacity as an acquisition of a property interest that the lessee acquires in the capacity of the lessor's pipeline.¹⁵ To enter into a lease agreement, the lessee generally needs to be a natural gas company under the NGA and needs section 7(c) certificate authorization to acquire the capacity. Once acquired, the lessee in essence owns that capacity and the capacity is subject to the lessee's tariff. The leased capacity is allocated for use by the lessee's customers. The lessor, while it may remain the operator of the pipeline system, no longer has any rights to use the leased capacity.¹⁶

¹⁴ We will require Iroquois to execute the Capacity Lease Agreement with Constitution prior to commencing construction and to file an executed copy with the Commission at least 30 days prior to the effective date of the lease.

¹⁵ *Texas Eastern Transmission Corp.*, 94 FERC ¶ 61,139, at 61,530 (2001).

¹⁶ *Texas Gas Transmission, LLC*, 113 FERC ¶ 61,185, at P 10 (2005).

36. The Commission's practice has been to approve a lease if it finds that: (1) there are benefits for using a lease arrangement; (2) the lease payments are less than, or equal to, the lessor's firm transportation rates for comparable service over the terms of the lease on a net present value basis; and (3) the lease arrangement does not adversely affect existing customers.¹⁷ We find that the transportation lease agreement between Constitution and Iroquois satisfies these requirements.

37. First, the Commission has found that leases in general have several potential public benefits. Leases can promote efficient use of existing facilities, avoid construction of duplicative facilities, reduce the risk of overbuilding, reduce costs, and minimize environmental impacts.¹⁸ In addition, leases can result in administrative efficiencies for shippers.¹⁹ Here, the transportation lease arrangement will enable Constitution's shippers to deliver new natural gas supplies to markets on the Iroquois and Tennessee systems without Constitution constructing duplicative facilities in the vicinity of Iroquois' Wright Compressor Station, and with less compression than originally envisioned for the Constitution Pipeline Project. The applicants also explain that the lease results in operational efficiencies for Constitution's customers and Tennessee's and Iroquois' existing customers by allowing Constitution's customers to access Iroquois Zone 1 or Zone 2 transportation paths without having to hold a separate Iroquois transportation service agreement, and by not requiring an Iroquois transportation service agreement for Constitution customers seeking to reach the Tennessee system. Finally, Iroquois proposes to coordinate the operation of the new Constitution Transfer Compressors with Iroquois' existing Wright Compressors to enhance reliability to both Constitution's and Iroquois' customers and to minimize fuel and emissions.

38. Second, as the applicants have explained, the monthly lease payment will recover both capital and operating costs associated with the project during the lease term. The lease payment is no higher than the maximum recourse rate would be for this project on a stand-alone basis.

¹⁷ *Id.*; *Islander East Pipeline Co., L.L.C.*, 100 FERC ¶ 61,276, at P 69 (2002) (*Islander East*).

¹⁸ *See, e.g., Dominion Transmission, Inc.*, 104 FERC ¶ 61,267, at P 21 (2003); *Islander East*, 100 FERC ¶ 61,276 at P 70.

¹⁹ *Wyoming Interstate Co., Ltd.*, 84 FERC ¶ 61,007, at 61,027 (1998), *reh'g denied*, 87 FERC ¶ 61,011 (1999).

39. Third, the lease arrangements will not adversely affect Constitution's customers or Iroquois' existing customers. Iroquois' customers should not experience any degradation of service because Iroquois is constructing new facilities to create the incremental capacity that it proposes to lease to Constitution. Additionally, Iroquois' capacity lease to Constitution will not adversely affect any of Iroquois' existing customers because none of Iroquois' existing customers will bear any of the costs associated with the Wright Interconnect Project. Consistent with Commission policy, Iroquois will be at risk for the recovery of any costs associated with the lease capacity that are not collected from Constitution.²⁰ Because Iroquois will not be able to provide jurisdictional service on the lease capacity, during the term of the lease with Constitution, Iroquois will not be allowed to reflect in its system rates any of the costs (i.e., the fully-allocated cost of service) associated with the leased capacity.²¹

40. Regarding fuel costs, Iroquois states that because it will at times be operating one set of compressors at Wright for the benefit of both its system customers and the leased Constitution capacity, it will need to modify its current MV/FU Factor tariff provision to ensure that its customers and Constitution, respectively, remain responsible for the appropriate fuel (whether associated with the Constitution or the Wright compressors) used to provide their service into Iroquois' Zone 2. Iroquois states this tariff change is needed to ensure that the principle of cost responsibility following cost incurrence is honored and that Iroquois' customers and Constitution's customers do not subsidize each other's fuel requirements.²² Iroquois anticipates making a tariff change filing to update its MV/FU Factor tariff provision before the commencement of service on the Wright Interconnect Project facilities. We will require that Iroquois make a filing to revise its MV/FU Factor tariff provision at least 60 days before the commencement of service for the Wright Interconnect Project.

²⁰ See, e.g., *Gulf Crossing Pipeline Co. LLC*, 123 FERC ¶ 61,100, at P 123 (2008); *Gulf South Pipeline Co., LP*, 120 FERC ¶ 61,291, at P 42 (2007); *Gulf South Pipeline Co., LP*, 119 FERC ¶ 61,281, at P 42 (2007).

²¹ See *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,028, at P 20 (2013) (*Columbia*).

²² Iroquois states it went through a similar process when it commissioned its Brookfield, Connecticut interconnection with Algonquin as the second physical receipt point into the Iroquois system (which also requires the operation of compression). See *Iroquois Gas Transmission System, L.P.*, 125 FERC ¶ 61,107 (2008).

41. We also find that Constitution's customers will not be adversely affected in that the lease provides a cost-effective means of acquiring the compression needed to make deliveries to interconnections with Iroquois and Tennessee in Schoharie County. As noted above, the lease arrangement allows Constitution to acquire the necessary 21,800 hp of compression to interconnect with Iroquois and Tennessee. If Constitution had to construct its own facilities, it would require 32,000 hp.

42. The applicants propose to treat the capacity lease as an operating lease for accounting purposes. Constitution must record the lease payments in Account 858, Transmission and Compression of Gas by Others. In addition, Iroquois is directed to record the monthly receipts in Account 489.2, Revenues from Transportation of Gas of Others Through Transmission Facilities. We have previously authorized similar accounting treatment for transportation capacity lease agreements.²³

43. Consistent with Commission policy, we will require Iroquois to file with the Commission a notification in this docket within 10 days of the date of abandonment of the capacity leased to Constitution providing the effective date of the abandonment.²⁴ We also remind the applicants that when the lease terminates, Constitution is required to obtain authority to abandon the lease capacity, and Iroquois is required to obtain certificate authorization to reacquire that capacity.²⁵

B. Blanket Certificates

44. Constitution requests a Part 284, Subpart G blanket certificate in order to provide open-access transportation services. Under a Part 284 blanket certificate, Constitution will not require individual authorizations to provide transportation services to particular customers. Constitution filed a *pro forma* Part 284 tariff to provide open-access transportation services. Since a Part 284 blanket certificate is required for Constitution to offer these services, we will grant Constitution a 284 blanket certificate, subject to the conditions imposed herein.

²³ See, e.g., *Columbia*, 145 FERC ¶ 61,028 at P 24 (citing *Gulf South Pipeline Co., LP*, 119 FERC ¶ 61,281 at P 42 (2007); *Millennium Pipeline Co., L.P.*, 97 FERC ¶ 61,292, at 62,331 (2001)).

²⁴ See, e.g., *Columbia*, 145 FERC ¶ 61,028 at Ordering Paragraph (D).

²⁵ See, e.g., *Islander East Pipeline Co.*, 102 FERC ¶ 61,054, at P 35 (2003).

45. Constitution has also applied for a Part 157, Subpart F blanket certificate. The Part 157 blanket certificate gives an interstate pipeline NGA section 7 authority to automatically, or after prior notice, perform certain activities related to the construction, acquisition, abandonment, and replacement and operation of pipeline facilities. Because Constitution will become an interstate pipeline with the issuance of a certificate to construct and operate the proposed facilities, we will issue to Constitution the requested Part 157, Subpart F blanket certificate.

C. Rates

1. Initial Rates for Constitution

46. Constitution proposes to offer cost-based firm (Rate Schedule FT) and interruptible (Rate Schedules IT and PAL) open-access transportation services on a nondiscriminatory basis under Part 284 of the Commission's regulations. Constitution states that the proposed rates reflect a straight fixed-variable rate design in allocating costs and designing rates for service. Constitution is offering negotiated rates as an option pursuant to section 15 of the General Terms and Conditions (GT&C) of its *pro forma* tariff.

47. The proposed recourse rate for Rate Schedule FT-1 is based upon a single rate zone for the entire design capacity of the pipeline. The proposed FT reservation rate is derived using an annual cost of service of \$153,095,101 and annual FT reservation billing determinants of 237,250,000 Dth based on Constitution's maximum daily design capacity. The proposed maximum cost-based FT daily reservation rate is \$0.64529 per Dth. Constitution proposes a FT commodity rate of \$0.00000 per Dth. The proposed maximum IT and PAL rate is \$0.64529 per Dth. Constitution is proposing to recover its fuel gas, including lost and unaccounted-for gas, through a tracker mechanism defined in section 14 of the GT&C of the *pro forma* tariff.

48. Constitution proposes a capital structure of 50 percent debt and 50 percent equity. Constitution's proposed rates include a cost of debt of 7 percent and a return on equity of 14 percent. Constitution states that the overall rate of return of 10.5 percent reflects the regulatory, contractual, and construction risks inherent in a new project of this type. Constitution also proposes an onshore transmission depreciation rate of 2.25 percent and a negative salvage rate of 0.25 percent.

49. The Commission has reviewed the proposed cost-of-service and proposed initial rates, and generally finds them reasonable for a new pipeline entity, such as Constitution, subject to the modifications and conditions imposed below.

a. Interruptible Services

50. The Commission's general policy regarding new interruptible services requires pipelines to either credit 100 percent of the interruptible revenues, net of variable costs, to firm and interruptible shippers, or to allocate costs and volumes to its interruptible services.²⁶ Constitution has not proposed to allocate costs to IT service nor has it proposed to credit IT revenues pursuant to the Commission's general policy stated above. Therefore, when Constitution files its tariff in compliance with this order, we will require Constitution to either allocate an appropriate level of the estimated cost of service to its interruptible services and recalculate its firm and interruptible rates, or to file a tariff mechanism to credit 100 percent of its interruptible revenues, net of costs, to its firm and interruptible recourse rate shippers.

b. Allowance for Funds Used During Construction

51. An Allowance for Funds Used During Construction (AFUDC) is a component part of the cost of construction of the Constitution Pipeline Project. Constitution proposes to capitalize a total of \$50,086,178 of AFUDC, composed of all equity funds, because Constitution states that it does not expect to borrow any funds prior to the in-service date of the proposed project. The AFUDC was computed using Constitution's proposed rate of return on equity of 14 percent. However, a basic tenet of the Commission's AFUDC rules is that the allowance should compensate a company for capital committed to construction projects at a rate that could be earned on operating assets.²⁷ In Constitution's case, that rate is the overall allowed rate of return used to develop its cost of service, which in this instance is 10.5 percent. Therefore, the Commission directs Constitution to capitalize the actual cost of borrowed and other funds for construction purposes, not to exceed the amount of debt and equity AFUDC that would be capitalized based on the overall rate of return approved herein of 10.5 percent.

52. When Constitution files its revised tariff sheets 60 days before commencing service, we will require it to recalculate its AFUDC, as directed above. Further, we will require Constitution to adjust all cost of service items dependent upon gas plant in service such as Income Taxes, Depreciation Expense, and Return and Interest Expense to appropriately reflect the effects from the reversal of the over-accrual of AFUDC, as discussed above, and file supporting work papers.

²⁶ *Transcontinental Gas Pipe Line Corp., LLC*, 130 FERC ¶ 61,019, at P 21 (2010).

²⁷ See *Gulfstream Natural System, L.L.C.*, 94 FERC ¶ 61,185, at 61,638 (2001); *Buccaneer Gas Pipeline Co., L.L.C.*, 91 FERC ¶ 61,117, at 61,447 (2000).

2. Three-Year Filing Requirement

53. Consistent with Commission precedent, we will require Constitution to file a cost and revenue study at the end of its first three years of actual operation to justify its existing cost-based firm and interruptible recourse rates.²⁸ In its filing, the projected units of service should be no lower than those upon which Constitution's approved initial rates are based. The filing must include a cost and revenue study in the form specified in section 154.313 of the Commission's regulations to update cost of service data. After reviewing the data, the Commission will determine whether to exercise its authority under NGA section 5 to establish just and reasonable rates. In the alternative, in lieu of this filing, Constitution may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

D. Constitution's Proposed Pro Forma Tariff

1. North American Energy Standards Board (NAESB)

54. Constitution adopted the Business Practices and Electronic Communications Standards of NAESB Wholesale Gas Quadrant's (WGO) Version 2.0. Constitution has identified those standards incorporated by reference in GT&C section 11. Those standards not incorporated by reference by Constitution have also been identified, along with the tariff record in which they are located. In the event an updated version of NAESB WGO standards is adopted by the Commission prior to Constitution's in-service date, the Commission directs Constitution to file revised tariff records consistent with the then current version.

2. GT&C Section 11 – Waivers

55. Constitution's GT&C section 11 – Standards for Business Practices, has a section entitled "Standards for which Waiver or Extension of Time to Comply have been granted". Constitution lists NAESB Standards 0.4.1, 1.2.3, 1.3.17 and 1.3.18 as having been granted waiver, and NAESB Standard 2.4.18 as having been granted an extension of time until 60 days following receipt of a request for this standard. Constitution has not been granted waivers or an extension of time to comply, nor has Constitution requested or supported the need for the waivers or an extension of time to comply. Constitution must either include the above NAESB Standards in its tariff or file justification for why it should be granted waivers and/or an extension of time to comply.

²⁸ See, e.g., *Bison Pipeline LLC*, 131 FERC ¶ 61,013, at 29 (2010).

3. GT&C Section 36 – Reservation Charge Credits

56. In general, the Commission requires all interstate pipelines to provide reservation charge credits to their firm shippers during both *force majeure* and non-*force majeure* outages. With respect to non-*force majeure* outages, where the curtailment occurred due to circumstances within a pipeline's control, including planned or scheduled maintenance, the Commission requires the pipeline to provide firm shippers a full reservation charge credit for the amount of primary firm service they nominated for scheduling which the pipeline failed to deliver. The Commission requires that the pipeline provide partial reservation charge credits during *force majeure* outages in order to share the risk of an event not in the control of the pipeline.²⁹ Partial credits may be provided pursuant to: (1) the No-Profit method under which the pipeline gives credits equal to its return on equity and income taxes starting on Day 1, or (2) the Safe Harbor method under which the pipeline provides full credits after a short grace period when no credit is due (i.e., 10 days or less).³⁰ The Commission has stated that pipelines may also use some other method which achieves equitable sharing in the same ball park as the first two methods.³¹

57. The Commission has defined *force majeure* outages as events that are both unexpected and uncontrollable. The Commission has held that routine, scheduled maintenance is not a *force majeure* event, even on pipelines with little excess capacity where such maintenance may require interruptions of primary firm service.³² Commission policy recognizes that even if such outages are considered to be

²⁹ The Commission has held that it is just and reasonable for pipelines to provide partial reservation charge credits for outages of primary firm service to comply with orders issued by the Pipeline and Hazardous Materials Safety Administration pursuant to section 60139(c) of Chapter 601 of Title 49 of the United States Code, added by section 23(a) of the Pipeline Safety, Regulatory Certainty and Job Creation Act of 2011, for a two-year transitional period consistent with Commission policy. *See, e.g., Gulf South Pipeline Co., LP*, 141 FERC ¶ 61,224 (2012), *order on reh'g*, 144 FERC ¶ 61,215 (2013).

³⁰ *See, e.g., Tennessee Gas Pipeline Co.*, Opinion No. 406, 76 FERC ¶ 61,022 (1996), *order on reh'g*, Opinion No. 406-A, 80 FERC ¶ 61,070 (1997), *as clarified by, Rockies Express Pipeline LLC*, 116 FERC ¶ 61,272, at P 63 (2006).

³¹ *Northern Natural Gas Co.*, 141 FERC ¶ 61,221, at P 20 (2012).

³² *El Paso Natural Gas Co.*, 105 FERC ¶ 61,262, at P 15 (2003).

uncontrollable, they are expected. The U.S. Court of Appeals for the District of Columbia Circuit affirmed this policy in *North Baja Pipeline, LLC v. FERC*.³³

58. Constitution's proposed tariff does not provide any reservation charge credits when firm service is curtailed due to a non-*force majeure* event. Therefore, consistent with Commission policy, we will require Constitution to revise its tariff to provide full reservation charge credits for outages of primary firm service due to non-*force majeure* events.³⁴

59. In section 36 of its GT&C, Constitution proposes to provide reservation charge credits due to a *force majeure* event, as described in section 41 (Force Majeure and Operating Conditions) of the GT&C, under certain circumstances. Constitution proposes to provide partial reservation charge credits for outages of primary firm service due to *force majeure* circumstances consistent with the Commission's Safe Harbor method.³⁵ Specifically, section 36.1(a) provides that Constitution will provide full credits after a grace period of 10 days or less when no credit is due.

60. Section 36.1(b) exempts Constitution from providing reservation charge credits where the shipper fails to properly nominate, or the confirming party fails to confirm, pursuant to the scheduling timeline of the tariff. Consistent with the discussion above, Constitution must clarify that such exemption will apply only to nominations which are not confirmed solely due to the events outside the pipeline's control, i.e., due to the conduct of the shipper or the upstream or downstream pipeline entity.³⁶ Further, Constitution proposes, in section 36.2, to calculate reservation charge credits based on "the nomination quantity minus the quantity [Constitution] schedules for confirmation." Reservation Charge Credits should be calculated based on nominated quantities which are not delivered³⁷ subject to certain allowable exemptions such as outages due to events

³³ 483 F.3d 819, 823 (D.C. Cir. 2007), *affirming*, *North Baja Pipeline, LLC*, 109 FERC ¶ 61,159 (2004), *order on reh'g*, 111 FERC ¶ 61,101 (2005).

³⁴ *See, e.g., Iroquois Gas Transmission System, L.P.*, 145 FERC ¶ 61,233 (2013) (*Iroquois*).

³⁵ However, as discussed below, Constitution has proposed to include outages due to non-*force majeure* circumstances as *force majeure* events, i.e., outages due to routine maintenance, in conflict with Commission policy which requires full reservation credits in such circumstances.

³⁶ *See, e.g., Iroquois*, 145 FERC ¶ 61,233 at PP 43-46.

³⁷ *See, e.g., Gulf South*, 141 FERC ¶ 61,224 at P 53.

outside the pipeline's control. The exemption proposed in section 36.1(b), as clarified pursuant to the discussion above, should make the reference to quantities scheduled for confirmation in the general provision concerning how to calculate credits unnecessary. Thus, Constitution must either eliminate the reference to quantities scheduled for confirmation or revise this provision consistent with Commission policy.

61. Section 36.1(g) provides an exemption when "Transporter's failure to deliver Shipper's nominated quantity is the result of the conduct of the Shipper or a third party operator of the facilities at the Point of Delivery." Constitution must clarify that such exemption is only applicable when the pipeline's failure to perform is caused solely by the conduct of others not controllable by the pipeline. We will require Constitution to revise proposed GT&C section 36.1 to make clear that Constitution is exempted from issuing credits only when its failure to deliver gas is due solely to the conduct of others or events not controllable by Constitution, i.e., operating conditions on upstream or downstream facilities or a shipper's inability to obtain gas supplies or find a purchaser to take delivery of the supplies.³⁸

4. GT&C Section 41 Force Majeure and Operating Conditions

62. Section 36 of Constitution's GT&C provides that Constitution will provide reservation charge credits for a *force majeure* event as described in section 41 (Force Majeure and Operating Conditions). As discussed above, the Commission has held that *force majeure* events must be both outside the pipeline's control and unexpected. The inclusion of Operating Conditions in section 41 as constituting a *force majeure* event conflicts with that Commission policy. Constitution's definition for Operating Conditions includes "the necessity to make modifications, tests, or repairs to Transporter's pipeline system," meaning that routine and scheduled maintenance would constitute a *force majeure* event.³⁹ Accordingly, Constitution must revise its proposed tariff to conform or eliminate its definition of events as Operating Conditions to (1) be consistent with Commission policy concerning *force majeure* and (2) provide partial reservation charge credits only for outages due to *force majeure* circumstances.⁴⁰

³⁸ See, e.g., *Gulf South*, 141 FERC ¶ 61,224 at P 84, 144 FERC ¶ 61,215 at P 68; *Iroquois*, 145 FERC ¶ 61,233 at PP 43-46.

³⁹ Only routine maintenance during normal periods of demand due to Constitution's negligence, willful actions, or failure to act is excluded.

⁴⁰ See, e.g., *Gulf South*, 141 FERC ¶ 61,224 at P 92, 144 FERC ¶ 61,215 at P 54.

63. Further, Constitution includes, in its enumeration of *force majeure* events, “the order of any court or government authority having jurisdiction while the same is in force and effect.” The Commission has considered similar tariff provisions which included governmental actions in the definition of *force majeure*. The Commission has explained that outages resulting from governmental actions may be treated as resulting from a *force majeure* event only when the governmental requirement pertains to matters which are not reasonably in the pipeline’s control and are unexpected.⁴¹ The Commission has found that to the extent this existing tariff language treats as *force majeure* events all outages for testing, repair, and maintenance to comply with governmental orders, it was over-inclusive and in conflict with Commission policy.⁴² Accordingly, Constitution must revise this provision to clarify that it does not apply to governmental requirements that are within the pipeline’s control or are expected.

5. Negotiated Transportation Agreements

64. Constitution states that it will provide service to the project shippers under negotiated rate agreements. Constitution must file either its negotiated rate agreements or tariff records setting forth the essential terms of the agreements associated with the project, in accordance with the Alternative Rate Policy Statement⁴³ and the Commission’s negotiated rate policies.⁴⁴ Constitution must file the negotiated rate agreements or tariff records at least 30 days, but not more than 60 days, before the proposed effective date for such rates.

⁴¹ See, e.g., *Algonquin Gas Transmission, LLC*, 143 FERC ¶ 61,082, at PP 24-25 (2013); *Texas Eastern Transmission, LP*, 140 FERC ¶ 61,216, at PP 82-88 (2012) (*Texas Eastern*); *Gas Transmission Northwest LLC*, 141 FERC ¶ 61,101, at PP 47-49 (2012) (*GTN*). See also *TransColorado Gas Transmission Co.*, 144 FERC ¶ 61,175, at PP 35-44 (2013) and *Gulf South*, 144 FERC ¶ 61,215 at PP 31-34 (clarifying the distinction between government actions that may be treated as *force majeure* events and those which may not).

⁴² *GTN*, 141 FERC ¶ 61,101 at P 49; *Texas Eastern*, 140 FERC ¶ 61,216 at P 88.

⁴³ *Alternatives to Traditional Cost-of-Service Ratemaking for Natural Gas Pipelines; Regulation of Negotiated Transportation Services of Natural Gas Pipelines*, 74 FERC ¶ 61,076, clarification granted, 74 FERC ¶ 61,194 (1996).

⁴⁴ *Natural Gas Pipelines Negotiated Rate Policies and Practices; Modification of Negotiated Rate Policy*, 104 FERC ¶ 61,134 (2003), order on reh’g and clarification, 114 FERC ¶ 61,042, reh’g dismissed and clarification denied, 114 FERC ¶ 61,304 (2006).

E. Environmental Analysis

1. Pre-filing Review

65. Commission staff began its initial review of the Constitution Pipeline Project following staff's approval on April 16, 2012, for Constitution to use the pre-filing process in Docket No. PF12-9-000. As part of the pre-filing review, staff issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Planned Constitution Pipeline Project, Request for Comments on Environmental Issues, and Notice of Public Scoping Meetings* (NOI) on September 7, 2012. This notice was published in the *Federal Register* on September 14, 2012,⁴⁵ and sent to more than 2,100 interested entities on the staff's environmental mailing list, including federal, state, and local agencies; elected officials; environmental and public interest groups; Native American tribes; potentially affected landowners as defined in the Commission's regulations (i.e., landowners crossed or adjacent to pipeline facilities or within 0.5 mile of a compressor station); local libraries and newspapers; and other stakeholders who had indicated an interest in the project. The notice briefly described the project and the environmental impact statement (EIS) process, provided a preliminary list of issues identified by Commission staff, invited written comments on the environmental issues that should be addressed in the draft EIS, listed the date and location of three public scoping meetings⁴⁶ to be held in the area of the project, and established a closing date for receipt of comments of October 9, 2012.

66. A total of 101 speakers provided comments on the project at the scoping meetings. In addition, more than 750 letters were filed by federal, state, and local agencies; elected officials; environmental and public interest groups; potentially affected landowners; and other interested stakeholders providing written scoping comments regarding the project.⁴⁷

67. On October 9, 2012, the Commission issued a *Notice of Public Scoping Meeting and Extension of Scoping Period for the Planned Constitution Pipeline Project* after an additional alternative route was identified by Commission staff. The notice was published in the *Federal Register* on October 16, 2012,⁴⁸ and mailed to more than 3,300

⁴⁵ 77 Fed. Reg. 56,835 (2012).

⁴⁶ The first meeting was held in Afton, New York, on September 24, 2012; the second meeting was held in Schoharie, New York, on September 25, 2012; and the third meeting was held in New Milford, Pennsylvania, on September 26, 2012.

⁴⁷ Table 1.3-1 of the final EIS provides a detailed and comprehensive list of issues raised during scoping.

⁴⁸ 77 Fed. Reg. 63,309.

interested entities as noted above. The notice listed the date and location of one additional public scoping meeting to be held in the pipeline project area and extended the closing date for receipt of comments to November 9, 2012. The additional scoping meeting was held on October 24, 2012, in Oneonta, New York, at which 70 speakers commented. During the pre-filing process, Commission staff conducted conference calls on an approximately bi-weekly basis with representatives from Constitution and interested agencies to discuss the pipeline project's progress and issues.

2. Application Review

68. As stated above, on June 13, 2013, Constitution and Iroquois filed separate applications with the Commission under section 7(c) of the NGA seeking authorization to construct and operate the projects' facilities.

69. On July 10, 2013, the Commission issued a *Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Wright Interconnect Project and Request for Comments on Environmental Issues*. The notice was published in the Federal Register on July 16, 2013, and mailed to 74 interested entities, including federal, state, and local government representatives and agencies; elected officials; environmental and public interest groups; Native American Tribes; affected property owners as defined in the Commission's regulations (i.e., landowners within one-half mile of the compressor transfer station); local libraries and newspapers; and other stakeholders who had indicated an interest in the project. Commission staff evaluated the potential environmental impacts of the proposed projects in the draft and final EIS, in accordance with the requirements of the National Environmental Policy Act of 1969 (NEPA).⁴⁹ The U.S. Environmental Protection Agency, the U.S. Army Corps of Engineers (COE), the Federal Highway Administration, and the New York State Department of Agriculture and Markets (NYSDAM) participated as cooperating agencies in the preparation of the EIS.

70. Commission staff issued the draft EIS for the Constitution Pipeline and Wright Interconnect Projects on February 12, 2014, which addressed the issues raised during the scoping period. Notice of the draft EIS was published in the *Federal Register* on February 20, 2014, establishing a 45-day public comment period.⁵⁰ The draft EIS was mailed to the environmental mailing list including additional interested entities that were added since issuance of the July 10 NOI. Four public meetings were held between March

⁴⁹ 42 U.S.C. §§ 4321 *et seq.* (2012). See the Commission's NEPA-implementing regulations at Part 380 of Title 18 of the Code of Federal Regulations.

⁵⁰ 79 Fed. Reg. 9735.

31 and April 3, 2014, to receive comments on the draft EIS.⁵¹ A total of 246 speakers provided comments at the meetings, and more than 600 stakeholders submitted a total of 884 letters in response to the draft EIS.

71. In response to comments received on the draft EIS, the Commission opened a limited comment period on May 15, 2014, for individuals crossed by or adjacent to a newly identified potential route alternative between mileposts (MP) 114.4 to 115.9. The limited comment period ended on June 4, 2014. A total of 3 stakeholders submitted 4 comment letters in response to this potential route alternative. Subsequently, the Commission opened another limited comment period on May 29, 2014, for individuals crossed by or adjacent to 8 newly identified potential route alternatives specifically associated with parcel NY-DE-226.000.⁵² This supplemental comment period ended on June 19, 2014. A total of 9 stakeholders submitted 11 comment letters in response to these potential route alternatives.

72. On October 24, 2014, Commission staff issued the final EIS for the Constitution Pipeline and Wright Interconnect Projects, and a public notice of the availability of the final EIS was published in the *Federal Register*.⁵³ The final EIS addresses timely comments received on the draft EIS.⁵⁴ The final EIS was mailed to the same parties as the draft EIS, as well as to additional parties that commented on the draft EIS.⁵⁵ The final EIS addresses geology; soils; water resources; wetlands; vegetation; wildlife and fisheries; special status species; land use, recreation, and visual resources;

⁵¹ The draft EIS comment meetings were held in Richmondville, New York, on March 31, 2014; Oneonta, New York, on April 1, 2014; Afton, New York, on April 2, 2014; and New Milford, Pennsylvania, on April 3, 2014.

⁵² The Kernan Land Trust, owner of parcel NY-DE-226.000, its associates, and agents filed twelve comment letters in response to the draft EIS primarily concerning impacts on wetlands and their timbering operation, as well as regarding invasive species and alternative routes.

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

⁵⁴ Appendix S of the final EIS includes responses to comments on the draft EIS through September 19, 2014. Commission staff continued to accept and consider comments received for nearly five months after the April 7 close of the official comment period on the draft EIS.

⁵⁵ The distribution list is provided in Appendix A of the final EIS.

socioeconomics; cultural resources; air quality and noise; reliability and safety; cumulative impacts; and alternatives.

73. The final EIS concludes that if the projects are constructed and operated in accordance with applicable laws and regulations, the projects will result in some adverse environmental impacts. However, these impacts described in the EIS will be reduced to less-than-significant levels with the implementation of Constitution's and Iroquois' proposed mitigation and staff's recommendations (now adopted as conditions in the attached Appendix of this order). Major issues of concern addressed in the final EIS are summarized below and include: construction in areas of karst geology; waterbodies and wetlands; interior forests and migratory birds; invasive plant species, compliance enforcement; rare bat species; homeowners' insurance and property values; safety; induced development of natural gas production; cumulative impacts; and alternatives.

3. Major Environmental Issues Addressed in the EIS

a. Karst Geology

74. Potential impacts resulting from construction and operation of the Constitution Pipeline Project on karst features, including groundwater, were identified during both the scoping and draft EIS comment periods. Karst features such as sinkholes, caves, and caverns can form as a result of the long-term action of groundwater on soluble carbonate rocks. Constitution's project will cross karst terrain in Schoharie County, New York (about 12.4 miles from approximately MP 109.1 to MP 124.4).

75. Blasting in areas of karst topography can create fractures in the rock, potentially changing groundwater flow, enabling groundwater contamination, and temporarily affecting yield and increasing turbidity in nearby water wells and/or springs. Constitution committed to avoid blasting in areas of limestone and karst features. Hard limestone will be removed by using conventional methods or techniques such as hydraulic chipping or ripping.

76. Constitution developed a Karst Mitigation Plan to mitigate potential impacts and hazards from karst features. During construction in areas of karst terrain Constitution will use Best Management Practices including, but not limited to: preventing runoff from the construction area into karst features using special controls; adhering to Constitution's *Spill Plan for Oil and Hazardous Materials*; monitoring existing and any previously unidentified wells and springs within karst areas; applying fertilizers, herbicides, pesticides, or other chemicals at least 200 feet away from karst features; and using geotechnical specialists if unanticipated karst features are found during construction. To ensure that impacts associated within construction in karst areas are minimized, Environmental Condition 15 requires Constitution to adhere to the site-specific

construction recommendations and mitigation measures for several steep slope and karst areas provided in its *Geological Reconnaissance Memorandum* dated October 4, 2013. The final EIS concludes that implementation of these measures will adequately protect karst features and related resources such as groundwater. We agree with this conclusion.

b. Waterbodies and Wetlands

77. Several commenters noted the potential for the Constitution Pipeline Project to impact waterbodies and wetlands. The pipeline will cross a total of 289 surface waterbodies, one of which is considered a major waterbody (greater than 100 feet wide). Constitution has proposed trenchless crossing methods for 21 of the crossings, including the major waterbody, and dry crossing methods that avoid in-stream construction impacts for the remaining 268 waterbodies. None of the aboveground facilities, including Iroquois' proposed project, will impact waterbodies. Use of trenchless crossing methods to cross waterbodies and implementation of the mitigation measures outlined in Constitution's *Environmental Construction Plans* (ECPs) and other project-specific plans will avoid or adequately minimize impacts on surface water resources.

78. Construction of the Constitution Pipeline Project will impact a total of 95.3 acres of wetlands, including 33.8 acres of forested wetlands, 35.4 acres of herbaceous wetlands, and 26.1 acres of shrub-scrub wetlands. The majority of the project's wetland impacts will be for temporary workspaces (76.1 acres) and these areas will eventually return to pre-construction conditions following construction, although as indicated in the final EIS, this may take many years. For the operation of the pipeline, Constitution will permanently maintain 14.5 acres of the 33.8 acres of previously forested wetlands in a scrub-shrub or herbaceous state. Constitution has avoided wetland impacts at 13 locations by using trenchless (conventional bore or Direct Pipe) construction methods. No wetlands will be impacted by construction of Constitution's aboveground facilities or Iroquois' proposed project.

79. Construction and operation-related impacts on waterbodies and wetlands will be further mitigated by Constitution's compliance with the conditions of the COE Section 404 and the New York State Department of Environmental Conservation (NYSDEC) Section 401 permits required under the Clean Water Act (including compensatory mitigation) and by implementing the wetland protection and restoration measures contained in Constitution's ECPs, including its *Wetland and Waterbody Construction and Mitigation Procedures* (Procedures). Additionally, Environmental Conditions 21 and 22 prohibit Constitution from using permanent fill for access roads at any waterbody or wetland and require Constitution to avoid clearing trees between the entry and exit locations of trenchless crossings. Based on the avoidance and minimization measures developed by Constitution, as well as our Environmental Conditions, the EIS concludes that impacts on waterbody and wetland resources will be effectively minimized or mitigated to the extent practicable.

c. Interior Forests and Migratory Birds

80. Throughout scoping and NEPA review commenters expressed concerns about general impacts on upland forest and particular impact on interior forest. Commenters indicated that the disturbance of large areas of unfragmented forest required for the pipeline project will cause permanent effects on forested habitats as well as forest-dwelling species such as some migratory birds.

81. Constitution will cross 36 miles of interior forest habitat, which includes both upland and wetland communities. In response to scoping concerns, Constitution reduced its construction workspace and right-of-way width from 110 feet to 100 feet within interior forests.⁵⁶ This reduction will prevent 51.8 acres of interior forest from being cleared during construction. Constitution attempted to route its pipeline adjacent to previously disturbed areas and outside of forested areas where possible. However, impacts on the interior forest habitat and on the migratory birds and other wildlife that use this habitat still account for about 43 percent of the total forest land impacts and about 24 percent of the total project land impacts.

82. Based on our staff's recommendation in the draft EIS, Constitution proposed preliminary measures including compensatory mitigation to offset the unavoidable impacts on upland interior forests, including allocation of funds for acquisition of lands for conservation and/or restoration, grants for habitat conservation, and long-term management of lands for migratory birds. Environmental Condition 23 requires that Constitution finalize these measures in its *Migratory Bird and Upland Forest Plan* in consultation with the U.S. Fish and Wildlife Service (FWS), the NYSDEC, the Pennsylvania Department of Conservation and Natural Resources (PADCNR), and the Pennsylvania Game Commission (PGC). Further, Environmental Condition 26 requires that Constitution employ qualified personnel to conduct nest surveys within areas proposed for any tree clearing between April 1 and August 31 to detect birds of conservation concern. Environmental Condition 26 also requires Constitution to provide a buffer around any active nests to avoid potential impacts until the young have fledged.

83. Based on the avoidance and minimization measures developed by Constitution, as well as the requirements in Environmental Conditions 23 and 26, the EIS concludes that impacts on interior forests and migratory birds will be effectively minimized or mitigated. We agree with this conclusion.

⁵⁶ Except where extra workspace is necessary for safety or engineering reasons.

d. Invasive Plant Species

84. Commenters also noted the potential for the pipeline project to spread noxious weeds and invasive plant species. Constitution developed state-specific *Invasive Species Management Plans* which contain numerous measures which it will implement to reduce construction-related impacts on vegetation, reduce the spread of noxious weeds and invasive species, and promote restoration of the right-of-way such as by limiting use of herbicides, installing wash stations, and rapidly restoring and reseeding disturbed sites after installing the pipeline. Timely revegetation promotes the establishment of desirable plant species and deters the spread of unwanted plant species. Environmental Condition 24 requires both extended monitoring for invasive plant species following successful revegetation, as well as cleaning of maintenance equipment during operation of the pipeline project. Further, Environmental Condition 25 requires that Constitution complete surveys for invasive plants and finalize plans for equipment washing stations. The final EIS concludes that the measures in Constitution's *Upland Erosion Control Maintenance and Revegetation Plan*, Procedures, ECPs, and state-specific *Invasive Species Management Plans*, in combination with our environmental conditions, will adequately promote the re-establishment of vegetation and prevent the spread of invasive species. We agree with this conclusion.

e. Compliance Enforcement

85. Commenters also contend that Constitution will not be held to its many mitigation commitments and measures and question who will enforce them. The Commission will implement a compliance inspection program under which Commission staff (or a designated contractor) conduct periodic inspections of project construction as well as right-of-way revegetation and restoration. Such inspections begin with the start of construction and continue until the right-of-way is determined to be effectively restored – a period which often lasts several years or longer for major projects similar to Constitution's Project.

86. In addition, Constitution has agreed to use the Commission's third-party monitoring program, which allows environmental monitors to be in the field for the duration of construction and initial restoration. These monitors report directly to the Commission staff and provide an additional level of compliance oversight. The inspection and monitoring programs will ensure compliance with Constitution's proposed mitigation and the environmental conditions in the attached Appendix A. Furthermore, neither of the projects may be placed into service until the Commission is satisfied that all project conditions have been met and that restoration of all construction work areas and the right-of-way is proceeding satisfactorily.

f. Rare Bat Species

87. The EIS includes an analysis of the projects' impact on four federally listed threatened or endangered species, including the Indiana bat, and one additional bat species, the northern myotis, which is proposed to be listed as endangered. The final EIS concludes that the projects are not likely to adversely affect the Indiana bat. This determination was based on the results of: surveys completed by Constitution in Pennsylvania, which did not identify any Indiana bats; and the determination by the U.S. Fish and Wildlife Service that the Indiana bat has been previously extirpated (by other non-project related activities or events) from the potential habitat crossed by the project in New York.

88. Constitution surveyed areas in Pennsylvania in June and July 2012, and additional areas in May and June 2013. Seven bat species were found in 2012, including 22 northern myotis. In 2013, Constitution also employed full spectrum acoustic detectors at 29 locations, resulting in the detection of approximately 3,700 bats, including 44 northern myotis. Based on the results of the 2012 and 2013 surveys, there are areas along the pipeline project in Pennsylvania that provide habitat for the northern myotis. Although bat surveys were not required in New York, the range of the northern myotis extends into the counties in New York that will be crossed by the pipeline.

89. Construction and operation of the pipeline could impact bat species through direct mortality if clearing affects occupied roost trees, or indirectly through habitat loss and disruption. Therefore, some project-related impacts on the species could occur in both Pennsylvania and New York.

90. Even though the northern myotis is not yet federally listed, the final EIS concluded that a proactive stance is prudent because the project may impact the species. Environmental Condition 29 requires that Constitution develop a project- and site-specific tree-clearing plan for the northern myotis if clearing is to occur between April 1 and September 30 including locating any potential roost trees in or adjacent to the construction corridor. As applicable, Constitution must incorporate the mitigation measures in section 4.7.2 of the final EIS. Environmental Condition 32 ensures that Constitution will not begin construction until all Section 7 consultation under the Endangered Species Act⁵⁷ is complete between the Commission and the FWS, including a conference opinion for northern myotis.

⁵⁷ 16 U.S.C. § 1536 (2012).

91. Three other special-status or rare bat species in addition to those discussed above are also present within the proposed pipeline project area, including the small-footed bat (listed as threatened in Pennsylvania and a New York species of concern); silver-haired bat (a Pennsylvania species of concern); and the little brown bat (not currently federally- or state-listed but under review by the FWS).

92. Constitution will conduct some tree clearing outside of the PGC's recommended allowable rare bat construction window of November 1 to March 31 because of a conflicting requirement to perform in-stream work at wild trout waters between January 1 and September 30 in Pennsylvania. To ensure that impacts are avoided, minimized, or mitigated, Environmental Condition 34 requires Constitution to develop impact avoidance, minimization, or mitigation measures in coordination with the FWS and the PGC for construction between April 1 and October 31 to minimize impacts on the small-footed bat, silver haired bat, and little brown bat.

93. Based on Constitution's proposed measures, as well as the environmental conditions in the Appendix to this order, the EIS concludes that impacts on rare bat species will be adequately prevented or minimized. We agree with this conclusion.

g. Homeowners' Insurance and Property Values

94. Throughout the NEPA review process, commenters expressed concerns about the pipeline project's potential to have negative impacts on their homeowner's insurance, such as increases in premiums, reductions in coverage, or termination of policies. There is no peer-reviewed literature available regarding the potential effects of pipeline proximity on property insurance, nor was Commission staff able to confirm the validity of these claims through independent research and interviews with regional and local experts.⁵⁸ However, to address this issue, Environmental Condition 40 requires that Constitution report the nature of any documented insurance complaints and describe how Constitution has mitigated the impact in its weekly status reports filed during construction and in quarterly reports for a two-year period following the in-service date of the project.

95. Both during the pre-filing and scoping periods commenters also expressed concerns about the pipeline project's impacts on property values. Specific issues included devaluation of property if encumbered by a pipeline easement; responsibility among parties for property taxes within a pipeline easement; payment of increased landowner insurance premiums for project-related effects; and negative economic effects resulting from changes in land use (e.g. loss of timber production within the permanent

⁵⁸ See section 4.9.6 of the final EIS at 4-156.

right-of-way). The final EIS at section 4.9.5 concludes that a significant loss of property value due to construction of a pipeline is not supported by the literature.⁵⁹ We agree with this conclusion.

h. Safety

96. Numerous comments received during the pre-filing and scoping periods questioned the safety of the proposed projects. As described in section 4.12 of the EIS, the projects' facilities will be designed, constructed, operated, and maintained to meet the U.S. Department of Transportation's (DOT) Minimum Federal Safety Standards set forth in Part 192 of Title 49 of the Code of Federal Regulations and in other applicable federal and state regulations.

97. Constitution will put in place several measures that exceed DOT's requirements, including installation of Class 2 design pipe in all Class 1 locations,⁶⁰ installation of the pipeline deeper than required for Class 1 locations with a minimum depth of 36 inches in normal soils and 24 inches in consolidated rock (a level suitable for Classes 2, 3, and 4 locations), inspection of 100 percent of mainline pipeline welds, hydrostatic testing of the entire pipeline at a higher level suitable for Class 3 locations, and spacing of mainline valves (MLVs) at closer intervals to meet Class 2 requirements in all areas. The final EIS concluded that through compliance with the DOT's construction, inspection, and maintenance requirements and Constitution's additionally proposed measures, the projects can be safely constructed and operated. We agree with this conclusion.

i. Indirect Impacts

98. The Council on Environmental Quality's (CEQ) regulations implementing NEPA state that an agency's NEPA review must analyze a project's indirect impacts, which are causally connected to the proposed action and occur "later in time or farther removed in distance [than direct impacts], but are still reasonably foreseeable."⁶¹ Indirect impacts may include the impacts of other activities induced by a proposed project, including growth inducing effects and other effects related to induced changes in the pattern of land

⁵⁹ Final EIS at 4-152 to 4-156.

⁶⁰ Class locations are based on the population density of the project area. Higher densities, and thus a higher class location, require additional measures such as thicker-walled pipe, lower design pressure, and more frequent pipeline inspection and patrols. See final EIS at 4-205.

⁶¹ 40 C.F.R. § 1508.8(b) (2014).

use, population density or growth rate, and related effects on air and water.⁶² However, for an agency to include consideration of an impact in its NEPA analysis as an indirect effect, approval of the proposed project and the related secondary effect must be causally related, i.e., the agency action and the effect must be “two links of a single chain.”⁶³

99. We received over 340 comments on the draft EIS and at our comment meetings suggesting that the proposed pipeline would facilitate, i.e., induce hydraulic fracturing in New York and/or Pennsylvania. As noted in the final EIS, hydraulic fracturing is currently restricted in New York and there is no basis to conclude that our approval of this pipeline will lead to changes to those restrictions. We also note that in June 2014, the New York Supreme Court ruled that local governments, such as towns, can ban high volume hydraulic fracturing through zoning ordinances.⁶⁴ In addition, the EIS identified that there are more than 5,000 miles of existing natural gas pipelines across New York State, including the Tennessee, Dominion, and Millennium pipelines in southern New York. Constitution’s pipeline will represent only approximately 2.5 percent of the total miles of interstate pipeline in New York. As noted in the EIS, if hydraulic fracturing were to be allowed in New York, any of these pipelines could serve to transport newly-developed supplies. Accordingly, there is an insufficient causal link between the proposed projects and any additional use of hydraulic fracturing to develop gas supplies in New York. As a result, any such development cannot be considered an indirect impact under NEPA and CEQ’s regulations.

100. With respect to Pennsylvania, Constitution asserts that there is adequate ongoing, existing production to fully supply its proposed project; there is no evidence that additional development of supply resources is necessary to support the proposal. In any event, as noted in the EIS, Pennsylvania is forecast to produce approximately 7.5 bcf/d of natural gas by 2015 and 13.4 bcf/d by 2020.⁶⁵ Thus, natural gas development, including development utilizing hydraulic fracturing techniques, will continue and indeed is continuing, with or without the proposed projects. As a result, there is an insufficient causal link for any additional development in Pennsylvania to be considered an indirect impact of the projects. It should be noted that any such development would be undertaken pursuant to the permitting authority of the Pennsylvania Department of Environmental Protection, which has developed best management practices for the

⁶² *Id.*

⁶³ *Sylvester v U.S. Army Corps of Engineers*, 884 F.2d 394 (9th Cir. 1980).

⁶⁴ *See* final EIS at 4-235.

⁶⁵ *See* final EIS at 4-232.

construction and operation of upstream oil and gas production facilities. The Department and the Susquehanna River Basin Commission have also enacted regulations to specifically protect water resources from potential impacts associated with the development of the Marcellus Shale region.⁶⁶

101. Therefore, we agree with the conclusion of the EIS that any incremental increase in high volume hydraulic fracturing in New York and Pennsylvania is not an indirect effect of these projects. Further, as discussed below, because the exact location, scale, and timing of any future production facilities is unknown, additional analysis would not inform our decision making.

j. Cumulative Impacts

102. Numerous comments were received on the draft EIS pertaining to additional actions to be considered in the cumulative impacts section. The majority of comments concerned the inclusion of impacts related to the Leatherstocking and Northeast Energy Direct Projects, and to hydraulic fracturing in New York, in the cumulative impacts analysis.

103. The CEQ regulations define cumulative impacts as “the impact on the environment that results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions.”⁶⁷ A cumulative impacts analysis may require an analysis of actions unrelated to the proposed project if they occur in the project area or region of influence of the project being analyzed.⁶⁸ CEQ states that “it is not practical to analyze the cumulative effects of an action on the universe; the list of environmental effects must focus on those that are truly meaningful.”⁶⁹ An agency is only required to include “such information as appears to be reasonably necessary under the circumstances for evaluation of the project rather than to be so all-encompassing in scope that the task of preparing it would become either fruitless or well nigh impossible.”⁷⁰ A project’s region of influence varies depending on the resource being

⁶⁶ See final EIS at 5-15.

⁶⁷ 40 C.F.R. § 1508.7 (2014).

⁶⁸ CEQ Guidance, *Considering Cumulative Effects under the National Environmental Policy Act* (January 1997).

⁶⁹ *Id.* at 8.

⁷⁰ *New York Natural Res. Def. Council, Inc. v. Kleppe*, 429 U.S. 1307, 1311 (1976) (citing *Natural Res. Def. Council v. Calloway*, 524 F. 2d 79, 88 (2d. Cir. 1975)).

discussed. The EIS considered the projects' region of influence as including minor projects (e.g., residential or small commercial development projects) within 0.25 mile of the proposed area for both Constitution's and Iroquois' project; major projects (e.g., large commercial, industrial, and energy development, including natural gas well permitting projects) within 10 miles of the proposed area for both projects; major projects within watersheds crossed by the proposed projects; and projects with potential to result in longer term impacts on air quality (e.g., natural gas pipeline compressor stations) located within an Air Quality Control Region crossed by the proposed projects.

104. Staff's analyses of the potential cumulative impacts of both the Leatherstocking Project⁷¹ and the Northeast Energy Direct Project⁷² are set forth in section 4.13 of the final EIS and are based on publicly available information and assumptions regarding pipeline distance, collocation, right-of-way width, and pipeline diameter. The Leatherstocking Project involves constructing four interconnects with the Constitution pipeline in order to bring a new source of gas supply to communities in northern Pennsylvania and New York. The Northeast Energy Direct Project is currently under development and involves upgrading Tennessee's existing pipeline system in the northeast in order deliver up to 2,200,000 Dth per day to the New England area. One of the proposed Northeast Energy Direct Project pipeline segments would roughly parallel the Constitution pipeline. The final EIS concludes that construction of each these projects in a short timeframe may result in some cumulative impacts on certain resources within the region of influence of the Constitution Pipeline Project. However, the EIS finds that these cumulative impacts would be reduced to less than significant levels with staff's recommended mitigation measures related to construction of the Constitution Pipeline Project and the additional mitigation measures which will likely result from applicable agency reviews of the Leatherstocking and Northeast Energy Direct projects.

105. For cumulative analysis purposes, section 4.13 of the final EIS also provides available information regarding energy development within the region of influence of the Constitution Pipeline Project (i.e., within 10 miles of the project area). Staff determined that between 2009 and October 2013, 1,564 unconventional gas wells (i.e. wells to undergo hydraulic fracturing) were permitted in Pennsylvania counties within 10 miles of the proposed projects. For the same period, 68 natural gas well permits were issued in New York. As of October 1, 2013, companies reported drilling 760 of the permitted wells (approximately 50 percent) in Pennsylvania, and 27 wells (approximately 40 percent) were listed as active in New York. Staff acknowledged that drilling would likely continue through construction of the proposed projects but to an unknown extent.

⁷¹ Section 4.13.2.2 of the final EIS at 4-234.

⁷² Section 4.13.4 of the final EIS at 4-238 to 4-239.

106. Staff considered the potential cumulative impacts of all known projects within the region of influence of the Constitution Pipeline Project on geology and soils; groundwater, surface water, and wetlands; vegetation; wildlife; fisheries and aquatic resources; land use; recreation; special interest areas and visual resources; socioeconomics; cultural resources; and air quality and noise in section 4.13.6 of the final EIA. Because the direct effects on these resources from the proposed projects would be highly localized and temporally limited primarily to the period of construction, staff concluded that the majority of overlapping cumulative impacts would be minor and temporary. Some long-term cumulative impacts would occur on wetland and upland forested vegetation and associated wildlife habitats. The final EIS explains that by implementing staff's recommended mitigation measures for the proposed projects, in combination with measures proposed or required by state and local agencies with overlapping or complementary jurisdiction, the cumulative impacts would be minimized below a significant level. We agree with this conclusion.

107. Moreover, the final EIS provides additional information regarding the extent of acreage that might hypothetically be impacted if all of the gas to be transported by the project were to be produced (1) solely from unconventional resources and (2) solely from a concentrated production area in Susquehanna County, Pennsylvania located adjacent to the beginning of the Constitution pipeline. Commission staff assumed a range of productivity for individual wells and assumed average rates of construction-based and operation-based land disturbance for individual wells. The final EIS concludes that sourcing the proposed 650,000 Dth per day would disturb or would have already disturbed 355 to 10,248 acres during well construction; about one tenth of this acreage would be disturbed during operation. However, this scenario is speculative and unlikely, given the complexities of the interstate natural gas system. In addition, because the exact location, scale, and timing of future facilities are unknown and unknowable, the available information does not assist us in making a meaningful analysis of potential impacts.⁷³

k. Alternatives

108. During scoping, numerous commenters expressed concern with the pipeline project's route and stressed the need for additional analysis of alternatives, including a major route alternative, identified as alternative M, which would be adjacent to Interstate 88. The EIS evaluates a range of alternatives for the Constitution Pipeline Project, including the No-Action Alternative, energy conservation and efficiency, non-gas energy alternatives, system alternatives, collocation with existing or proposed pipeline systems, route alternatives, and minor route variations. Section 3.0 of the EIS evaluates

⁷³ See, e.g., *Columbia Gas Transmission, LLC*, 145 FERC ¶ 61,257, at P 38 (2013) (explaining that time, scale, and location were not predictable).

alternatives to the proposed Constitution Pipeline Project to determine whether they are technically and economically feasible and environmentally preferable.

109. Prior to issuance of the draft EIS, Constitution evaluated 371 route realignments over the course of the project development and incorporated many of these into the proposed route filed with the application. Constitution changed over 50 percent of its originally considered pipeline route due to incorporation of alternatives and smaller realignments since the original project description filed in May 2012.

110. Section 3.4.1 of the EIS identifies two major route alternatives, alternatives K and M, to determine whether the route alternatives would avoid or reduce impacts on environmentally sensitive resources. The EIS concludes, and we agree, that these alternatives do not convey significant environmental advantages compared to the proposed route, given negative related factors such as construction feasibility (e.g., increased steep side slopes associated with alternative M) and risks to drinking water supplies (e.g., the New York City Water Supply Watershed associated with alternative K).

111. Based on consultations with landowners, resource agencies, municipal governments, field review, and impact assessment, Constitution also incorporated nine minor route alternatives and partially incorporated two additional minor route alternatives into the proposed route during the pre-filing and post-filing review stages of its project. Section 3.4.2.2 of the EIS evaluates five additional minor route alternatives that were not adopted into the proposed route and concludes that they do not convey a significant environmental advantage over the proposed route. We agree with this conclusion.

112. The final EIS discussed an additional 151 minor route variations identified by landowner or stakeholder input on the draft EIS. Minor route variations are much smaller in scale than the major and minor route alternatives discussed above, and involve minor shifts in the pipeline alignment to avoid a site-specific resource issue or concern. Constitution adopted 76 minor route variations following issuance of the draft EIS. The final EIS examined in detail minor route variations for 54 parcels as reported by Constitution, stakeholders, and the NYSDAM. Environmental Conditions 11, 12, and 13 require Constitution to adopt additional mitigation measures or additional minor route variation for 21 parcels as listed and depicted in the final EIS.

4. Late Comments Not Addressed in the Final EIS

113. All written comments received from February 12 to September 19, 2014, were included in Appendix S of the final EIS. Nine letters were filed too late to be included in the final EIS, and two comments were filed after issuance of the final EIS. Blake Guyler filed a letter expressing support for the Constitution Pipeline Project in order for the United States to better utilize domestic, low cost natural gas resources. Marlene Welden

filed a motion to intervene and commented on October 14, 2014, that she opposed the projects. The remaining letters raised specific concerns that are addressed below.

a. Stop the Pipeline

114. In comments filed on September 23, 2014, Stop the Pipeline requests that the Commission issue a revised draft EIS and include a cumulative impacts analysis for Tennessee's Northeast Energy Direct Project. The final EIS includes a thorough discussion of the cumulative impacts of the Constitution and Iroquois projects, and Tennessee's planned Northeast Energy Direct Project.⁷⁴

115. We reject Stop the Pipeline's further assertion that the two projects are interconnected and should be evaluated in a single environmental document. In support, it asserts that because the Tennessee and Iroquois pipelines are capacity constrained, the Northeast Energy Direct Project is needed to move gas from Wright, New York, the terminus of the Constitution Pipeline Project, to markets in New York City and Boston. We disagree. Natural gas can be transported from the terminus of the Constitution Pipeline Project to downstream markets by any shipper holding capacity on Iroquois and/or Tennessee. 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.

116. The two projects are not "connected actions" under NEPA that require a single environmental review.⁷⁵ Constitution is a stand-alone project designed to meet the market needs of all shippers signing binding precedent agreements in response to the open season notice for the project. Therefore, the Constitution Pipeline Project can go forward regardless of whether the Northeast Energy Direct Project is authorized by the Commission. On the other hand, the Northeast Energy Direct Project is intended to serve purposes independent of the Constitution Pipeline Project. As explained in the final EIS at 3-26, the Northeast Energy Direct Project is currently contemplated to extend from Susquehanna County, Pennsylvania to Dracut, Massachusetts, with laterals in New York

⁷⁴ The cumulative impacts of Tennessee's Northeast Energy Direct Project are discussed in section 4.13.4 of the final EIS at 4-238 to 4-239.

⁷⁵ The Counsel of Environmental Quality regulations require that the scope of an environmental review under NEPA include "connected actions." Actions are "connected" if they: "[a]utomatically trigger other actions which may require environmental impact statements;" "[c]annot or will not proceed unless other actions are taken previously or simultaneously;" or "[a]re interdependent parts of a larger action and depend on the larger action for their justification." 40 C.F.R. § 1508.25(a)(1) (2014).

and Connecticut, and deliver up to 2,200,000 Dth per day to the Northeast/New England area. Moreover, although Tennessee entered into the pre-filing process for this project in October 2014, it has not yet filed an application for the project. Of course, before the Northeast Energy Direct Project could be constructed, it would be subject to full Commission scrutiny, including NEPA analysis.

117. On October 17, 2014, Stop the Pipeline filed a letter requesting that the Commission delay issuance of the final EIS until all of the information requested by the COE in its October 8, 2014, letter is incorporated into a supplemental draft EIS. As stated in section 1.5 of the final EIS, Constitution and Iroquois are responsible for obtaining all permits and approvals necessary to construct their proposed respective projects. Furthermore, the COE participated as a cooperating agency in the review and development of the Commission's EIS, during which staff coordinated with the COE to address many of its concerns. Environmental Condition 8 requires Constitution and Iroquois to obtain all applicable authorizations required by federal law prior to commencing construction of the projects, including the COE permit under section 404 of the Clean Water Act (Section 404 permit).

b. Stanton Family Farms, L.L.C.

118. Stanton Family Farms, L.L.C. filed comments on September 24, October 9, and October 14, 2014, reiterating their concerns regarding the proposed route through Stanton Family Farms' property. Impacts on this property were discussed in the final EIS,⁷⁶ and Environmental Condition 11 requires Constitution to adopt a minor route variation that will largely avoid the farming operation and entirely avoid the planned farm structures, the new well, and the planned retirement home. Virtually all of this minor route variation will remain on the farm owners' parcels. The EIS concluded, and we agree, that implementation of Environmental Condition 11 will adequately minimize impacts on this property.

c. United States Army Corps of Engineers

119. On October 8, 2014, the COE filed a copy of its letter addressed to Constitution regarding information required by COE and regarding agency reviews that must be completed to allow COE to make a decision regarding Constitution's Section 404 permit. The COE informed Constitution that a decision on its permit likely could not be made until compliance with other applicable federal laws is completed and Constitution has received its Section 401 certificate from the NYSDEC.

⁷⁶ Impacts on the Stanton Family Farms' Property are discussed in section 3.4.3.2 of the final EIS at 3-63.

120. The COE requested that Constitution provide written information comparing remote sensing to ground surveys to estimate impacts on aquatic resources as well as provide a mitigation plan to minimize impacts on aquatic resources. The COE indicated that it is continuing its review of Constitution's proposed mitigation plans and requested that Constitution provide a written discussion of why Constitution is not proposing to restore/replant areas temporarily impacted. The COE also requested that Constitution provide additional information regarding alternative M. In addition, the COE informed Constitution that an additional cumulative impacts assessment of the Leatherstocking and Northeast Energy Direct Projects may be needed if the Commission's EIS does not meet its needs. Section 3.4.1 of the final EIS discusses alternative M in detail and section 4.13 provides an analysis of the cumulative impacts of both the Leatherstocking and Northeast Energy Direct Projects.

121. The Commission continues to encourage applicants to work with other federal, state, and local agencies and to provide all relevant information in order to obtain all necessary permits. We note that much of the information identified by the COE is present in the final EIS. Additionally, as noted above, Environmental Condition 8 requires Constitution to obtain all applicable authorizations required by federal law before commencing construction, including COE's permit authorizations.

d. Earthjustice

122. Earthjustice filed a letter on October 20, 2014, requesting that the Commission revise and reissue the draft EIS to include an analysis of an alternative collocating the Northeast Energy Direct Project in the same right-of-way as the Constitution Pipeline Project. One pipeline segment of the Northeast Energy Direct Project, as currently planned, would roughly parallel the Constitution Pipeline from Susquehanna County to Wright, while a second segment would extend from Wright to Dracut, Massachusetts. Earthjustice also requested that the Commission analyze whether these two pipelines are in the public convenience and necessity. Section 4.13.3 of the final EIS provides a discussion of cumulative impacts associated with the Constitution and Northeast Energy Direct Projects, to the extent information regarding that project is available. Although Tennessee has begun the pre-filing process for the planned Northeast Energy Direct

Project, this project may proceed, be delayed, or be cancelled. The Commission will analyze the public convenience and necessity for the Northeast Energy Direct Project during review of that project after Tennessee's formal application is before the Commission.

123. Earthjustice also requested that the Commission require Constitution and Tennessee to construct one single pipeline to Wright. Section 3.3.5 of the final EIS includes a discussion at 3-24 to 3-27 of a single pipeline alternative and concludes that the single pipeline alternative would generally reduce long term impacts on environmental resources. However, this alternative would require Constitution to

reassess the technical feasibility of many resource crossings, engineering design, and turbines at the Wright Compressor Station. Further reassessment of the project would take at least several months to complete, if not longer. Significantly, the market support for a larger diameter pipe and associated incremental capacity to Wright is dependent on the second portion of Tennessee's project from Wright to Dracut, which, as proposed, would not be placed in service until 2018. Moreover, Tennessee's proposal may be modified or not even built. Requiring Constitution to construct additional capacity that would not be utilized on at least a short-term basis and potentially not on a long-term basis would conflict with our policy of promoting the proper sizing of new facilities and mitigating the potential for overbuilding.⁷⁷ Additionally, according to available information, Tennessee and Constitution have different project objectives, customers, and market-driven obligations that may not be met by a combined project. In turn, if Tennessee's project is ultimately denied, abandoned, or held in regulatory abeyance, disproportionate or unwarranted impacts may occur on Constitution's shippers and the environment. The final EIS concludes that implementation of the single pipeline alternative would delay Commission review of the Constitution Pipeline Project significantly and would be inconsistent with the Energy Policy Act of 2005 requirement that we ensure expeditious completion of projects. We agree with the EIS's conclusions, and find no reason to delay our decision so as to further assess Tennessee's project at this time.

5. Comments and New Information Received After Issuance of the Final EIS

a. James S. Buzon, Town of Middleburgh

124. Mr. Buzon stated that the projects would lower property values, induce hydraulic fracturing, and be a safety risk. He also requested that the Commission intervene regarding routing of the pipeline on parcels owned by Stanton Family Farms, L.L.C. The final EIS and the paragraphs above fully address these matters.

125. Mr. Buzon also commented that the pipelines would result in the installation of additional pipelines. Evaluating the feasibility of collocating pipelines with existing utilities where practical is consistent with our regulatory guidance to the natural gas industry⁷⁸ recognizing that collocation has the *potential* to lessen impacts on environmental resources. As stated in the final EIS, any utility easement may carry with it the potential to attract other utility easements. However, depending on the utility, and

⁷⁷ See, e.g., *Pine Prairie Energy Center, LLC*, 137 FERC ¶ 61,060, at P 25 (2011).

⁷⁸ See 18 C.F.R. § 380.15(e) (2014).

any permitting agencies involved, additional environmental review would be necessary before any additional infrastructure along the proposed Constitution pipeline right-of-way could be built. We have examined this possibility in our consideration of these projects and find that any inherent “attraction”—which would exist for every utility across the United States—does not outweigh the benefits of Constitution’s and Iroquois’ projects.

b. Constitution Pipeline Company, LLC

126. On October 31, 2014, Constitution filed comments on the final EIS specifically involving 7 of the minor route deviations recommended by Commission staff in the final EIS and two new minor route deviations developed by Constitution not addressed in the final EIS.⁷⁹ Constitution evaluated Commission staff’s recommendation, and identified minor revisions to further reduce site-specific impacts or required adjustment to make them technically feasible for four of these deviations, as well as the two newly developed deviations not addressed in the final EIS.⁸⁰ We have reviewed these minor changes and conclude that they either offer an environmental advantage or are required to construct the project; and are approving them with this order. We have revised Environmental Conditions 11 and 12 accordingly; however, Constitution is still required to comply with Environmental Condition 5 for these deviations.

127. For the remaining three deviations, Constitution states that it has reached a signed agreement with the landowners for Constitution’s original proposed routes. Constitution states that these agreements were signed just prior to or immediately after the issuance of the final EIS, and therefore Constitution was unable to file this information with the Commission prior to the issuance of the final EIS.

128. The final EIS concludes that a minor route deviation at each of these 3 locations is preferable to the proposed route, largely due to individual landowner concerns and preferences. The final EIS explains that localized sensitive resources such as wetlands, waterbodies, or historical objects were not the driving cause for evaluating these alternatives. Because some of the landowners have, on their own accord, reached an agreement with Constitution for an easement, we believe that their concerns have been

⁷⁹ These reroutes are identified on pages 3-64 through 3-75 in the final EIS and involve tract numbers NY-BR-001.002, ALT-B-NY-BR-001.000, ALT-B-NY-BR-016.003, ALT-B-NY-BR-054.000, NY-CH-014.000, NY-CH-015.000, UA-NY-CH-015.001, NY-CH-016.000, NY-DE-072.000, NY-DE-080.000, NY-DE-137.000, And NY-DE-138.000.

⁸⁰ The two newly developed deviations are identified in Constitution’s October 31, 2014, filing as TRK# 501 and TRK# 502.

effectively mitigated. Therefore, we will not require these three minor route deviations, and we have modified Environmental Conditions 11 and 12, accordingly.

129. Constitution also requested the use of one new permanent access road. Constitution's proposed use of this access road, i.e., permanent access of a mainline valve, appears valid, however the precise location and extent of the road is unclear from Constitution's request. Therefore, we are not approving this road as part of this order. Constitution must comply with the additional stipulations of Environmental Condition 5 for further Commission consideration of this access road.

c. Catapano Family

130. Mr. Gaetano Catapano, Ms. Carol Ann Catapano, and Ms. Theresa Catapano Black (collectively the Catapano family) filed letters on November 10, 11, and 12, 2014, reiterating their opposition to a pipeline route across their property. They objected to: proposed routing changes made late in the project review process; route modifications that involved moving the pipeline away from neighboring agricultural lands for reasons they deemed inappropriate; direct and indirect effects upon their residential developments including the ability of buyers to obtain loans and property devaluation; and impacts on Mr. Catapano's home and the parcel where he resides. Impacts on property values and the ability of a potential purchaser to obtain a mortgage were discussed in both the final EIS and in this order above. Based on the conclusions already reached, we find no merits to discuss the issue further.

131. The Commission received Mr. Catapano's prior comments regarding the draft EIS on May 29, June 4, and June 5, 2014. Staff's responses to those previously filed comments were included in Appendix S of the final EIS. In a notice published on

May 15, 2014,⁸¹ the Commission notified Mr. Catapano that a minor route variation was being considered that could affect his property. Mr. Catapano acknowledged receipt of that notice in his letter to the Commission received on May 29, 2014.

132. Mr. Catapano noted that the original pipeline route proposed by Constitution crossed parcels owned by Stanton Family Farms, LLC (Stanton) or members of the Stanton Family and that it was unnecessary and unfair for the route to be moved onto his property, particularly late in the environmental review process. We do not find this reasoning supported, as the routing of a pipeline project can be, and often is, modified from its original path at any point in the review process in order to avoid or minimize

⁸¹ The notice included the opening of a limited public comment period which began on May 15, 2014 and ended on June 4, 2014.

impacts on resources and as influenced by the consideration of new information and analyses.

133. The specific routing at the Stanton and Catapano properties was the subject of longstanding assessment and consideration by the FERC staff, including a recommendation in the draft EIS that Constitution further assess minor route variations in order to avoid, minimize, or mitigate impacts on the Stanton's farm.⁸² Stanton representatives had commented and provided supporting documentation that the original crossing route along the length of their farm would jeopardize their compliance with vital agricultural permits, including a concentrated animal feeding operation permit. Therefore, in coordination with the NYSDAM,⁸³ the final EIS evaluated minor route variations in this area, as well as other potential impact avoidance measures such as trenchless horizontal directional drill or direct pipe methods. Subsequently, the Stanton representatives asserted that the proposed route on their farm would also affect a new well, proposed heifer barn, and planned retirement home.

134. The final EIS balanced the resource concerns associated with the Stanton property along with those of the neighboring properties. The minor route variation identified in our May 15, 2014, notice was ultimately modified in the final EIS (as a result of comments from Mr. Catapano) to minimize impacts on his property by adjusting the route away from the central part of his parcel and farther away from his home (approximately 190 feet farther away). This placed the pipeline at the southeastern corner of the parcel and reduced the parcel crossing length from approximately 520 feet to 90 feet. Virtually all of the minor route variation recommended in the final EIS will remain on parcels owned by the Stantons. Although this now results in the crossing of Mr. Catapano's home parcel at the southeastern property corner, the pipeline will be located approximately 425 feet from Mr. Catapano's home, and no trees will be removed from his parcel.

135. While the minor route variation evaluated in the final EIS and required by Environmental Condition 11 will require a crossing of Michele Drive near its intersection with Keyser Road, none of Mr. Catapano's existing or proposed residential development parcels will be crossed, nor will this road crossing hamper Mr. Catapano's ability to develop said parcels.

136. The final EIS also considered another minor route variation south and east of the home at 129 Keyser Road (immediately southeast of Mr. Catapano's parcel south of

⁸² Draft EIS at 5-20.

⁸³ The NYSDAM was a cooperating agency for the development of the EIS.

Keyser Road), but ultimately rejected that option due to concerns about increasing impacts relative to the concentrated animal feeding operation permit, potentially more severe pipeline bends to accommodate a crossing of Highway 145, and the potential that the pipeline centerline might be closer to the home at 129 Keyser Road.

137. We conclude that the minor route variation for this area as required by Environmental Condition 11 sufficiently balances the need to reduce impacts on the Stanton farm, while minimizing impacts on Mr. Catapano's parcel and avoiding impacts on the residential developments.

d. BMB Land, LLC

138. On November 12, 2014, BMB Land, LLC (BMB Land) filed comments on the final EIS with respect to a recommended minor route deviation on its property. BMB Land identifies that it recently executed an easement agreement with Constitution for Constitution's proposed route across BMB Land's property. However, the final EIS recommended a minor route deviation at this location to alleviate landowner concerns. BMB Land writes in support of the deviation because this alternative route would impose less impact on the site's environmental resources and its buildable land. BMB Land also states that Constitution's proposed route passes narrowly between ponds on the property and asserts that it leaves no room for collocation of the Northeast Energy Direct Project, while the recommended deviation is not constrained in this way.

139. We have evaluated the environmental advantages of the recommended minor route deviation and determined that both routes on BMB Land's property would be environmentally acceptable and that the differences between them are negligible. Further, requiring Constitution to modify its project purely because of the Northeast Energy Direct Project—a future project which may or may not be constructed by a different sponsor—is unwarranted. We have fully discussed the merits of Tennessee's project above regarding how it relates to Constitution's proposal and our consideration of Constitution's proposal in this proceeding. We find no reason to further discuss the Northeast Energy Direct Project, or its likelihood.

140. BMB Land also notes that it attempted to negotiate an alternative route with Constitution similar to the later recommended minor route deviation, but BMB Land ultimately executed an easement agreement with Constitution for Constitution's proposed route prior to learning of the final EIS's recommendation. BMB Land indicates a desire to renegotiate a substitute easement agreement with Constitution.

141. The Commission does not have a role in disputes over easement agreements, which are a matter of private contract. If BMB Land is unable to reach an agreement with Constitution and chooses to do so, it may pursue relief before a state court. We maintain the conclusion, as above, that the impacts of the *proposed* route on this parcel

have been effectively mitigated and will be subject to the mutually agreed upon terms of the parties' signed easement agreements.

e. George Meszaros

142. On November 17, 2014, U.S. Congressman Tom Reed (NY) forwarded the November 4, 2014 correspondence of a constituent, Mr. George Meszaros. Mr. Meszaros had previously filed comments on the draft EIS in March 2014. In his November 2014 comments, Mr. Meszaros addresses the analyses in the final EIS,⁸⁴ which recommend a minor route deviation on Mr. Meszaros' property to shift the route north and away from an existing dwelling. However, Mr. Meszaros, in his November 2014 letter, suggests a new route deviation. This deviation (nearly a mile long), would shift the route even further to the north approximately 660 feet, and off his property. Mr. Meszaros asserts that avoidance of his parcels is "the most favorable option," in that it reduces the number of points of inflection and moves the pipeline further from a residence.

143. We disagree. After reviewing both routes, we conclude that the deviation offered in the final EIS adequately minimizes impacts on the affected parcels. While the latest route proposed by Mr. Meszaros does reduce the overall number of "points of inflection," or bends in the pipeline, this alone is not a reason to require an alternate route in the absence of other overriding factors, such as the points of inflection resulting in cost-prohibitive or technically infeasible construction, or the alternate route conferring an obvious environmental advantage. These factors are not present here.

144. The alternative recommended by the final EIS (and hereby approved in this order) was developed specifically to accommodate Mr. Meszaros' initial concerns about the dwelling and alleged potential historic nature of the site. We are unaware of any additional information regarding the specific historic or cultural significance of any of this property, as Mr. Meszaros denied Constitution survey permission or access to the property. However, because of the increased distance from the dwelling as recommended in the final EIS, we do not expect that any adverse impacts here would occur. Additionally Mr. Meszaros' November 2014 route proposal would encounter additional side-slope terrain, which would almost certainly require additional workspace for safe construction. The recommendation in the final EIS crosses more favorable terrain.

145. Mr. Meszaros' recent proposed alternative route would impact one new landowner in the entirety of its nearly 1-mile length. This new landowner to our knowledge has not been afforded the opportunity to voice concerns over this specific route. It is possible

⁸⁴ The final EIS responded to Mr. Meszaros' concerns in app. S at S-31 to S-32 (response to comment FA1-2) and section 3.4.3.

that similar concerns would arise were we to do so. Because the Meszaros' latest route has not been shown to have any significant environmental advantage, and would likely involve the transference of similar impacts to another landowner, we will not require it.

6. Conclusion

146. We have reviewed the information and analysis contained in the final EIS regarding potential environmental effects of the Constitution Pipeline and Wright Interconnect Projects. Based on our consideration of this information and the discussion above, we agree with the conclusions presented in the final EIS and find that the projects, if constructed and operated as described in the final EIS, are environmentally acceptable actions. We are accepting the environmental recommendations in the final EIS and are including them as conditions in the appendix to this order.

147. Any state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate. The Commission encourages cooperation between interstate pipelines and local authorities. However, this does not mean that state and local agencies, through application of state or local laws, may prohibit or unreasonably delay the construction or operation of facilities approved by this Commission.⁸⁵

148. The Commission on its own motion received and made a part of the record in this proceeding all evidence, including the applications, as supplemented, and exhibits thereto, and all comments submitted, and upon consideration of the record,

The Commission orders:

(A) A certificate of public convenience and necessity is issued authorizing Constitution to construct and operate the Constitution Pipeline Project, as described in this order and in the application in Docket No. CP13-499-000.

(B) A blanket construction certificate is issued to Constitution under Subpart F of Part 157 of the Commission's regulations.

(C) A blanket transportation certificate is issued to Constitution under Subpart G of Part 284 of the Commission's regulations.

⁸⁵ See, e.g., *Schneidewind v. ANR Pipeline Co.*, 485 U.S. 293 (1988); *National Fuel Gas Supply v. Public Service Comm'n*, 894 F.2d 571 (2d Cir. 1990); *Iroquois Gas Transmission System, L.P.*, 52 FERC ¶ 61,091 (1990) and 59 FERC ¶ 61,094 (1992).

(D) A certificate of public convenience and necessity is issued authorizing Iroquois to construct and operate the Wright Interconnect Project, as more fully described in this order and in the application in Docket No. CP13-502-000.

(E) The certificate authority issued in Ordering Paragraphs (A) and (D) shall be conditioned on the following:

(1) Applicants' completion of the authorized construction of the proposed facilities and making them available for service within 24 months from the date of this order, pursuant to section 157.20(b) of the Commission's regulations;

(2) Applicants' compliance with all applicable Commission regulations under the NGA including, but not limited to, Parts 154 and 284, and paragraphs (a), (c), (e), and (f) of section 157.20 of the regulations;

(3) Applicants' compliance with the environmental conditions listed in the appendix to this order.

(F) Applicants shall notify the Commission's environmental staff by telephone or facsimile of any environmental noncompliance identified by other federal, state, or local agencies on the same day that such agency notifies an applicant. Applicants shall file written confirmation of such notification with the Secretary of the Commission within 24 hours.

(G) Constitution shall execute firm contracts for the capacity levels and terms of service represented in signed precedent agreements, prior to commencing construction.

(H) Iroquois shall execute the Capacity Lease Agreement with Constitution, prior to commencing construction, and file it with the Commission at least 30 days prior to its effective date.

(I) Constitution's initial rates and tariff are approved, as conditioned and modified in this order. Constitution is required to file actual tariff records reflecting the initial rates and tariff that comply with the requirements contained in the body of this order not less than 30 days, and not more than 60 days, prior to the date the proposed project goes into service.

(J) As discussed in the body of this order, within three years after its in-service date, Constitution must make a filing to justify its existing cost-based firm and interruptible recourse rates. In the alternative, in lieu of such filing, Constitution may make an NGA section 4 filing to propose alternative rates to be effective no later than three years after the in-service date for its proposed facilities.

(K) A certificate of public convenience and necessity is issued to Constitution authorizing it to lease capacity from Iroquois, as described and conditioned herein.

(L) Iroquois is authorized to abandon by lease to Constitution capacity on Iroquois' system, as described and conditioned and herein.

(M) Iroquois shall notify the Commission within 10 days of the date of abandonment of the capacity leased to Constitution.

(N) Iroquois shall make a NGA section 4 filing to revise its MV/FU Factor tariff provision at least 60 days before the commencement of service for the Wright Interconnect Project.

(O) The late, unopposed motions to intervene filed before issuance of this order in each respective docket are granted.

(P) The requests for an evidentiary hearing are denied.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix
Environmental Conditions

As recommended in the final environmental impact statement and otherwise amended herein, this authorization includes the following conditions. The section number in parentheses at the end of a condition corresponds to the section number in which the measure and related resource impact analysis appears in the final EIS.

1. The Applicants (Constitution Pipeline Company, LLC and Iroquois Gas Transmission, L.P., jointly) shall each follow the construction procedures and mitigation measures described in their application and supplements, including responses to staff data requests and as identified in the EIS, unless modified by the Order. The Applicants must:
 - a. request any modification to these procedures, measures, or conditions in a filing with the Secretary of the Commission (Secretary);
 - b. justify each modification relative to site-specific conditions;
 - c. explain how that modification provides an equal or greater level of environmental protection than the original measure; and
 - d. receive approval in writing from the Director of the Office of Energy Projects (OEP) **before using that modification.**
2. The Director of OEP has delegated authority to take whatever steps are necessary to ensure the protection of all environmental resources during construction and operation of the projects. This authority shall allow:
 - a. the modification of conditions of the Order; and
 - b. the design and implementation of any additional measures deemed necessary (including stop-work authority) to ensure continued compliance with the intent of the environmental conditions as well as the avoidance or mitigation of adverse environmental impact resulting from construction and operation of the projects.
3. **Prior to any construction**, the Applicants shall each file an affirmative statement with the Secretary, certified by a senior company official, that all company personnel, environmental inspectors (EIs), and contractor personnel will be informed of the EIs' authority and have been or will be trained on the implementation of the environmental mitigation measures appropriate to their jobs **before** becoming involved with construction and restoration activities.
4. The authorized facility locations shall be as shown in the EIS, as supplemented by filed alignment sheets. **As soon as they are available, and before the start of construction**, the Applicants shall file any revised detailed survey alignment

maps/sheets at a scale not smaller than 1:6,000 with station positions for all facilities approved by the Order. All requests for modifications of environmental conditions of the Order or site-specific clearances must be written and must reference locations designated on these alignment maps/sheets.

Constitution's exercise of eminent domain authority granted under Natural Gas Act (NGA) Section 7(h) in any condemnation proceedings related to the Order must be consistent with these authorized facilities and locations. Constitution's right of eminent domain granted under NGA Section 7(h) does not authorize it to increase the size of its natural gas pipeline to accommodate future needs or to acquire a right-of-way for a pipeline to transport a commodity other than natural gas.

5. The Applicants shall file detailed alignment maps/sheets and aerial photographs at a scale not smaller than 1:6,000 identifying all route realignments or facility relocations, and staging areas, contractor yards, new access roads, and other areas that would be used or disturbed and have not been previously identified in filings with the Secretary. Approval for each of these areas must be explicitly requested in writing. For each area, the request must include a description of the existing land use/cover type, and documentation of landowner approval, whether any cultural resources or federally listed threatened or endangered species would be affected, and whether any other environmentally sensitive areas are within or abutting the area. All areas shall be clearly identified on the maps/sheets/aerial photographs. Each area must be approved in writing by the Director of OEP **before construction in or near that area.**

This requirement does not apply to extra workspace allowed by the Applicants' *Upland Erosion Control and Maintenance Plans* and/or minor field realignments per landowner needs and requirements which do not affect other landowners or sensitive environmental areas such as wetlands.

Examples of alterations requiring approval include all route realignments and facility location changes resulting from:

- a. implementation of cultural resources mitigation measures;
- b. implementation of endangered, threatened, or special concern species mitigation measures;
- c. recommendations by state regulatory authorities; and
- d. agreements with individual landowners that affect other landowners or could affect sensitive environmental areas.

6. **Within 60 days of the acceptance of the Certificate and before construction begins**, the Applicants shall file their respective Implementation Plans for review and written approval by the Director of OEP. The Applicants must file revisions to their plans as schedules change. The plans shall identify:
- a. how the Applicants will implement the construction procedures and mitigation measures described in its application and supplements (including responses to staff data requests), identified in the EIS, and required by the Order;
 - b. how the Applicants will incorporate these requirements into the contract bid documents, construction contracts (especially penalty clauses and specifications), and construction drawings so that the mitigation required at each site is clear to onsite construction and inspection personnel;
 - c. the number of EIs assigned, and how the company will ensure that sufficient personnel are available to implement the environmental mitigation;
 - d. company personnel, including EIs and contractors, who will receive copies of the appropriate material;
 - e. the location and dates of the environmental compliance training and instructions the Applicants will give to all personnel involved with construction and restoration (initial and refresher training as the projects progress and personnel change) with the opportunity for OEP staff to participate in the training sessions;
 - f. the company personnel (if known) and specific portion of the Applicant's organization having responsibility for compliance;
 - g. the procedures (including use of contract penalties) the Applicants will follow if noncompliance occurs; and
 - h. for each discrete facility, a Gantt or PERT chart (or similar project scheduling diagram), and dates for:
 - (1) the completion of all required surveys and reports;
 - (2) the environmental compliance training of onsite personnel;
 - (3) the start of construction; and
 - (4) the start and completion of restoration.
7. Beginning with the filing of its Implementation Plan, Constitution shall file updated status reports with the Secretary on a **weekly basis until all construction and restoration activities are complete**. Iroquois shall file updated status reports with the Secretary on a **monthly basis until construction and restoration activities are complete**. On request, these status reports will also be provided to

other federal and state agencies with permitting responsibilities. Status reports shall include:

- a. an update on the Applicant's efforts to obtain the necessary federal authorizations;
 - b. the construction status of the projects, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas;
 - c. a listing of all problems encountered and each instance of noncompliance observed by the EIs during the reporting period (both for the conditions imposed by the Commission and any environmental conditions/permit requirements imposed by other federal, state, or local agencies);
 - d. a description of corrective actions implemented in response to all instances of noncompliance, and their cost;
 - e. the effectiveness of all corrective actions implemented;
 - f. a description of any landowner/resident complaints that may relate to compliance with the requirements of the Order, and the measures taken to satisfy their concerns; and
 - g. copies of any correspondence received by the Applicants from other federal, state, or local permitting agencies concerning instances of noncompliance, and the Applicant's response.
8. **Prior to receiving written authorization from the Director of OEP to commence construction of their respective project facilities**, the Applicants shall file documentation that they have received all applicable authorizations required under federal law (or evidence of waiver thereof).
9. The Applicants must receive written authorization from the Director of OEP **before placing their respective projects into service**. Such authorization will only be granted following a determination that rehabilitation and restoration of areas affected by the projects are proceeding satisfactorily.
10. **Within 30 days of placing the authorized facilities in service**, each Applicant shall file an affirmative statement with the Secretary, certified by a senior company official:
- a. that the facilities have been constructed in compliance with all applicable conditions, and that continuing activities will be consistent with all applicable conditions; or
 - b. identifying which of the Certificate conditions the Applicant has complied or will comply with. This statement shall also identify any areas affected by the projects where compliance measures were not properly

implemented, if not previously identified in filed status reports, and the reason for noncompliance.

11. Constitution shall adopt the minor route variations and/or modifications of construction methods for the tracts specified in table 3.4.3-1 and as depicted in Appendix H-2A of the EIS (except for TRK# 478.0 as identified in Constitution's October 31, 2014 filing). As part of its Implementation Plan, Constitution shall file with the Secretary updated alignment sheets incorporating these minor route variations and modifications of construction methods **prior to the start of construction.** (*section 3.4.3.2*)
12. Constitution shall adopt the minor route variations and/or modifications of construction methods for the tracts specified in table 3.4.3-2 and as depicted in Appendix H-2B of the EIS (except for TRK#s 892.0, 893.0, 902.0, 895.0, 897.0, 898.0, as identified in Constitution's October 31, 2014 filing). As part of its Implementation Plan, Constitution shall file with the Secretary updated alignment sheets incorporating these minor route variations, and modifications of construction methods, **prior to the start of construction.** (*section 3.4.3.2*)
13. Constitution shall adopt the minor route variation for tracts UA-NY-CH-015.001, NY-CH-015.000, and NY-CH-016.000 as specified in table 3.4.3-3 and as depicted in Appendix H-3A of the EIS. Constitution shall file updated alignment sheets incorporating this minor route variation with the Secretary **prior to the start of construction.** (*section 3.4.3.3*)
14. **Prior to construction,** Constitution shall file with the Secretary all outstanding geotechnical feasibility studies for trenchless crossing locations. (*section 4.1.1.2*)
15. Constitution shall adopt the recommendations and mitigation measures for steep slope and karst areas provided in the Geological Reconnaissance Memorandum dated October 4, 2013. (*section 4.1.3.4*)
16. Constitution shall employ a geotechnical expert to identify and develop mitigation measures (where applicable) regarding potential landslide hazards during construction of the pipeline. (*section 4.1.3.4*)
17. Constitution shall adhere to a maximum allowable construction equipment rutting depth of 4 inches in saturated agricultural areas, where Constitution has not segregated topsoil across the full right-of-way width. (*section 4.2.4*)
18. **Prior to conducting any agricultural restoration between October 1 and May 15,** Constitution shall determine soil workability in consultation with the FERC, the NYSDAM, and the agricultural inspector (AI) for all New York agricultural parcels. (*section 4.2.4*)
19. **Prior to construction,** Constitution shall file with the Secretary the location of all water wells and springs within 150 feet of the pipeline and aboveground facilities. (*section 4.3.1.5*)

20. **Prior to construction**, Constitution shall file with the Secretary the results of water wells, waterbodies, and wetlands surveys for all proposed contractor yards not previously filed, as well as the status of any required agency consultations. *(section 4.3.2)*
21. Constitution shall not permanently fill any waterbodies or wetlands for the use of access roads. *(section 4.3.3.1)*
22. **During construction of the project**, Constitution shall not clear any trees between the workspaces for Direct Pipe entry and exit sites [or horizontal directional drill (HDD), if subsequently proposed]. To facilitate the use of the Direct Pipe (or HDD) tracking system or acquisition of water for makeup of the Direct Pipe (or HDD) slurry, Constitution may employ minor brush clearing, less than 3 feet wide between workspaces, using hand tools only. During operation, Constitution shall not conduct any routine vegetation maintenance in these areas. *(section 4.4.3)*
23. **Prior to construction**, Constitution shall file with the Secretary, for review and written approval of the Director of the OEP, a final Migratory Bird and Upland Forest Plan developed in consultation with the U.S. Fish and Wildlife Service, the New York State Department of Environmental Conservation, the Pennsylvania Department of Conservation and Natural Resources, and the PGC. The final plan shall include a discussion of compliance with the Migratory Bird Treaty Act (MBTA) and Bald and Golden Eagle Protection Act (BGEPA); measures to avoid, reduce, or minimize unavoidable impacts on forests and migratory birds; and establishment of mitigation plans for conservation of migratory bird habitat. *(section 4.5.3.1)*
24. Constitution shall conduct invasive species monitoring within the maintained right-of-way **for 3 years** following successful completion of revegetation as determined by the FERC staff based on the FERC staff's post-construction monitoring inspections. Constitution shall file a report documenting the monitoring results after the 3 year period. Constitution shall not move mowing and maintenance equipment from an area where known invasive species have been encountered during operation of the project unless it is cleaned prior to moving. *(section 4.5.4)*
25. **Prior to construction**, Constitution shall file with the Secretary the final, complete results of its invasive plant surveys and the planned locations of weed wash stations for review and written approval of the Director of OEP. *(section 4.5.3)*
26. **Immediately prior to any vegetation clearing to be conducted between April 1 and August 31**, Constitution shall conduct nest surveys for birds of conservation concern performed by qualified personnel within areas proposed for clearing. Constitution shall file the results of the surveys with the Secretary and provide a

- buffer around any active nests to avoid potential impacts until the young have fledged. (*section 4.6.1.3*)
27. **Prior to in-stream blasting at any waterbody crossing**, Constitution shall file with the Secretary for review and approval of the Director of OEP, a site-specific Blasting Plan that provides protocols for in-stream blasting and the protection of the fisheries and aquatic resources and habitat. These plans shall be developed in consultation with applicable state resource agencies. (*section 4.6.2.3*)
 28. Constitution shall not withdraw water from Starrucca Creek outside of the Pennsylvania Fish and Boat Commission (PFBC) recommended in-stream work window of June 16 through February 28, or shall provide the PFBC approval to withdraw water outside this window. **Prior to construction**, Constitution shall also file with the Secretary copies of consultation with the NYSDEC regarding the potential to withdraw water from Oquaga, Ouleout, Kortright, and Schoharie Creeks, as well as any timing restrictions placed on water withdrawal at those locations. (*section 4.6.2.3*)
 29. **Prior to construction**, Constitution shall develop a project- and site-specific tree clearing plan for the northern myotis if clearing occurs between April 1 and September 30 that includes the location of any potential roost trees in or adjacent to the construction corridor, and as applicable incorporate the identified mitigation measures in section 4.7.2 of the final EIS. This plan shall be filed with the Secretary for review and written approval of the Director of OEP. (*section 4.7.2*)
 30. **Prior to construction**, Constitution shall file with the Secretary impact avoidance or effective impact minimization or mitigation measures (e.g., utilization of trenchless crossing methods or mussel relocation) in consultation with the FWS, the PFBC, the PGC, the PADCNR, and the NYSDEC for any dwarf wedgemussels encountered during field surveys and/or construction. (*section 4.7.2*)
 31. **Prior to construction**, Constitution shall file with the Secretary the results of its completed Northern monkshood surveys and Constitution's consultation with the FWS and the NYSDEC regarding the results. Constitution shall file the avoidance/minimization measures it would use in the event that Northern monkshood are found either prior to or during construction, including:
 - a. avoidance of plant locations and associated habitat, as feasible, including "necking-down" or reducing construction footprint;
 - b. the feasibility of conventional boring, direct pipe, or HDD; and
 - c. the feasibility of transplanting and seed banking (only after all other options are considered). (*section 4.7.2*)

32. Constitution shall not begin construction of the proposed facilities **until**:
 - a. all outstanding biological surveys have been completed;
 - b. the FERC staff completes any necessary Section 7 consultation with the FWS (including a conference opinion regarding the northern myotis); and
 - c. Constitution has received written notification from the Director of OEP that construction and/or use of mitigation (including implementation of conservation measures) may begin. (*section 4.7.2*)
33. **Prior to construction**, Constitution shall file with the Secretary for review and written approval of the Director of OEP the final bald eagle survey results, as well as the final bald eagle mitigation plan, developed in consultation with the FWS, the PGC, and the NYSDEC. The mitigation plan shall include impact avoidance or effective impact minimization or mitigation measures for any nests encountered during the pre-construction surveys. Specific mitigation, or approval from the applicable agencies, shall be included for potential blasting within 0.5 mile of an active nest. (*section 4.7.3*)
34. **Prior to construction**, Constitution shall develop impact avoidance, minimization, or mitigation measures in coordination with the FWS and the PGC for construction between April 1 and October 31 to minimize impacts on the small-footed bat, silver haired bat, and little brown bat. Constitution shall file any such measures with the Secretary. (*section 4.7.3*)
35. **Prior to construction**, Constitution shall file with the Secretary the results of any outstanding surveys for New York and Pennsylvania state-listed species and identify additional mitigation measures developed in consultation with the applicable state agencies. (*section 4.7.4*)
36. **Prior to construction**, Constitution shall file an updated classification of the current use of the twelve unsurveyed structures identified in table 4.8.3-1 of the EIS within 50 feet of the construction work area. If any of the structures are found to be occupied residences, site-specific plans shall be developed and filed with the Secretary for review and written approval of the Director of OEP. Also, Constitution shall provide an updated site-specific plan for tract **ALT-F-NY-SC-011.000 at milepost 96.7 that** includes adequate impact avoidance, minimization, or mitigation measures for the septic field. (*section 4.8.3.1*)
37. **Prior to construction**, Constitution shall confirm the distance and location of the subdivision at MP 99.3 in relation to the pipeline, and provide a site-specific plan if within 50 feet of the construction work area. (*section 4.8.3.1*)
38. **Prior to construction**, Constitution shall file with the Secretary for review and written approval of the Director of OEP an impact avoidance, minimization, or mitigation plan for specialty crops (e.g., the sugar bush operation at MP 79.5), in consultation with the landowner. (*section 4.8.4.2*)

39. **No more than 60 days following the authorization of in-service**, Constitution shall file with the Secretary for review and written approval of the Director of OEP, site-specific reports for each of the five sites identified in table 4.8.4-6 of the EIS describing follow-up impact assessments, description of mitigation or visual screening measures, or justification for why no such mitigation measures were required. (*section 4.8.6.2*)
40. Constitution shall file with the Secretary reports describing any documented complaints from a homeowner that a homeowner's insurance policy was cancelled or voided due directly to the grant of the pipeline right-of-way or installation of the pipeline, and/or that the premium for the homeowner's insurance increased materially and directly as a result of the grant of the pipeline right-of-way or installation of the pipeline. The reports shall also identify how Constitution has mitigated the impact. **During construction** these reports shall be included in Constitution's status reports (see condition 7 above) and in quarterly reports **for a 2 year period following in-service of the project**. (*section 4.9.6*)
41. Constitution shall not begin implementation of any treatment plans/measures (including archaeological data recovery); construction of facilities; or use of staging, storage, or temporary work areas and new or to-be-improved access roads **until:**
- a. Constitution files with the Secretary outstanding cultural resources survey and evaluation reports, any necessary treatment plans, site specific protection plans, and the Pennsylvania Historical and Museum Commission's and New York State Office of Parks, Recreation and Historic Preservation's comments, as appropriate, on the reports and plans;
 - b. Constitution provides documentation that it has provided cultural resources reports to the Native American Tribes which have requested them;
 - c. the Advisory Council on Historic Preservation is provided an opportunity to comment on the undertaking if historic properties would be adversely affected; and
 - d. the FERC staff reviews and the Director of OEP approves all cultural resources survey reports and plans, and notifies Constitution in writing that treatment plans/mitigation measures may be implemented or construction may proceed.

All material filed with the Secretary containing **location, character, and ownership information** about cultural resources must have the cover and any relevant pages therein clearly labeled in bold lettering: **"CONTAINS PRIVILEGED INFORMATION - DO NOT RELEASE."** (*section 4.10.4*)

42. **Prior to Construction**, Constitution shall file with the Secretary, for review and written approval of the Director of OEP, updated acoustical analysis for the Direct

Pipe crossing locations 1 through 5. Constitution shall include site-specific plans detailing any noise mitigation measures Constitution would use to ensure that the noise levels attributable to the Direct Pipe activities do not exceed a day-night sound level (L_{dn}) of 55 decibels on the A-weighted scale (dBA) and/or increase noise over ambient conditions greater than 10 decibel (dB) at any noise sensitive area (NSA). (*section 4.11.2.3*)

43. Iroquois shall file a noise survey with the Secretary **no later than 60 days** after placing the authorized units at the Wright Compressor Station in service. If a full load condition noise survey is not possible, Iroquois shall provide an interim survey at the maximum possible horsepower load and provide the full load survey **within 6 months**. If the noise attributable to the operation of all of the equipment at the Wright Compressor Station under interim or full horsepower load conditions exceeds an L_{dn} of 55 dBA at any nearby NSAs, Iroquois shall file a report on what changes are needed and shall install the additional noise controls to meet the level **within 1 year** of the in-service date. Iroquois shall confirm compliance with the above requirement by filing a second noise survey with the Secretary **no later than 60 days** after it installs the additional noise controls. (*section 4.11.2.3*)

Document Content(s)

CP13-499-000.DOCX.....1-57

Exhibit 2

Stop the Pipeline

Request for Rehearing

January 2, 2015

**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
)	

**REQUEST FOR REHEARING
OF STOP THE PIPELINE**

Critical Energy Infrastructure Information (CEII)

and privileged information have been redacted.

Complete version was filed as CEII.

**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
)	

**REQUEST FOR REHEARING
OF STOP THE PIPELINE**

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 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).

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-eminent-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 pre-filing, 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).

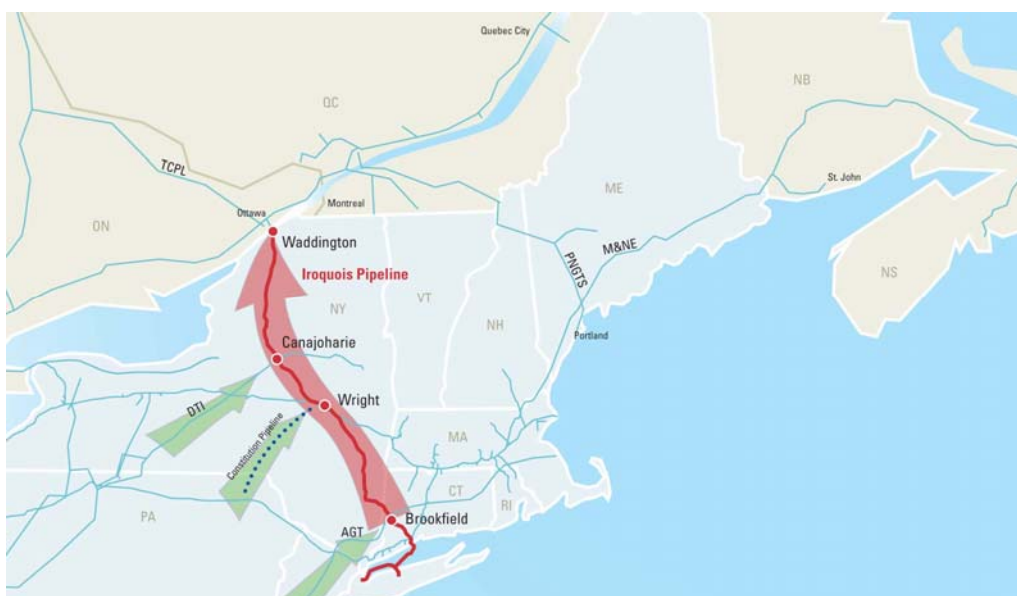
¹¹⁶ 149 FERC ¶ 61,199, at PP 48-57.

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.

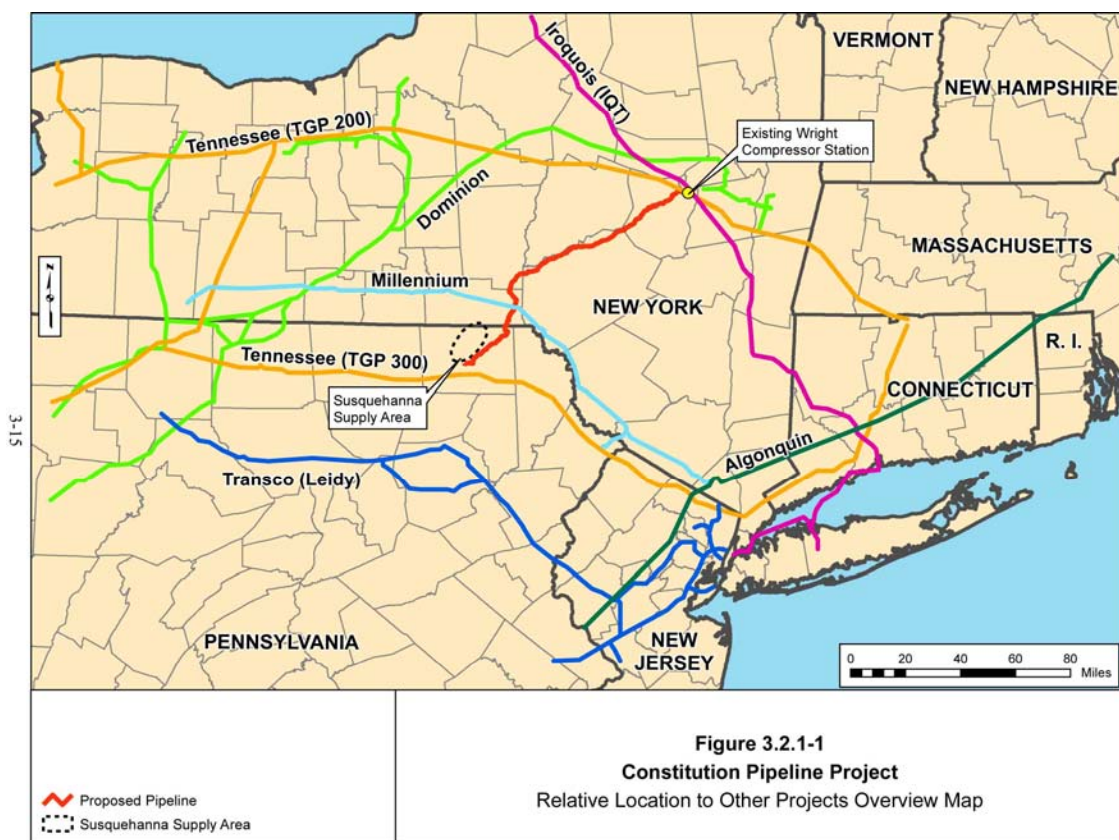
¹²² *Id.* § 1508.25(a)(1)(iii).

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.



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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

-4-

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.

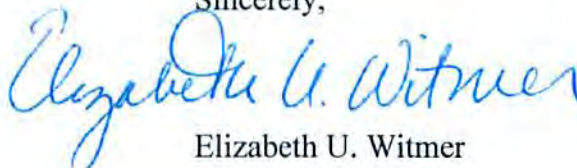
Page 2

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.

Elizabeth U. Witmer, Esq.

December 5, 2014

Page 2

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



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.

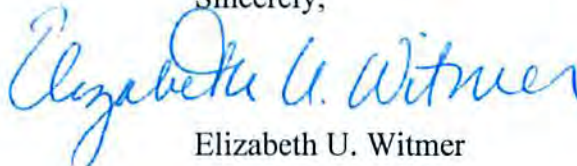
Page 2

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.

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

<agarti@law.pace.edu>
914 422-4343

Document Content(s)

STP request for rehearing_redacted.PDF.....1-73

Exhibit 3

FERC

Order Granting Rehearing
for Further Reconsideration

January 27, 2015

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Constitution Pipeline Company, LLC
Iroquois Gas Transmission System, L.P.

Docket No. CP13-499-001
Docket No. CP13-502-001

ORDER GRANTING REHEARING FOR
FURTHER CONSIDERATION

(January 27, 2015)

Rehearing has been timely requested of the Commission's order issued on December 2, 2014, in this proceeding. *Constitution Pipeline Company and Iroquois Gas Transmission System, L. P.*, 149 FERC ¶ 61,199 (2014). In the absence of Commission action within 30 days from the date the rehearing request was filed, the request for rehearing (and any timely requests for rehearing filed subsequently)¹ would be deemed denied. 18 C.F.R. § 385.713 (2014).

In order to afford additional time for consideration of the matters raised or to be raised, rehearing of the Commission's order is hereby granted for the limited purpose of further consideration, and timely-filed rehearing requests will not be deemed denied by operation of law. Rehearing requests of the above-cited order filed in this proceeding will be addressed in a future order. As provided in 18 C.F.R. § 385.713(d), no answers to the rehearing requests will be entertained.

Nathaniel J. Davis, Sr.,
Deputy Secretary.

¹ See *San Diego Gas & Electric Company v. Sellers of Energy and Ancillary Services into Markets Operated by the California Independent System Operator and the California Power Exchange, et al.*, 95 FERC ¶ 61,173 (2001) (clarifying that a single tolling order applies to all rehearing requests that were timely filed).

Document Content(s)

CP13-499-001.DOC.....1-1

Exhibit 4

N.D.N.Y.

Constitution Pipeline Company,
Eminent Domain Cases

December 31, 2014

Select A Case

Constitution Pipeline Company, LLC is a plaintiff in 121 cases.

1:14-cv-02000-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 3.62 Acres and Temporary Easements for 3.08 Acres in Middleburgh, Schoharie County, New York, Tax Parcel Number 81.-4-13 et al	filed 12/12/14	210(Condemnation)
1:14-cv-02003-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.11 Acres and Temporary Easements for 1.42 Acres in Summit, Schoharie County, New York, Tax Parcel Number 112.-1-2-11.1 et al	filed 12/15/14	210(Condemnation)
1:14-cv-02007-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.18 Acres and Temporary Easements for 0.40 Acres in Summit, Schoharie County, New York, Tax Parcel Number 123.-3-11.2 et al	filed 12/15/14	210(Condemnation)
1:14-cv-02010-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Access Easement for 1.10 Acres in Summit, Schoharie County, New York Tax Parcel Number 133.-6-17 et al	filed 12/15/14	210(Condemnation)
1:14-cv-02011-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.34 Acres and Temporary Easements for 1.88 Acres in Cobleskill, Schoharie County, New York, Tax Parcel Number 81.-1-5 et al	filed 12/15/14	210(Condemnation)
1:14-cv-02014-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.93 Acres and Temporary Easements for 1.96 Acres in Richmondville, Schoharie County, New York, Tax Parcel Number 91.-3-5 et al	filed 12/15/14	210(Condemnation)

1:14-cv-02016-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.40 Acres and Temporary Easements for .057 Acres in Schoharie, Schoharie County, New York, Tax Parcel Number 47.-7-13 et al	filed 12/15/14	210(Condemnation)
1:14-cv-02023-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.67 Acres and Temporary Easement for 0.68 Acres in Summit, Schoharie County, New York, Tax Parcel Number 133.-5-14 et al	filed 12/17/14	210(Condemnation)
1:14-cv-02027-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.80 Acres and Temporary Easement for 1.51 Acres in Summit, Schoharie County, New York, Tax Parcel Number 123.-4-3.13 et al	filed 12/17/14	210(Condemnation)
1:14-cv-02032-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.24 Acres and Temporary Easements for 0.32 Acres in Jefferson, Schoharie County, New York, Tax Parcel Number 134.-1-22 et al	filed 12/17/14	210(Condemnation)
1:14-cv-02041-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.28 Acres and Temporary Easement for 0.39 Acres in Summit, Schoharie County, New York, Tax Parcel Number 123.-2-1 et al	filed 12/18/14	210(Condemnation)
1:14-cv-02044-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.74 Acres and Temporary Easement for 0.85 Acres in Schoharie, Schoharie County, New York, Tax Parcel Number 71.-3-3 et al	filed 12/18/14	210(Condemnation)
1:14-cv-02047-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.26 Acres And Temporary Easement for 0.26 Acres in Summit, Schoharie County, New York, Tax Parcel Number 134.-1-1.1 et al	filed 12/18/14	210(Condemnation)
1:14-cv-02048-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.05 Acres And Temporary Easements for 0.52 Acres In Summit, Schoharie County, New York, Tax Parcel Number 123.-4-3.12 et al	filed 12/18/14	210(Condemnation)

1:14-cv-02050-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.81 Acres And Temporary Easements for 1.15 Acres In Summit, Schoharie County, New York, Tax Parcel Number 123.-4-3.1 et al	filed 12/18/14	210(Condemnation)
1:14-cv-02051-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.31 Acres and Temporary Easement for 0.44 Acres in Summit, Schoharie County, New York, Tax Parcel Number 123.-2-3 et al	filed 12/18/14	210(Condemnation)
1:14-cv-02052-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.01 Acres and Temporary Easement for 0.01 Acres in Summit, Schoharie County, New York, Tax Parcel Number 111.-6-7, et al	filed 12/19/14	210(Condemnation)
1:14-cv-02054-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.46 Acres and Temporary Easement for 0.56 Acres in Summit, Schoharie County, New York, Tax Parcel Number 123.-3-2 et al	filed 12/19/14	210(Condemnation)
1:14-cv-02055-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.49 Acres and a Temporary Easement for 0.68 Acres in Summit. Schoharie County, New York, Tax Parcel Number 112.-4-14.1 et al	filed 12/19/14	210(Condemnation)
1:14-cv-02057-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.42 Acres and a Temporary Easement for 0.46 Acres, in Summit, Schoharie County, New York, Tax Parcel Number 133.-6-11 et al	filed 12/19/14	210(Condemnation)
1:14-cv-02060-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.79 Acres and Temporary Easement for 2.03 Acres in Cobleskill, Schoharie County, New York, Tax Parcel Number 81.-1-6 et al	filed 12/19/14	210(Condemnation)
1:14-cv-02061-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.43 Acres and Temporary Easements for 2.20 Acres in Schoharie, Schoharie County, New York, Tax Parcel Number 71.-1-6.1 et al	filed 12/19/14	210(Condemnation)

1:14-cv-02062-NAM-RFT	Constitution Pipeline Company, LLC v. A Temporary Easement for 0.07 Acres in Middleburgh, Schoharie County, New York, Tax Parcel Number 81.-3-3.2 et al	filed 12/19/14		210(Condemnation)
1:14-cv-02063-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.80 Acres and Temporary Easements for 1.84 Acres in Summit, Schoharie County, New York, Tax Parcel Number 123.-2-9 et al	filed 12/19/14		210(Condemnation)
1:14-cv-02065-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.32 Acres and Temporary Easement for 0.39 Acres in Middleburgh, Schoharie County, New York, Tax Parcel Number 70.-5-6.2 et al	filed 12/19/14		210(Condemnation)
1:14-cv-02066-NAM-RFT	Constitution Pipeline Company, LLC v. Summit, Schoharie County, New York, Tax Temporary Easements for 0.16 Acres in Parcel Number 123.-3-7 et al	filed 12/19/14		210(Condemnation)
1:14-cv-02067-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.37 Acres and Temporary Easement for 0.25 Acres in Summit, Schoharie County, New York, Tax Parcel Number 133.-5-13 et al	filed 12/19/14		210(Condemnation)
1:14-cv-02072-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.54 Acres and Temporary Easements for 0.60 Acres in Middleburgh, Schoharie County, New York, Tax Parcel Number 81.-4-14 et al	filed 12/22/14	closed 12/31/14	210(Condemnation)
1:14-cv-02103-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.65 Acres and Temporary Easements for 2.44 Acres, in Middleburgh, Schoharie County, New York, Tax Parcel Number 70.-5-11.1 et al	filed 12/22/14		210(Condemnation)
1:14-cv-02104-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.78 Acres and Temporary Easement for 1.85 Acres, in Middleburgh, Schoharie County, New York, Tax Parcel Number 70.5-10 et al	filed 12/22/14		210(Condemnation)

1:14-cv-02105-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.69 Acres and Temporary Easements for 3.90 Acres in Middleburgh, Schoharie County, New York, Tax Parcel Number 70.-5-6.1 et al	filed 12/22/14	210(Condemnation)
1:14-cv-02110-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.43 Acres and Temporary Easements for 1.72 Acres, in Middleburgh, Schoharie County, New York, Tax Parcel Number 82.-1-1.1 et al	filed 12/22/14	210(Condemnation)
1:14-cv-02112-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.06 Acres and Temporary Easement for 0.99 Acres in Afton, Chenango County, New York, Tax Parcel Number 290.-1-11.1 et al	filed 12/24/14	210(Condemnation)
1:14-cv-02119-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.22 Acres and Temporary Easements for 1.35 Acres in Schoharie, Schoharie County, New York Tax Parcel Number 48.-4-21 et al	filed 12/24/14	210(Condemnation)
1:14-cv-02120-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.34 Acres and Temporary Easement for 0.30 Acres in Middleburgh, Schoharie County, New York, Tax Parcel Number 70.-5-5.2 et al	filed 12/24/14	210(Condemnation)
3:14-cv-02001-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement For 0.62 Acres And Temporary Easements for 0.48 Acres, In Masonville, Delaware County, New York, Tax Parcel Number 160.-1-10 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02002-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.89 Acres and Temporary Easement for 1.08 Acres in Sidney, Delaware County, New York, Tax Parcel Number 139.-1-12.3 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02004-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.18 Acres and a Temporary Easement for 0.31 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-8.9 et al	filed 12/15/14	210(Condemnation)

3:14-cv-02005-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 3.76 Acres and Temporary Easements for 4.91 Acres, in Sanford, Broome County, New York, Tax Parcel Number 186.00-00001-1 et al	filed 12/15/14		210(Condemnation)
3:14-cv-02006-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.52 Acres and Temporary Easements for 1.93 Acres, in Franklin, Delaware County, New York, Tax Parcel Number 31.-1-10 et al	filed 12/15/14		210(Condemnation)
3:14-cv-02008-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement For 0.42 Acres and Temporary Easements for 0.67 Acres in Davenport, Delaware County, New York, Tax Parcel Number 32.-1-34.5 et al	filed 12/15/14		210(Condemnation)
3:14-cv-02009-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.46 Acres and Temporary Easements for 0.67 Acres in Franklin, Delaware County, New York, Tax Parcel Number 43.-1-29 et al	filed 12/15/14		210(Condemnation)
3:14-cv-02012-NAM-RFT	Constitution Pipeline Company, LLC v. Temporary Easements for 0.44 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 24.-1-31.14 et al	filed 12/15/14	closed 12/31/14	210(Condemnation)
3:14-cv-02013-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.49 Acres and Temporary Easements for 1.85 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-8.11 et al	filed 12/15/14		210(Condemnation)
3:14-cv-02015-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.32 Acres and Temporary Easements for 3.10 Acres, in Afton, Chenango County, New York, Tax Parcel Number 295.-1-2 et al	filed 12/15/14		210(Condemnation)
3:14-cv-02017-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.01 Acres and Temporary Easements for 0.76 Acres, in Masonville, Delaware County, New York, Tax Parcel Number 160.-2-9 et al	filed 12/15/14		210(Condemnation)

3:14-cv-02018-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.38 Acres and a Temporary Easement for 0.38 Acres, in Sidney, Delaware County, New York, Tax Parcel Number 75.-2-5 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02019-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.02 Acres and Temporary Easements for 0.26 Acres, in Franklin, Delaware County, New York, Tax Parcel Number 43.-1-9.2 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02020-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement For 0.54 Acres And Temporary Easements for 0.65 Acres In Davenport, Delaware County, New York, Tax Parcel Number 33.-1-14.111 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02021-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.34 Acres And Temporary Easements for 0.41 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-31 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02022-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.08 Acres And Temporary Easements for 0.24 Acres, In Davenport, Delaware County, New York, Tax Parcel Number 33.-1-33 et al	filed 12/15/14	210(Condemnation)
3:14-cv-02024-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.87 Acres and Temporary Easements for 1.42 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-22.111 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02025-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for .081 Acres and Temporary Easements for 1.20 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-22.12 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02026-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 3.75 Acres and Temporary Easements for 4.95 Acres, in Sidney, Delaware County, New York, Tax Parcel Number 117.-1-58.12 et al	filed 12/17/14	210(Condemnation)

3:14-cv-02028-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.36 Acres And Temporary Easement for 0.38 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-22.51 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02029-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.08 Acres And a Temporary Easement for 0.03 Acres, In Sanford, Broome County, New York, Tax Parcel Number 086.00-00001-28 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02030-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.79 Acres And Temporary Easements for 1.08 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-8.151 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02031-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.47 Acres and Temporary Easements for 0.61 Acres in Davenport, Delaware County, New York, Tax Parcel Number 24.-3-5. et al	filed 12/17/14	210(Condemnation)
3:14-cv-02033-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.98 Acres And Temporary Easements for 2.26 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-10 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02034-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.33 Acres And Temporary Easements for 1.70 Acres In Davenport, Delaware County, New York, Tax Parcel Number 32.-1-21.1 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02035-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for .68 Acres and Temporary Easements for 1.05 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 25.-1-19 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02036-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.23 Acres And Temporary Easements for 1.52, In Davenport, Delaware County, New York, Tax Parcel Number 32.-1-20.1, et al	filed 12/17/14	210(Condemnation)

3:14-cv-02037-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.02 Acres and a Temporary Easement for 1.02 Acres, in Franklin, Delaware County, New York, Tax Parcel Number 58.-1-7 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02038-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.25 Acres And a Temporary Easement for 0.24 Acres, In Davenport, Delaware County, New York, Tax Parcel Number 33.-1-22.4 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02039-NAM	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.17 Acres and Temporary Easements for 1.61 Acres, in Davenport, Delaware County, New York Tax Parcel Number 32.-1-14.1 et al	filed 12/17/14	210(Condemnation)
3:14-cv-02040-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.47 Acres and Temporary Easements for 2.25 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-19.11 et al	filed 12/18/14	210(Condemnation)
3:14-cv-02042-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.18 Acres and a Temporary Easement for 0.07 Acres in Davenport, Delaware County, New York, Tax Parcel Number 32.-1-20.4 et al	filed 12/18/14	210(Condemnation)
3:14-cv-02043-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.12 Acres and a Temporary Easement for 2.55 Acres, in Sanford, Broome County, New York, Tax Parcel Number 138.00-00001-11.2 et al	filed 12/18/14	210(Condemnation)
3:14-cv-02045-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.24 Acres and Temporary Easement for 0.22 Acres in Davenport, Delaware County, New York, Tax Parcel, Number 34.-1-48 et al	filed 12/18/14	210(Condemnation)
3:14-cv-02046-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.40 Acres And Temporary Easements for 3.13 Acres in Davenport, Delaware County, New York, Tax Parcel Number 25.-1-5 et al	filed 12/18/14	210(Condemnation)

3:14-cv-02049-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.80 Acres and Temporary Easement for 2.09 Acres in Davenport, Delaware County, New York, Tax Parcel Number 24.-1-41 et al	filed 12/18/14	210(Condemnation)
3:14-cv-02053-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.21 Acres and Temporary Easement for 0.36 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 35.-1-1.12 et al	filed 12/19/14	210(Condemnation)
3:14-cv-02056-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 3.28 Acres, Permanent Access Easment for 0.21 Acres and Temporary Easments for 3.94 Acres in Sanford, Broome County, New York, Tax Parcel number 217.03-00001-8 et al	filed 12/19/14	210(Condemnation)
3:14-cv-02058-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.55 Acres and Temporary Easement for 0.64 Acres in Harpersfield, Delaware County, New York, Tax Parcel Number 10.-1-15.1 et al	filed 12/19/14	210(Condemnation)
3:14-cv-02059-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for .44 Acres and a Temporary Easement for 0.66 Acres, in Harpersfield, Delaware County, New York, Tax Parcel Number 17.-1-1 et al	filed 12/19/14	210(Condemnation)
3:14-cv-02064-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.52 Acres and a Temporary Easement for 0.38, in Davenport, Delaware County, New York, Tax Parcel Number 24.-3-8 et al	filed 12/19/14	210(Condemnation)
3:14-cv-02068-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.98 Acres and Temporary Easement for 0.89 Acres in Afton, Chenango County, New York, Tax Parcel Number 290.-1-5 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02069-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.25 Acres and Temporary Easements for 0.43 Acres in Bainbridge, Chenango County, New York, Tax Parcel Number 276.-1-26.2 et al	filed 12/22/14	210(Condemnation)

3:14-cv-02070-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.03 Acres and Temporary Easement for 0.05 Acres, in Delaware County, New York, Tax Parcel Number 71.-2-25 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02071-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.16 Acres and Temporary Easement for 1.59 Acres in Davenport, Delaware County, New York, Tax Parcel Number 17.-2-4.3 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02073-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.23 Acres and a Temporary Easement for 0.22 Acres in Sidney, Delaware County, New York, Tax Parcel Number 75.-1-33.1 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02074-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.24 Acres and a Temporary Easement for 0.24 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-22.52 et al	filed 12/22/14	closed 12/31/14	210(Condemnation)
3:14-cv-02075-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.15 Acres and Temporary Easements for 1.57 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 25.-1-1 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02076-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.59 Acres and Temporary Easements for 0.93 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 17.-2-11.1 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02077-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.15 Acres and Temporary Easements for 1.56 Acres in Sanford, Broome County, New York, Tax Parcel Number 086.00-00001-17.12. et al	filed 12/22/14		210(Condemnation)
3:14-cv-02078-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanenet Easement for 1.61 Acres, Permanent Access Easement for 1.13 Acres and Temporary Easements for 1.82 Acres in Sidney, Delaware County, New York, Tax	filed 12/22/14	closed 12/31/14	210(Condemnation)

Parcel Number 75.-1-40 et al

3:14-cv-02079-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.17 Acres and Temporary Easement for 0.55 Acres in Sanford, Broome County, New York, Tax Parcel Number 186.00-00001-2.1 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02080-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.27 Acres and Temporary Easements for 2.66 Acres in Davenport, Delaware County, New York, Tax Parcel Number 32.-1-15.121 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02081-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.25 Acres and Temporary Easement for 2.09 Acres in Sidney, Delaware County, New York, Tax Parcel Number 117.-1-57 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02082-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.58 Acres and Temporary Easement for 0.65 Acres in Sanford, Broome County, New York, Tax Parcel Number 103.00-00002-7 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02083-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.49 Acres and Temporary Easements for 1.09 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 24.-1-14 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02084-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.57 Acres and Temporary Easement for 0.66 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 25.-1-21 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02085-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.75 Acres and a Temporary Easement for 1.12 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 25.-1-20 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02086-	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.22	filed 12/22/14	210(Condemnation)

NAM-RFT	Acres, Temporary Easements for 0.84 Acres and Temporary Access Easement for 0.07 Acres in Sidney, Delaware County, New York, Tax Parcel Number 140.-1-47.3 et al			
3:14-cv-02087-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.45 Acres and Temporary Easement for 2.45 Acres in Davenport, Delaware County, New York, Tax Parcel Number 34.-1-34. et al	filed 12/22/14		210(Condemnation)
3:14-cv-02088-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.52 Acres and Temporary Easements for 0.62 Acres in Davenport, Delaware County, New York, Tax Parcel Number 16.-2-30 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02089-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.11 Acres in Sidney, Delaware County, New York, Tax Parcel Number 140.-1-30.12 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02090-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.47 Acres and Temporary Easements for 2.04 Acres in Franklin, Delaware County, New York, Tax Parcel Number 76.-1-7.2 et al	filed 12/22/14	closed 12/31/14	210(Condemnation)
3:14-cv-02091-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.22 Acres and Temporary Easement for 0.22 Acres in Davenport, Delaware County, New York, Tax Parcel Number 34.-1-44 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02092-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.33 Acres and Temporary Easements for 1.48 Acres in Sidney, Delaware County, New York, Tax Parcel Number 140.-1-47.1 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02093-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.89 Acres, Permanent Access Easement for 0.59 Acres and Temporary Easements for 1.02 Acres in Afton, Chenango County, New York, Tax Parcel Number 295.-1-5.2 et al	filed 12/22/14		210(Condemnation)

3:14-cv-02094-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.77 Acres and Temporary Easements for 2.14 Acres in Franklin, Delaware County, New York, Tax Parcel Number 58.-1-14 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02095-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.71 Acres and Temporary Easements for 0.75 Acres in Sanford, Broome County, New York, Tax Parcel Number 201.00-00001-12 et al	filed 12/22/14	closed 12/31/14	210(Condemnation)
3:14-cv-02096-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.01 Acres and Temporary Easement for 0.04 Acres in Sanford, Broome County, New York, Tax Parcel Number 201.04-00001-19 et al	filed 12/22/14	closed 12/31/14	210(Condemnation)
3:14-cv-02097-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.18 Acres and a Temporary Easement for 0.24 Acres, in Franklin, Delaware County, New York, Tax Parcel Number 31.-1-6.2 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02098-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.10 Acres and a Temporary Easement for 2.08 Acres in Franklin, Delaware County, New York, Tax Parcel Number 30.-1-17 et al	filed 12/19/14		210(Condemnation)
3:14-cv-02099-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.57 Acres and Temporary Easements for 0.75 Acres in Sanford, Broome County, New York, Tax Parcel Number 201.00-00001-15 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02100-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 3.59 Acres, Permanent Access Easement for 0.74 Acres and Temporary Easements for 4.30 Acres, in Franklin, Delaware County, New York, Tax Parcel Number 43.-1-35.11 et al	filed 12/22/14		210(Condemnation)
3:14-cv-02101-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.92 Acres, Permanent Access Easement for 0.78 Acres, Temporary	filed 12/22/14	closed 12/31/14	210(Condemnation)

Easements for 4.08 Acres, and Exclusive Rights Easement for 0.11 Acres in Franklin, Delaware County, New York, et al

3:14-cv-02102-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.12 Acres and Temporary Easement for 0.10 Acres in Davenport, Delaware County, New York, Tax Parcel Number 33.-1-22.2 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02106-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.23 Acres and Temporary Easement for 0.23 Acres, in Sidney, Delaware County, New York, Tax Parcel Number 75.-1-33.5 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02107-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.28 Acres, Permanent Access Easement for 2.31 Acres, Temporary Easements for 2.68 Acres and Exclusive Rights Easement for 0.11 Acres in Masonville, Delaware County, New York, et al	filed 12/22/14	210(Condemnation)
3:14-cv-02108-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.37 Acres and Temporary Easements for 0.55 Acres, in Davenport, Delaware County, New York, Tax Parcel Number 32.-1-34.2. et al	filed 12/22/14	210(Condemnation)
3:14-cv-02109-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.33 Acres and Temporary Easements for 0.77 Acres in Sanford, Broome County, New York, Tax Parcel Number 103.00-00001-32 et al	filed 12/22/14	210(Condemnation)
3:14-cv-02111-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 1.83 Acres and Temporary Easements for 2.02 Acres, in Sidney, Delaware County, New York, Tax Parcel Number 138.-2-32 et al	filed 12/24/14	210(Condemnation)
3:14-cv-02113-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.40 Acres and Temporary Easement for 0.51 Acres in Sanford, Broome County, New York, Tax Parcel Number 201.00-00001-13 et al	filed 12/23/14	210(Condemnation)

3:14-cv-02114-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 2.16 Acres and Temporary Easements for 2.41 Acres, in Harpersfield, Delaware County, New York, Tax Parcel Number 11.-1-3.3 et al	filed 12/23/14	210(Condemnation)
3:14-cv-02115-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 6.57 Acres and Temporary Easements for 3.41 Acres in Harpersfield, Delaware County, New York, Tax Parcel Number 4.-1-9 et al	filed 12/23/14	210(Condemnation)
3:14-cv-02116-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 0.98 Acres and a Temporary Easement for 0.96 Acres in Davenport, Delaware County, New York, Tax Parcel Number 32.-3-12 et al	filed 12/23/14	210(Condemnation)
3:14-cv-02117-NAM-RFT	Constitution Pipeline Company, LLC v. A Temporary Easement for 0.07 Acres in Davenport, Delaware County, New York, Tax Parcel Number 34.-1-96 et al	filed 12/23/14	210(Condemnation)
3:14-cv-02118-NAM-RFT	Constitution Pipeline Company, LLC v. A Permanent Easement for 3.14 Acres and Temporary Easements for 4.52 Acres in Franklin, Delaware County, New York, Tax Parcel Number 76.-1-8.3 et al	filed 12/23/14	210(Condemnation)

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Exhibit 5

New York State Department of
Environmental Conservation

Notice of Complete Application

December 24, 2014

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ENB - Statewide Notices 12/24/2014

Public Notice

Rescheduled due to weather: New York State Department of Environmental Conservation (NYS DEC) to Recognize Six Innovative Programs at the 11th Annual NYS Environmental Excellence Awards Ceremony - Registration Now Open

NYS DEC will recognize six organizations for their innovative programs and commitment to environmental sustainability, social responsibility and economic viability at the 11th Annual New York State Environmental Excellence Awards ceremony at 10:00 a.m. on Wednesday, January 14, 2015.

The event will take place at the Colleges of Nanoscale Science and Engineering, SUNY Polytechnic Institute's NanoFab South Rotunda and Auditorium in Albany. It is open to the public, however space is limited and those wishing to attend must pre-register at: <http://on.ny.gov/eearegistration>.

The event will showcase innovations by businesses investing in energy efficiencies and undertaking continuous improvements to become carbon-neutral; a university reducing solvent use through a comprehensive recycling program; an inter-municipal coalition creating and protecting critical wetlands and a municipal program that is

Outdoor Activities[Animals, Plants, Aquatic Life](#)[Chemical and Pollution Control](#)[Energy and Climate](#)[Lands and Waters](#)[Education](#)[Permit, License, Registration](#)**Public Involvement and News****Environmental Notice Bulletin (ENB)****ENB Current and Archives for January - December 2014****Environmental Notice Bulletin December 24, 2014****ENB - Statewide Notices 12/24/2014**[Regulations and Enforcement](#)[Publications, Forms, Maps](#)[About DEC](#)

resulting in an innovative, sustainable, economically viable and socially acceptable solution to replacing aging agricultural fuel tanks atop Long Island's sole source aquifer. The program will also include an update about the Colleges of Nanoscale Science and Engineering at SUNY Polytechnic Institute's role in building New York's innovation-driven economy as a global leader in high-tech education, research, and development.

Following the awards ceremony, there will be a tour of the Owens Corning facility in Glenmont, NY. Owens Corning, a 2012 Environmental Excellence Award winner, is implementing clean-tech solutions and innovative process changes as part of the production of insulation from natural minerals, recycled glass and an innovative starch-based binder that replaced a formaldehyde-based binder. Space is limited and those interested must pre-register.

DEC established the Environmental Excellence Award in 2004 to recognize and give visibility to selected businesses, schools, municipalities, governments and not-for-profit organizations achieving outstanding environmental sustainability, social responsibility and economic viability. Since then, DEC has recognized 60 organizations.

For more information about the awards ceremony, contact: Marna Posluszny, NYS DEC - Division of Environmental Permits and Pollution Prevention, 625 Broadway, Albany, NY 12233-1750, Phone: (518) 402-9467, Fax: (518) 402-9168, E-mail: awards@dec.ny.gov.

Notice of Complete Application

Notice of Legislative Public Comment Hearing

Applicants: Constitution Pipeline Company, LLC and Iroquois Gas Transmission System, Inc.

Project Title: Constitution Pipeline/Iroquois Compressor Station

Contact for this Page

ENB
NYS DEC
Division of
Environmental Permits
625 Broadway, 4th
Floor
Albany, NY
12233-1750
518-402-9167

[Send us an email](#)**This Page Covers**

Permit and Application Numbers:**Constitution Pipeline:**

Application ID: 0-9999-00181/00009 - Water Quality Certification

Application ID: 0-9999-00181/00010 - Freshwater Wetlands

Application ID: 0-9999-00181/00011 - Water Withdrawal

Application ID: 0-9999-00181/00012 - Excavation and Fill in Navigable Waters

Application ID: 0-9999-00181/00013 - Stream Disturbance

Iroquois Gas Transmission System, Inc.:

Application ID: 4-4350-00008/00012 - Air Title V

Project Description:

Constitution Pipeline Company, LLC (Constitution) and Iroquois Gas Transmission System, Inc. (Iroquois), filed applications for a Certificate of Public Convenience and Necessity (Certificate) with the Federal Energy Regulatory Commission (FERC) on June 13, 2013 for approximately 124.14 miles of new interstate natural gas transmission pipeline, and an associated upgrade to the existing Iroquois Wright Compressor Station.

Constitution Pipeline:

Constitution Pipeline Company, LLC proposes new construction of approximately 124.14 miles of interstate natural gas transmission originating in in northeastern Pennsylvania and crosses into New York State in Broome County, extending in a northeasterly direction through Chenango, Delaware, and Schoharie Counties,

terminating at the existing Wright Compressor Station in Schoharie County. The pipeline will provide 650,000 dekatherms per day (Dth/d) of new firm natural gas transportation capacity from two receipt points in Susquehanna County, Pennsylvania, to a proposed interconnection with existing Iroquois Gas Transmission System, L.P. (Iroquois) and Tennessee Gas Pipeline Company LLC (Tennessee) facilities in Schoharie County, New York. In New York State, the Constitution project will include construction of approximately 99 miles of new 30-inch diameter pipeline; temporary and permanent access roads; one meter station; and additional ancillary facilities, such as main line valves (MLVs), cathodic protection, and internal inspection device launchers and receivers.

In New York State, temporary and permanent impacts to field surveyed wetlands along the proposed primary route from construction of the pipeline and access roads have been calculated to be a total of 80.73 acres. Of these total impacts, 65.65 acres are temporary. Permanent impacts are proposed to 15.08 acres of wetlands. Of these permanent impacts, 15.01 acres would be from the conversion of wetland cover type due to tree removal and 0.07 acres would result from fill for the construction of permanent access roads. Impacts to New York State Department of Environmental Conservation (NYS DEC) jurisdictional field surveyed wetlands include 5.41 acres of temporary impacts; 0.8 acres of permanent forest conversion impacts; and 4.54 acres of temporary and 4.32 acres of permanent impacts to DEC-jurisdictional adjacent areas. Impacts to remote sensed wetlands potentially under the NYS DEC jurisdiction include 1.67 acres of temporary impacts; 0.53 acres of permanent forest conversion impacts; and 2.42 acres of temporary and 0.80 acres of permanent impacts to NYS DEC jurisdictional adjacent areas.

Impacts to remotely sensed potential wetland areas from construction of the pipeline in New York State on properties where wetland surveys have not occurred are estimated at 31.18 acres, including temporary impacts of 26.13 acres. Permanent impacts resulting from conversion are estimated at 5.05 acres of wetlands. To mitigate impacts to NYS DEC jurisdictional wetlands that result from project

construction, Wetland Mitigation Areas (WMAs) are proposed to be developed. The WMAs include four NYS DEC jurisdictional wetlands, as follows: SC-65 on Beckers Corners Road in Schoharie County, DE-89 on Rod and Gun Club Road and DE-51 on Betty Brook Road in Delaware County; and BR-24 on Davey Mendenhall Road in Broome County. The WMAs will include the creation of 1.0 acres of forested wetlands and 0.3 acres of emergent wetlands; the restoration/enhancement of 6.8 acres of emergent wetlands, 7.0 acres of scrub-shrub wetlands, and 5.9 acres of forested wetlands; and the establishment of 7.5 acres of wetland adjacent areas. In addition to the mitigation listed above, WMA for United State Army Corp of Engineers (USACE) jurisdictional wetlands in NYS is supplemented by participation in the Susquehanna Basin Headwater In-Lieu Fee Program sponsored by The Wetland Trust, an approved in-lieu fee program dedicated to wetland mitigation, enhancement and restoration, and by providing site-specific mitigation at NYSDEC wetland SC-66 on Tower Road in Schoharie County.

Total impacts to NYS DEC and USACE jurisdictional streams include 2,954 linear feet of stream crossing length, 0.04 acres of permanent stream disturbance and 4.56 acres of temporary stream disturbance impacts. Impacts to DEC-jurisdictional streams only include 1,894 linear feet of stream crossing length, 0.02 acres of permanent stream disturbance and 2.20 acres of temporary stream disturbance.

Constitution is seeking a water withdrawal permit for a one-time, temporary withdrawal of a total volume of approximately 5,787,900 gallons of water from the Schoharie Creek for initial hydrostatic testing of the pipeline. Upon completion of hydrostatic testing, test water will be discharged within the Schoharie Creek Watershed.

A separate [Notice of Complete Application](http://www.dec.ny.gov/enb/20141224_reg0.html) for this project can be viewed at the following: http://www.dec.ny.gov/enb/20141224_reg0.html

Iroquois Wright Compressor Station:

Iroquois applied for a new Title V Facility permit for the Wright Compressor Station facility located on 330 Westfall Rd., Town of Wright, Schoharie County. Iroquois is proposing to install two additional combustion turbines to drive natural gas pipeline compressors. The modification will include two Solar Taurus 70 natural gas-fired turbines of about 11,000 horsepower (hP) each, along with an emergency generator reciprocating engine with a maximum rating of 940 kW. The facility currently consists of two natural gas combustion turbines of about 7,000 hP and one emergency generator reciprocating engine. Conditions were included in the permit to limit the emissions of nitrogen oxides to prevent the facility from contributing to a violation of the National Ambient Air Quality Standards.

A separate [Notice of Complete Application](#) for this project can be viewed at the following: http://www.dec.ny.gov/enb/20141224_reg4.html

National Environmental Policy Act (NEPA) Determination:

FERC is the lead agency for the environmental review of interstate gas pipelines. FERC staff has prepared a Final Environmental Impact Statement (FEIS), dated October 2014, for the Constitution Pipeline Project and Wright Interconnect Project (projects), proposed by Constitution and Iroquois, respectively, in Docket Nos. CP13-499-000 and CP13-502-000, in accordance with the requirements of NEPA. The FEIS can be viewed and downloaded at: http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141024-4001

NYS DEC relies upon the federal review process conducted by FERC pursuant to NEPA and the permit applications submitted by applicants to NYS DEC to ultimately make a determination regarding issuing its authorizations.

National Historic Preservation Act (NHPA): These applications are being reviewed in accordance with Section 106 of the NHPA. The applications are not subject to the New York State Historic Preservation Act.

Coastal Zone Consistency: No portion of the proposed projects are located within a designated coastal zone area.

NYS DEC Policy 29, Environmental Justice and Permitting (CP-29): The permit applications for the Constitution Pipeline project are not subject to review and approval in accordance with DEC Commissioner's Policy 29. The Title V application for the Wright Compressor station project is subject to CP-29; however, review in accordance with methodology at Section V.B of the policy has resulted in a determination that no potential adverse environmental impacts related to the proposed action are likely to affect a potential environmental justice areas.

Statutory and Regulatory Provisions:

These applications were filed and reviewed pursuant to Environmental Conservation Law (ECL) Article 3, Title 3 (General Functions, Powers, Duties and Jurisdiction), and Article 70 (Uniform Procedures Act or UPA); and pursuant to Title 6 of Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR) Part 621- Uniform Procedures. For the Constitution Pipeline project the relevant regulations are found at: Part 608 (Protection of Waters), Part 663 (Freshwater Wetlands), Part 601 (Water Withdrawal Permitting), and Section 401 of the federal Clean Water Act (CWA) (33 USCA 1341). For the Wright Compressor Station project the relevant regulations are found at: ECL Article 19 (Air Pollution Control). In addition to these permits being considered under UPA, both projects are required to demonstrate the ability to obtain coverage under the State Pollutant Discharge Elimination System Stormwater General Permit for Construction Activities (GP-0-10-001) prior to conducting any construction activities that disturb greater than one acre.

Legislative Hearing:

Pursuant to 6 NYCRR 621.8, legislative public hearings for the receipt of public comments on the permit applications and Title V draft permit will be held on January 12, 13 and 14, 2015, at the locations listed below. Each public hearing will commence at 6:00 p.m. All persons, organizations, corporations, or government agencies which may be affected by the proposed project are invited to attend the hearing and to submit oral or written comments. It is not necessary to notify NYSDEC in advance to speak at the legislative hearing. Equal weight will be afforded to both oral and written statements. Lengthy statements should be in writing and summarized for oral presentation. The presiding Administrative Law Judge may set reasonable time limits for each speaker to afford everyone an opportunity to be heard. The hearings are fully accessible to persons with a mobility impairment. Interpreter services will be made available to the hearing impaired at no charge upon written request to the NYSDEC contact person named below, no less than one week prior to the hearing.

Parties may also file written comments to the NYSDEC representative listed below.

All written comments must be postmarked or submitted electronically by fax or email no later than Friday, January 30, 2015.

The hearings are scheduled as follows:

Date: January 12, 2015

Time: 6:00 p.m.

Location: East Middle School

The Auditorium

167 East Frederick Street

Binghamton, New York 13904

Date: January 13, 2015

Time: 6:00 p.m.

Location: SUNY Oneonta

Lecture Hall IRC #3

108 Ravine Parkway

Oneonta, NY 13820

Date: January 14, 2015**Time:** 6:00 p.m.**Location:** SUNY Cobleskill

Bouck Hall Theater

State Route 7

Cobleskill, NY 12043

Public Hearing and Comment:

Written comments submitted to NYS DEC during this comment period and oral comments given at the Legislative Hearing are considered part of the record. At the conclusion of the public comment period NYS DEC will determine pursuant to 6 NYCRR 621.8 whether substantive or significant issues have been raised in the public comments or legislative hearing to warrant an Adjudicatory Hearing, or whether the permits should be issued without any further review. If no issues are raised to warrant further adjudication, NYS DEC will proceed to develop a response to comments, provide public notice of the approval of the permits and issue the requested permits.

Availability of Documents:

Filed application documents, and Department draft permits where applicable, are available for inspection during normal business hours at the address of the contact person. To ensure timely service at the time of inspection, it is recommended that an appointment be made with the contact person.

In addition, application documents may be accessed at the following locations:

Constitution Pipeline:

On-line:

<http://constitutionpipeline.com/>

Printed copies:

Broome County Public Library
185 Court Street
Binghamton, NY 13901

Afton Free Library
105A Main Street
Afton, NY 13730

Bainbridge Free Library
13 N Main Street
Bainbridge, NY 13733

Franklin Free Library
334 Main Street
Franklin, NY 13775

Sidney Memorial Public Library
8 River Street
Sidney, NY 13838

Deposit Free Library
159 Front Street
Deposit, NY 13754

The Community Library
110 Union Street
Cobleskill, NY 12043

Schoharie Free Library
103 Knower Avenue
Schoharie, NY 12157

Iroquois Wright Compressor Station:

On-line:

http://www.iroquois.com/documents/WIP_-_NYSDEC_Air_Permit_Application_7-26-13.pdf

Printed copies:

Schoharie Free Library
103 Knower Avenue
Schoharie, NY 12157

Town of Wright Municipal Building
105-3 Factory Street
Gallupville, NY 12073

Contact: Stephen M. Tomasik, NYS DEC - Division of Environmental Permits, 625 Broadway, 4th Floor, Albany, NY 12233-1750, Phone: (518) 402-9167, Fax: (518) 402-9168, E-mail: dec.sm.constitution@dec.ny.gov.

Exhibit 6

N.D.N.Y.

Docket for Case No.
3:14-cv-2049-NAM-RFT

February 23, 2015

MANDATORY-MEDIATION

U.S. District Court
Northern District of New York - Main Office (Syracuse) [LIVE - Version 6.1] (Binghamton)
CIVIL DOCKET FOR CASE #: 3:14-cv-02049-NAM-RFT

Constitution Pipeline Company, LLC v. A Permanent Easement for 1.80 Acres and Temporary Easement for 2.09 Acres in Davenport, Delaware County, New York, Tax Parcel Number 24.-1-41 et al

Assigned to: Senior Judge Norman A. Mordue

Referred to: Magistrate Judge Randolph F. Treece

related Case: [1:14-cv-02000-NAM-RFT](#)

Cause: 15:717 Natural Gas Act

Date Filed: 12/18/2014

Jury Demand: None

Nature of Suit: 210 Condemnation

Jurisdiction: Federal Question

Date Filed	#	Docket Text
12/18/2014	1	COMPLAINT against A Permanent Easement for 1.80 Acres and Temporary Easement for 2.09 Acres in Davenport, Delaware County, New York, Tax Parcel Number 24.-1-41, All Unknown Owners, Robert J. Lidsky, Beverly Travis (Filing fee \$400 receipt number ALB008903) filed by Constitution Pipeline Company, LLC. (Attachments: # 1 Notice of Condemnation, # 2 Notice of Related Cases, # 3 Civil Cover Sheet)(rjb,) (Entered: 12/19/2014)
12/18/2014	2	FRCP 7.1 CORPORATE DISCLOSURE STATEMENT by Constitution Pipeline Company, LLC identifying Corporate Parents - Williams Partners Operating, LLC, Cabot Pipeline Holdings, LLC, Piedmont Constitution Pipeline Company, LLC, WGL Midstream CP, LLC, Williams Partners L.P., The Williams Companies, Inc., Cabot Oil & Gas Corporation, Piedmont Natural Gas Company, Inc., WGL Holdings Inc. for Constitution Pipeline Company, LLC. (rjb,) (Entered: 12/19/2014)
12/18/2014	3	G.O. 25 FILING ORDER ISSUED: Initial Conference set for 3/12/2015, at a time to be determined, in Albany before Magistrate Judge Randolph F. Treece. Civil Case Management Plan must be filed and Mandatory Disclosures are to be exchanged by the parties on or before 3/5/2015. (Pursuant to Local Rule 26.2, mandatory disclosures are to be exchanged among the parties but are NOT to be filed with the Court.) (rjb,) (Entered: 12/19/2014)
12/24/2014	4	MOTION for Partial Summary Judgment Motion Hearing set for 2/4/2015 10:00 AM in Syracuse before Senior Judge Norman A. Mordue Response to Motion due by 1/20/2015 Reply to Response to Motion due by 1/26/2015. filed by Constitution Pipeline Company, LLC. (Attachments: # 1 Motion, # 2 Memorandum of Law, # 3 Affidavit of Swift, # 4 Affidavit of McClusky, # 5 Statement of Material Facts, # 6 Proposed Order/Judgment) (Witmer, Elizabeth) (Entered: 12/24/2014)

01/12/2015	5	Omnibus MOTION for Preliminary Injunction <i>for possession of rights of way by February 16, 2015</i> by Constitution Pipeline Company, LLC. (Attachments: # 1 Declaration of Witmer, # 2 Memorandum of Law, # 3 Affidavit of Swift, # 4 Proposed Order/Judgment)(Witmer, Elizabeth) (Entered: 01/12/2015)
01/15/2015	6	ORDER TO SHOW CAUSE- The 5 Omnibus MOTION for Preliminary Injunction <i>for Possession of Rights of Way by February 16, 2015</i> is returnable on 2/4/15; Response to Motion due by 1/28/2015; Reply to Response to Motion due by 2/2/2015. The Omnibus Motion and the Partial Motion for Summary Judgment are returnable on 2/4/2015 before Senior Judge Norman A. Mordue. The motions are on submit, NO appearances. Service by Plaintiff of a copy of this Order, Plaintiffs Memorandum of Law in support of this Omnibus Motion for Preliminary Injunction and the sworn statements in support of this Omnibus Motion, with exhibits upon Defendants shall be by Federal Express and completed on or before January 19, 2015. Signed by Senior Judge Norman A. Mordue on 1/15/15. (jlm) (Entered: 01/15/2015)
01/22/2015	7	TEXT ORDER - On reviewing the plaintiffs submissions and the responses received from defendants in this case and/or related cases, the Court hereby modifies its Order to Show Cause dated January 15, 2016, to establish the following schedule. It is hereby, ORDERED that any defendant serving a Notice of Appearance in compliance with Fed. R. Civ. P. 71.1(e)(1), shall serve and file such notice either 21 days after personal service of the summons and complaint in accordance with Fed. R. Civ. P. 4, or on January 30, 2015, whichever is later; and it is further ORDERED that any defendant serving an Answer in compliance with Fed. R. Civ. P. 71.1(e)(2), shall serve and file such Answer either 21 days after service of the summons and complaint, or on January 30, 2015, whichever is later; and on the same date, defendants shall file any additional papers responding to the Motions for Partial Summary Judgment and Omnibus Motions for Preliminary Injunction, or any cross-motion, or other motion or request for relief; and it is further ORDERED that service by plaintiff of a copy of this order shall be by Overnight Federal Express sent on or before January 23, 2015; and it is further ORDERED that plaintiffs reply papers, if any, shall be served and filed on or before February 6, 2015; and it is further ORDERED that the return date of the Motions for Partial Summary Judgment and Omnibus Motions for Preliminary Injunction is adjourned to February 9, 2015; except that in all cases in which the Answer and response papers are due after January 30, 2015, any reply papers from plaintiff will be due 7 days after the due date for the Answer and response papers, and the return date shall be 2 days thereafter; and it is further ORDERED that all the motions are on submit, with no appearances. Endorsed by Senior Judge Norman A. Mordue on 1/22/15. (jlm) (Entered: 01/22/2015)
01/22/2015	8	CERTIFICATE OF SERVICE by Constitution Pipeline Company, LLC re 6 Order Setting Hearing on Motion,, (Witmer, Elizabeth) (Entered: 01/22/2015)
01/27/2015	9	AFFIDAVIT of Service for Civil cover sheet, notice of related cases, disclosure statement, notice of condemnation, complaint w/exhibits, motion for psj, statement of material facts, affidavit of m. swift w/exhibits, affidavit of p. mcclusky, memorandum of law in support of motion for psj, proposed order and court's filing order with attachments served on Robert J. Lidsky on January 21, 2015, filed by Constitution Pipeline Company, LLC. (Witmer, Elizabeth) (Entered: 01/27/2015)
01/27/2015	10	AFFIDAVIT of Service for Civil cover sheet, notice of related cases, disclosure statement, notice of condemnation, complaint w/exhibits, motion for psj, statement of material facts, affidavit of m. swift w/exhibits, affidavit of p. mcclusky,

		memorandum of law in support of motion for psj, proposed order and court's filing order with attachments served on Beverly Travis on January 21, 2015, filed by Constitution Pipeline Company, LLC. (Witmer, Elizabeth) (Entered: 01/27/2015)
01/29/2015		***Answer due date updated for Robert J. Lidsky answer due 2/11/2015; Beverly Travis answer due 2/11/2015. (mgh) (Entered: 01/29/2015)
01/29/2015	11	CERTIFICATE OF SERVICE by Constitution Pipeline Company, LLC re 7 Order Setting Hearing on Motion,,,,,, (Witmer, Elizabeth) (Entered: 01/29/2015)
02/11/2015	12	NOTICE of Appearance by Anne Marie Garti on behalf of Robert J. Lidsky, Beverly Travis (Garti, Anne Marie) (Entered: 02/11/2015)
02/11/2015	13	MOTION to Dismiss <i>Fed. R. Civ. P. 12(b)(1) and 12(b)(5)</i> Motion Hearing set for 3/18/2015 10:00 AM in Syracuse before Senior Judge Norman A. Mordue Response to Motion due by 3/2/2015 Reply to Response to Motion due by 3/9/2015. filed by Robert J. Lidsky, Beverly Travis. (Attachments: # 1 Memorandum of Law, # 2 Affirmation, # 3 Exhibit(s), # 4 Exhibit(s)) (Garti, Anne Marie) (Entered: 02/11/2015)
02/11/2015	14	RESPONSE in Opposition re 4 MOTION for Partial Summary Judgment <i>Notice of Cross Motion for Summary Judgment</i> filed by Robert J. Lidsky, Beverly Travis. (Attachments: # 1 Memorandum of Law, # 2 Declaration, # 3 Affirmation, # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s), # 17 Exhibit(s), # 18 Exhibit(s))(Garti, Anne Marie) (Entered: 02/11/2015)
02/11/2015	15	RESPONSE in Opposition re 5 Omnibus MOTION for Preliminary Injunction <i>for possession of rights of way by February 16, 2015 Memorandum of Law in Opposition to Injunction</i> filed by Robert J. Lidsky, Beverly Travis. (Attachments: # 1 Affirmation, # 2 Exhibit(s), # 3 Exhibit(s), # 4 Exhibit(s), # 5 Exhibit(s), # 6 Exhibit(s), # 7 Exhibit(s), # 8 Exhibit(s), # 9 Exhibit(s), # 10 Exhibit(s), # 11 Exhibit(s), # 12 Exhibit(s), # 13 Exhibit(s), # 14 Exhibit(s), # 15 Exhibit(s), # 16 Exhibit(s)) (Garti, Anne Marie) (Entered: 02/11/2015)
02/18/2015		TEXT NOTICE: The Rule 16 Initial Conference scheduled for March 12, 2015 before Magistrate Judge Randolph F. Treece in Albany, NY and the deadline to file a proposed Civil Case Management Plan and exchange Mandatory Disclosures are ADJOURNED without date pending a decision by Senior District Judge Norman A. Mordue on Plaintiff's Motions for Partial Summary Judgment and Preliminary Injunction and Defendants' Motion to Dismiss. No appearances in Albany, NY on March 12, 2015 are required. (mab) (Entered: 02/18/2015)
02/18/2015	16	REPLY to Response to Motion re 4 MOTION for Partial Summary Judgment <i>and Response to Cross-Motion for Summary Judgment</i> filed by Constitution Pipeline Company, LLC. (Attachments: # 1 Affidavit of M. Swift, # 2 Statement of Material Facts)(Witmer, Elizabeth) (Entered: 02/18/2015)
02/18/2015	17	REPLY to Response to Motion re 5 Omnibus MOTION for Preliminary Injunction <i>for possession of rights of way by February 16, 2015</i> filed by Constitution Pipeline Company, LLC. (Witmer, Elizabeth) (Entered: 02/18/2015)

02/18/2015	18	CERTIFICATE OF SERVICE by Constitution Pipeline Company, LLC re 16 Reply to Response to Motion, (Witmer, Elizabeth) (Entered: 02/18/2015)
02/18/2015	19	CERTIFICATE OF SERVICE by Constitution Pipeline Company, LLC re 17 Reply to Response to Motion (Witmer, Elizabeth) (Entered: 02/18/2015)
02/23/2015	20	ORDER granting Plaintiff's 4 Motion for Partial Summary Judgment and Plaintiff's 5 Motion for Preliminary Injunction; Defendants' 13 Motion to Dismiss is Denied. Signed by Senior Judge Norman A. Mordue on 2/21/15. Plaintiffs counsel is directed to serve any unrepresented defendant(s) a copy of this order. (jlm) (Entered: 02/23/2015)
02/23/2015	21	ORDER granting Plaintiff's 4 MOTION for Partial Summary Judgment filed by Constitution Pipeline Company, LLC. Signed by Senior Judge Norman A. Mordue on 2/23/15. Plaintiffs counsel is directed to serve any unrepresented defendant(s) a copy of this order. (jlm) (Entered: 02/23/2015)
02/23/2015	22	ORDER granting Plaintiff's 5 Omnibus MOTION for Preliminary Injunction <i>for possession of rights of way by February 16, 2015</i> filed by Constitution Pipeline Company, LLC. Signed by Senior Judge Norman A. Mordue on 2/23/15. Plaintiffs counsel is directed to serve any unrepresented defendant(s) a copy of this order. (jlm) (Entered: 02/23/2015)

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Description:	Docket Report	Search Criteria:	3:14-cv-02049-NAM-RFT
Billable Pages:	4	Cost:	0.40

Exhibit 7

N.D.N.Y.

Constitution Pipeline, Co. v.
A Permanent Easement for 1.80 Acres,
3:14-cv-02049-NAM-RFT, ECF No. 20

February 21, 2015

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

Constitution Pipeline Co., LLC,

Plaintiff,

-v-

3:14-CV-2049 (NAM/RFT)

**A Permanent Easement for 1.80 Acres and Temporary
Easement for 2.09 Acres in Davenport, Delaware
County, New York, Tax Parcel Number 24.-1-41;**

z Robert J. Lidsky; and Beverly Travis,

Defendants.

APPEARANCES:

Saul Ewing LLP
Elizabeth U. Witmer, Esq., of counsel
1200 Liberty Ridge Drive, Suite 200
Wayne, Pennsylvania 19087-5569

and

Stockli, Slevin and Peters, LLP
John P. Stockli, Jr., Esq., of counsel
1826 Western Avenue
Albany, New York 12203

and

Saul Ewing LLP
Sean T. O'Neill, Esq., of counsel
Saul, Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, Pennsylvania 19102

and

Hiscock & Barclay LLP14-2018
Yvonne E. Hennessey, Esq., of counsel
80 State Street
Albany, New York 12207
Attorneys for Plaintiff

Office of Anne Marie Garti
Anne Marie Garti, Esq.
P.O. Box 15
Bronx, New York 10471
Attorney for Defendants.

Hon. Norman A. Mordue, Senior U.S. District Judge:

MEMORANDUM-DECISION AND ORDER

On December 2, 2014, the Federal Energy Regulatory Commission (“FERC”) issued an Order which, *inter alia*, authorized plaintiff Constitution Pipeline Co., LLC (“Constitution”) to construct and operate approximately 124 miles of new 30-inch diameter natural gas pipeline (“the Project”). The FERC Order granted to Constitution a certificate of public convenience and necessity (“FERC certificate”) under the Natural Gas Act (“NGA”), 15 U.S.C. § 717f. The NGA grants private natural gas companies the federal power of eminent domain where they hold a FERC certificate and either cannot acquire property by contract, or are unable to agree with the owner of the property on the amount of compensation to be paid for a necessary right of way for the transportation of gas. *Id.* at § 717f(h).¹ District court has jurisdiction in such cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000. Thus, “[o]nce a [certificate of public convenience and necessity] is issued by the FERC, and the gas company is unable to acquire the needed land by contract or agreement with the owner, the only issue before the district court in the ensuing eminent domain proceeding is the amount to be paid to the property owner as just compensation for the taking.” *Maritimes & Northeast Pipeline, L.L.C. v.*

¹ 15 U.S.C. § 717f(h) provides:

When any holder of a certificate of public convenience and necessity cannot acquire by contract, or is unable to agree with the owner of property to the compensation to be paid for, the necessary right-of-way to construct, operate, and maintain a pipe line or pipe lines for the transportation of natural gas, and the necessary land or other property, in addition to right-of-way, for the location of compressor stations, pressure apparatus, or other stations or equipment necessary to the proper operation of such pipe line or pipe lines, it may acquire the same by the exercise of the right of eminent domain in the district court of the United States for the district in which such property may be located.... [T]he United States district courts shall only have jurisdiction of the cases when the amount claimed by the owner of the property to be condemned exceeds \$3,000.

Decoulos, 146 Fed.Appx. 495, 498 (1st Cir. 2005); *Millennium Pipeline Co., L.L.C. v. Certain Permanent & Temp. Easements*, 777 F.Supp.2d 475, 479 (W.D.N.Y. 2011), *aff'd* 552 Fed.Appx. 37 (2d Cir. 2014).

Relying on its FERC Order, Constitution filed the instant action under section 71.1 of the Federal Rules of Civil Procedure against defendants, the owners of the subject property, to take the rights of way on the property necessary to install and construct pipeline facilities as part of the Project. The complaint (Dkt. No. 1) seeks an order and judgment holding that Constitution has the substantive right to condemn the rights of way, fixing the compensation to be paid to defendants for the rights of way, and granting title to the rights of way to Constitution. The complaint avers that the FERC Order covers rights of way described in the complaint and that, although Constitution has offered at least \$3,000 for the rights of way, it has been unable to acquire the rights of way by agreement with the landowners.

Currently before the Court are the following motions:

- Constitution's Motion for Partial Summary Judgment (Dkt. No. 4) seeking partial summary judgment holding that Constitution has the substantive right to condemn a permanent right of way and easement and temporary easement as described in Exhibit A to the complaint;
- Constitution's Omnibus Motion for Preliminary Injunction (Dkt. No. 5) seeking access to, possession of, and entry to the rights of way upon the filing of a bond; and
- Defendants' motion (Dkt. No. 13) to dismiss the complaint.

The Court first addresses defendants' contention that they were not "personally served" as required by the Court's order and Rule 4 of the Federal Rules of Civil Procedure. Rule 4(e)(1) provides: "Unless federal law provides otherwise, an individual ... may be served in a judicial

district of the United States by: (1) following state law for serving a summons in an action brought in courts of general jurisdiction in the state where the district court is located or where service is made[.]” Section 308 of New York’s Civil Practice Law & Rules provides:

Personal service upon a natural person shall be made by any of the following methods:

1. by **delivering** the summons within the state to the person to be served; or
2. by **delivering** the summons within the state to a person of suitable age and discretion at the actual place of business, dwelling place or usual place of abode of the person to be served and by either mailing the summons to the person to be served at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business...; or

4. **where service under paragraphs one and two cannot be made with due diligence**, by affixing the summons to the door of either the actual place of business, dwelling place or usual place of abode within the state of the person to be served and by either mailing the summons to such person at his or her last known residence or by mailing the summons by first class mail to the person to be served at his or her actual place of business in an envelope bearing the legend “personal and confidential” and not indicating on the outside thereof, by return address or otherwise, that the communication is from an attorney or concerns an action against the person to be served, such affixing and mailing to be effected within twenty days of each other; proof of such service shall be filed with the clerk of the court designated in the summons within twenty days of either such affixing or mailing, whichever is effected later; service shall be complete ten days after such filing...[.]

(Emphasis added.) The plain language of section 308 establishes that so-called “nail and mail” service under section 308(4) constitutes “personal service.” Defendants here do not allege that the process server in the instant case did not exercise due diligence in attempting service under sections 308(1) or (2) before serving under 308(4); rather, defendants only put forward the legal argument that section 308(4) service is not personal service. The Court rejects this argument.

In support of their motion, defendants rely on section 401(a)(1) of the Clean Water Act (“CWA”), which requires “[a]ny 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 [to] provide the licensing or permitting agency a certification from the State in which the discharge originates or will originate,” and further provides: “No license or permit shall be granted until the certification required by this section has been obtained or has been waived[.]” 33 U.S.C. § 1341(a)(1). Defendants contend that the FERC Order herein is invalid or insufficient because a certificate under section 401(a)(1) of the CWA (“CWA 401 certificate”) has not yet been obtained or waived; indeed, it is undisputed that Constitution’s re-application for a CWA 401 certificate is still pending.

In response to defendants’ argument, plaintiff correctly points out that once a FERC certificate is issued, judicial review of the FERC certificate itself is only available in the circuit court. *See* 15 U.S.C. § 717r(b); *Millennium Pipeline*, 777 F.Supp.2d at 479; *Kansas Pipeline Co. v. A 200 Foot By 250 Foot Piece of Land*, 210 F. Supp. 2d 1253, 1256 (D.Kan. 2002) (“The district court lacks jurisdiction to review the validity and/or conditions of a FERC certificate.”).

As explained by the Tenth Circuit:

[A] collateral challenge to the FERC order [granting certificate of public convenience and necessity under 15 U.S.C. § 717f] could not be entertained by the federal district court. We agree with the appellants that the eminent domain authority granted the district courts under § 7(h) of the NGA, 15 U.S.C. § 717f(h), does not provide challengers with an additional forum to attack the substance and validity of a FERC order. The district court’s function under the statute is not appellate but, rather, to provide for enforcement.

Williams Natural Gas Co. v. City of Oklahoma City, 890 F.2d 255, 264 (10th Cir. 1989); *accord Guardian Pipeline, LLC v. 529.42 Acres of Land*, 210 F.Supp.2d 971, 974 (N.D.Ill. 2002) (“The

jurisdiction of [district] court is limited to evaluating the scope of the FERC Certificate and ordering condemnation as authorized by that certificate”). It is not for this Court to decide whether the FERC Order was properly issued in the absence of a CWA 401 certificate.

Defendants present no persuasive authority to the contrary. The Court rejects this argument.

Defendants further argue that the FERC Order is “conditioned” upon Constitution’s receipt of a CWA 401 certificate, and that therefore Constitution must wait until it has obtained a CWA 401 certificate before it can initiate eminent domain proceedings. This argument is defeated by a plain reading of the FERC Order in light of relevant case law. Defendants rely on Ordering Paragraph E, which states in part: “The certificate authority issued [herein] ... shall be conditioned on the following: ... (3) Applicants’ compliance with the environmental conditions listed in the appendix to this order.” The Appendix to which Ordering Paragraph E(3) refers includes the following: “8. Prior to receiving written authorization from the Director of OEP [Officer of Energy Projects] to commence construction of their respective project facilities, the Applicants shall file documentation that they have received all applicable authorizations required under federal law (or evidence of waiver thereof).” Defendants argue that “all applicable authorizations required under federal law” includes the CWA 401 certificate. In finding that these provisions do not, as defendants argue, create a “condition precedent” such that Constitution cannot commence condemnation proceedings until it has obtained the CWA 401 certificate, the Court observes first that paragraph 8 of the Appendix requires applicants to show that they have received “all applicable authorizations” prior to receiving OEP authorization to commence construction – not prior to initiating eminent domain proceedings. Further, Ordering Paragraph E also provides that the certificate authority “shall be conditioned” on “(1) Applicants’ completion

of the authorized construction of the proposed facilities and making them available for service within 24 months from the date of this order[.]” Certainly, the completion of construction of the facilities cannot be a condition precedent to Constitution’s exercise of eminent domain. In addition, paragraph 6 of the Appendix requires Constitution to “file updated status reports with the Secretary on a weekly basis until all construction and restoration activities are complete. ... Status reports shall include: (a.) an update on the Applicant’s efforts to obtain the necessary federal authorizations[.]” The requirement of weekly updates on Constitution’s efforts to obtain federal authorizations clearly presupposes that they have not all been obtained prior to the exercise of eminent domain. As Constitution points out in its memorandum of law, because many of the environmental conditions in the Appendix can only be satisfied if Constitution has possession of the rights of way, and because some conditions cannot be completed until construction is complete and the Project is placed in service, “if Constitution were not allowed to exercise eminent domain authority until it had satisfied all conditions in the FERC Order, the Project could never be constructed.” The Court agrees; the FERC Order cannot reasonably be read to prohibit Constitution from exercising eminent domain authority until it has complied with all conditions set forth in the Appendix. *Compare Mid-Atlantic Express, LLC v. Baltimore County, Md.*, 410 Fed.Appx. 653, 657 (4th Cir. 2011) (holding that district court lacked jurisdiction to enter a preliminary injunction awarding immediate possession where FERC Order contained significant restrictions, including: “Mid-Atlantic *shall not exercise eminent domain authority ... to acquire permanent rights-of-way ... until* the required site specific residential construction plans have been reviewed and approved in writing by the Director of [OEP].” (emphasis added)). In contrast to the order in *Mid-Atlantic Express*, the conditions in the FERC Order in the instant case do not

expressly restrict Constitution's right to exercise eminent domain, and they do not prevent this Court from granting the relief requested by Constitution. *See, e.g., Columbia Gas Transmission, LLC v. 370.393 Acres*, 2014 WL 5092880, *4 (D.Md. Oct. 9, 2014) ("A district court's role in proceedings involving FERC Orders is circumscribed by statute, and when a landowner contends that the certificate holder is not in compliance with the certificate, that challenge must be made to FERC, not the court." (citing *Millennium Pipeline*, 777 F.Supp.2d at 281)); *Portland Natural Gas Transmission Sys. v. 4.83 Acres of Land*, 26 F. Supp. 2d 332, 336 (D.N.H. 1998) ("Compliance with FERC conditions cannot be used as a defense to the right of eminent domain and cannot be cited to divest the court of the authority to grant immediate entry and possession to the holder of a FERC certificate."). The Court rejects the argument that Constitution must wait until it has obtained a CWA 401 certificate before it can initiate eminent domain proceedings.

The Court rejects defendants' argument that the relief sought by Constitution in its motion for partial summary judgment exceeds the scope of the FERC Order. Defendants raise no material question of fact on this issue.² The proposed orders submitted herein expressly limit the rights of way being condemned to those rights and facilities "approved by the Federal Energy Regulatory Commission pursuant to the Natural Gas Act and the Order of the Federal Energy Regulatory Commission dated December 2, 2014, Docket Nos. CP13-499-000 and CP13-502-000, 149 FERC 61,199 (2014)." (See also Affidavit of Matthew Swift, Project Manager for Constitution's operator Williams Gas Pipeline Company, LLC, and Project Manager for the

² Although defendants complain of the Court's initial briefing schedule, the Court modified the initial briefing schedule to allow all defendants at least 21 days to respond (Dkt. No. 7). Defendants have not sought additional discovery and have made no showing supporting discovery of additional facts at this stage of the matter. *See Fed. R. Civ. P. 56(d); Falso v. Rochester City School Dist.*, 460 Fed.Appx. 60, 61 (2d Cir. 2012).

Project, Dkt. Nos. 4-3, 16-1). The Court has reviewed all arguments raised by defendants in support of their motion to dismiss, and finds that they lack merit. The motion is denied.

Plaintiff has demonstrated that it meets the requirements of 15 U.S.C. § 717f(h): it has a certificate of public convenience and necessity issued by FERC; it has not been able to acquire the needed land by contract or agreement with the owner; and the owner has rejected an offer of at least \$3,000. Thus, it is authorized to exercise the federal power of eminent domain. *See Millennium Pipeline*, 777 F.Supp.2d at 479. On this record, resolving all ambiguities and drawing all factual inferences in defendants' favor, the Court finds no genuine issue with regard to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). Plaintiff is entitled to partial summary judgment holding that, pursuant to the NGA and the FERC Order, Constitution has the substantive right to condemn a permanent right of way and easement and temporary easements as described in Exhibit A to the complaint.

With respect to plaintiff's motion for a preliminary injunction, "once a district court determines that a gas company has the substantive right to condemn property under the NGA, the court may exercise equitable power to grant the remedy of immediate possession through the issuance of a preliminary injunction." *East Tenn. Natural Gas Co. v. Sage*, 361 F.3d 808, 828 (4th Cir. 2004). The standard for a preliminary injunction is as follows:

In order to justify a preliminary injunction, a movant must demonstrate (1) irreparable harm absent injunctive relief; (2) either a likelihood of success on the merits, or a serious question going to the merits to make them a fair ground for trial, with a balance of hardships tipping decidedly in the plaintiffs favor; and (3) that the public's interest weighs in favor of granting an injunction. A showing of irreparable harm is the single most important prerequisite for the issuance of a preliminary injunction.

Singas Famous Pizza Brands Corp. v. New York Advertising LLC, 468 Fed.Appx. 43, 45 (2d Cir.

2012) (citations and quotation marks omitted).³ With respect to the second element, the Court has already determined that Constitution has succeeded on the merits.⁴

Regarding the likelihood of irreparable harm in the absence of the injunction, Constitution points to the provision in the FERC Order requiring Constitution to complete construction of the Project and make the new pipeline facilities available for service within twenty four months of the date of the FERC Order, or by December 2, 2016. The affidavit of Matthew Swift, Constitution's Project Manager, states that if Constitution does not have possession of the rights of way on or about February 16, 2015 for surveys and construction, "there is a likely risk that Constitution will not be able to begin construction in time to allow the Project to be completed by the anticipated in service date of December 2, 2016, which will cause Constitution to fail to comply with the conditions of the FERC Order and to suffer substantial damages." Swift explains:

6. The pipeline is approximately 124 miles long, and in order to expedite construction, Constitution has divided the pipeline into 5 construction spreads, each of which will have twelve crews to perform all construction tasks....

7. The construction of large-diameter natural gas pipelines is accomplished in linear segments, with a number of different crews performing different functions as part of the overall pipeline spread. Each crew follows the one ahead of it from one end of a construction spread to the other. The crews (and equipment) proceed sequentially in an assembly-like fashion along the construction corridor at a rate (distance per day) that depends on topography,

³ Even accepting defendants' characterization of the injunction sought as a mandatory injunction, which should issue "only upon a clear showing that the moving party is entitled to the relief requested, or where extreme or very serious damage will result from a denial of preliminary relief," *Abdul Wali v. Coughlin*, 754 F.2d 1015, 1025 (2d Cir. 1985), the Court finds that Constitution has met this standard for the reasons set forth herein.

⁴ As the Third Circuit observed in *Columbia Gas Transmission, LLC v. 1.01 Acres*, 768 F.3d 300, 315 (3d Cir. 2014):

This is not a "normal" preliminary injunction, where the merits await another day. In those situations, the probability of success is not a certainty such that weighing the other factors is paramount. Here, there is no remaining merits issue; we have ruled that Columbia has the right to the easements by eminent domain.

road and stream crossings, and other factors. In addition, there will be specialty crews that typically do not work sequentially with the other crews. The specialty crews perform tasks such as road borings, stream installations, and trenchless crossings of environmentally sensitive areas.

8. Pipeline construction begins with tree and vegetation clearing, and installation of environmental controls, followed by grading and trenching. Thereafter, stringing, pipe bending, welding, and coating of the pipe takes place, followed by installation, backfilling, remediation, and restoration. The newly constructed pipeline will then be pressure-tested prior to being placed in service.

9. Generally once construction starts, the crews will move sequentially through all of the tasks for each pipeline segment until construction is complete.

10. Construction of the Project is also subject to significant restrictions intended to protect the environment and minimize the impact of construction on the environment. These restrictions are time sensitive and interdependent.

The Swift affidavit goes on to explain in substantial detail the construction schedule, the FERC requirements prior to construction, and other restrictions on construction, as well as potential monetary losses. Constitution has demonstrated it will sustain immediate and irreparable harm in the absence of the injunction.

Defendants claim hardship on the ground that the granting of a preliminary injunction “could lead to a destruction of trees, transformation of slopes, and other negative environmental and quality of life issues before it is even determined if the Plaintiff has the right to be on their land, or if the Plaintiff has illegally expanded the scope of FERC’s Certificate.” Defendants add: “Having the privacy of one’s land violated, and potentially torn asunder, is an irrevocable injury, far greater than some numbers on a balance sheet. This should not be allowed to happen until it is assured that the project will be built.” Such injuries, while perhaps severe, arise from the NGA and the FERC Order themselves, not the preliminary injunction. As already noted, it is not for this Court to review the substance and validity of the FERC order. *See Williams Natural Gas*, 890 F.2d at 264. Faced with FERC’s Order and plaintiff’s motions for relief within the scope of that

order, this Court's role is one of enforcement. *See id.* In the exercise of its discretion, the Court finds that the speculative harm alleged by defendants weighs less heavily than the harms alleged by plaintiff.

Regarding the public interest, Swift explains in his affidavit that the Project "will provide additional natural gas capacity to meet the increased needs of customers in the New York and New England market areas" and "will provide new natural gas service for areas currently without access to natural gas, expand access to multiple sources of natural gas supply, improve operational performance, system flexibility and reliability in the New York and New England market areas and optimize the existing systems for the benefit of both current and new customers." FERC has issued to Constitution a certificate of public convenience and necessity, and has determined that "benefits the Constitution Pipeline Project ... will provide to the market outweigh any adverse effects on existing shippers, other pipelines and their captive customers, and on landowners and surrounding communities." The public's interest weighs in favor of granting a preliminary injunction.

Weighing all of the relevant factors, including in particular defendants' allegations of harm, the Court holds that Constitution is entitled to a preliminary injunction granting access to, possession of, and entry to the rights of way upon the filing of a bond. In setting the amount of the bond, the Court accepts \$2,900 as the appraised value of the subject property, as set forth in Exhibit A to the declaration of Elizabeth U. Witmer, Esq. (Dkt. No. 5-1). Accordingly, the Omnibus Motion for Preliminary Injunction (Dkt. No. 5) is granted upon the filing of a bond in the sum of \$11,600.

It is therefore

ORDERED that plaintiff's Motion for Partial Summary Judgment (Dkt. No. 4) is granted, and the Court will sign the submitted Order; and it is further

ORDERED that plaintiff's Omnibus Motion for Preliminary Injunction (Dkt. No. 5) is granted upon the filing of a bond in the sum of \$11,600, and the Court will sign the submitted Order; and it is further

ORDERED that defendants' Motion to Dismiss (Dkt. No. 13) is denied.

IT IS SO ORDERED.

Date: February 21, 2015

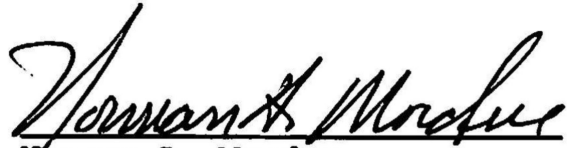

Norman A. Mordue
Senior U.S. District Judge

Exhibit 8

New York State Department of
Environmental Conservation

Notice of Extension of
Public Comment Period

January 12, 2015



Department of
Environmental
Conservation

For Release: Monday, January 12, 2015

DEC Extends Public Comment Period On Proposed Constitution Pipeline Until FEB. 27th

The New York State Department of Environmental Conservation (DEC) today extended the public comment period on the draft permit for the proposed, federally regulated Constitution Pipeline and an upgrade to the Iroquois Wright Compressor station in Schoharie County by an additional 28 days. Public comments on the proposed project will now be accepted until close of business on Friday, February 27.

The Constitution Pipeline is a proposed interstate natural gas pipeline that would traverse through Broome, Chenango, Delaware and Schoharie counties. The Federal Energy Regulatory Commission (FERC) was responsible for conducting an environmental review of the project and has the authority to approve the pipeline route. FERC issued a [final Environmental Impact Statement \(FEIS\)](http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141024-4001) in October, which can be viewed at: http://elibrary.FERC.gov/idmws/file_list.asp?accession_num=20141024-4001.

DEC maintains the authority to review applications for specific permits and approvals, including an Air Title V permit for the proposed compressor station upgrade, as well as a Water Quality Certification, a Protection of Waters permit, a Water Withdrawal permit and a Freshwater Wetlands permit for state-protected wetlands and adjacent areas.

Written comments should be submitted to:

Stephen M. Tomasik
DEC - Division of Environmental Permits
625 Broadway, 4th Floor
Albany, NY 12233-1750
constitution@dec.ny.gov

In addition, people can provide verbal or written comments at the following public meetings:

- Binghamton - Monday, Jan. 12, 2015, 6 p.m. East Middle School Auditorium, 167 East Frederick Street
- Oneonta - Tuesday, Jan. 13, 2015, 6 p.m.
SUNY Oneonta Lecture Hall IRC #3, 108 Ravine Parkway
- Cobleskill, Wednesday, Jan. 14, 2015, 6 p.m.
SUNY Cobleskill, Bouck Hall Theater, State Route 7

Copies of the FEIS and DEC permit application documents can be viewed online at: <http://www.constitutionpipeline.com/>. Printed copies are available at:

The Broome County Public Library, 185 Court St., Binghamton

The Afton Free Library, 105A Main St., Afton

The Bainbridge Free Library, 13 N Main St., Bainbridge.

The Franklin Free Library, 334 Main St., Franklin

Sidney Memorial Public Library, 8 River St., Sidney

Deposit Free Library, 159 Front St., Deposit

The Community Library, 110 Union St., Cobleskill

Schoharie Free Library, 103 Knower Ave., Schoharie

[Information on the Iroquois Wright Compressor Station](http://www.iroquois.com/documents/WIP_-_NYSDEC_Air_Permit_Application_7-26-13.pdf) can viewed at: http://www.iroquois.com/documents/WIP_-_NYSDEC_Air_Permit_Application_7-26-13.pdf

Printed copies are also available at:

Schoharie Free Library, 103 Knower Avenue, Schoharie

Town of Wright Municipal Building, 105-3 Factory Street, Gallupville

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