

**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
CATSKILL MOUNTAINKEEPER, CLEAN AIR COUNCIL, DELAWARE-OTSEGO
AUDUBON SOCIETY, DELAWARE RIVERKEEPER NETWORK, RIVERKEEPER, INC.,
AND SIERRA CLUB**

Pursuant to Rule 713 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. § 385.713, Catskill Mountainkeeper; Clean Air Council; Delaware-Otsego Audubon Society; Delaware Riverkeeper Network; Riverkeeper, Inc.; and Sierra Club (collectively “Intervenors”) hereby request rehearing and rescission of the Commission’s December 2, 2014 Order (“Order”) granting Constitution Pipeline, LLC (“Constitution”) authorization under Section 7(c) of the Natural Gas Act (“NGA”) 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 (“Iroquois”) in Schoharie County, New York. Intervenors seek rehearing and rescission of the Commission’s Order because the Order violates the Clean Water Act (“CWA”); the environmental review underlying the conclusions in the Order fails to meet the requirements of the National Environmental Policy Act (“NEPA”), 42 U.S.C. §§ 4321 *et seq.*, and its implementing regulations, 40 C.F.R. Pts. 1500–08; and the Order is not required by the public convenience and necessity.

I. STATEMENT OF RELEVANT FACTS

On June 13, 2013, Constitution and Iroquois (collectively, “Applicants”) each filed an application with the Commission for a certificate of public convenience and necessity.¹ Constitution seeks approval to construct and operate a 124.4-mile, 30-inch-diameter interstate natural gas transmission pipeline designed to provide up to 650,000 dekatherms (“Dth”) per day of transportation service, along with various associated facilities (“Pipeline Project”). Order ¶ 1. Iroquois seeks to construct and operate pipeline connection and compression facilities (“Wright Interconnect Project”) and to lease the incremental pipeline capacity associated with such facilities, located at the eastern terminus of the Pipeline Project in Wright, New York, to Constitution (collectively with the Pipeline Project, the “Projects”). *Id.* ¶ 2.

The Pipeline Project will cut through Broome, Chenango, Delaware, and Schoharie Counties in New York and Susquehanna County in Pennsylvania, disturbing more than 1,859 acres of land and leaving at least 757 acres permanently altered. FERC, Final Environmental

¹ Constitution Pipeline Company, LLC, Application for Certificate of Public Convenience and Necessity, FERC Docket No. CP13-499-000 (filed June 13, 2013); Iroquois Gas Transmission System, LP, Application for Certificate of Public Convenience and Necessity, FERC Docket No. CP13-502-000 (filed June 13, 2013).

Impact Statement, Constitution Pipeline and Wright Interconnect Projects, 2-4, 2-8 (Oct. 24, 2014) (“FEIS”). The Pipeline Project largely is greenfield construction, with a mere nine percent of the proposed 124-mile route co-located with existing rights-of-way. *Id.* at 2-8. Construction of the Pipeline Project will result in the clear-cutting of hundreds of thousands of trees in the 983 acres of forested land that it will disturb, including 439.7 acres of interior forest, 217.7 acres of which will be eliminated permanently. *Id.* at 4-68, 4-71. The permanent conversion of forest to open land will fragment important habitat, result in increased stormwater runoff, and compromise the area’s resilience to flooding in the face of increased precipitation and more frequent and intense storm events. The Pipeline Project will cross multiple public drinking water supply sources, three watersheds, and 289 waterbodies and will affect at least 95.3 acres of wetlands. *Id.* at 4-36–4-37, 4-46, 4-51, 4-62.

Along with 124 miles of pipeline and seventeen miles of access roads that will cut across forests and water resources, the Pipeline Project will be served by two compressor stations: Iroquois’ proposed 21,800-horsepower Wright Interconnect Project and Williams’ 17,970-horsepower Central Compressor Station, located in Brooklyn Township, Pennsylvania. These sources, together with construction equipment and other operational facilities, will emit harmful air pollution, including criteria pollutants such as nitrogen oxides (“NO_x”), and hazardous air pollutants such as volatile organic compounds (“VOCs”), which also are ozone precursors. The Projects also will result in the direct emission of climate-change-causing greenhouse gases (“GHGs”): carbon dioxide (“CO₂”) and nitrous oxide from compressor engines, line heaters, and generators; fugitive methane emissions from compressors and the pipeline; and black carbon emissions from diesel vehicles and equipment.

In addition to the direct impacts to natural resources located in the immediate vicinity of the Projects, the availability of the infrastructure necessary to bring gas to market through a region underlain by the Marcellus Shale formation is likely to induce the development of additional gas wells, including those developed utilizing the extraction technique of high volume hydraulic fracturing. Such development brings with it water, air, and land pollution and could plague rural communities with constant truck traffic, the loss of scenic vistas, and increased noise and light pollution, among other impacts. The Pipeline Project also will induce construction and operation of a new distribution system for the transportation of gas from the pipeline to delivery points, causing additional impacts to the environment surrounding the Project area.

Intervenors filed comments on Constitution’s application on July 17, 2014, identifying various resource areas of concern and calling on the Commission to conduct a comprehensive review of all potentially significant adverse environmental effects of the Projects, in accordance with the requirements of NEPA, including the Projects’ potential to cause degradation of water resources, impairment of ecosystem services, diminished air quality, forest fragmentation, harm to wildlife and botanical species of concern, permanent landscape alteration, disruption of community character, and threats to community safety.²

² Catskill Mountainkeeper, et al., Comments on Application of Constitution Pipeline Company, LLC for Certificate of Public Convenience and Necessity, FERC Docket No. CP13-499-000 (Jul. 17, 2013), Accession No. 20130717-5249.

On February 12, 2014, the Commission issued the Draft Environmental Impact Statement (“DEIS”). Intervenor filed comments on the DEIS, which noted major deficiencies in the DEIS and called on FERC to issue a revised draft for public review and comment.³ Intervenor observed that the DEIS failed to adhere to NEPA by basing its analysis on incomplete information, including an inadequate assessment of water resources, forest ecosystems, and air quality and climate change impacts; refusing to take a hard look at the indirect and cumulative impacts of the Projects; and failing to properly consider purpose and need and reasonable alternatives. Intervenor also noted that the Projects were not required by the public convenience and necessity. Intervenor supplemented their comments on the DEIS on June 13, 2014; July 7, 2014; July 21, 2014; and October 20, 2014. The supplemental comments highlighted flaws in Constitution’s Preliminary Migratory Bird and Upland Forest Plan, drew attention to a federal district court decision requiring the use of the social cost of carbon tool to calculate climate change impacts under NEPA, and the raised the need to consider the Northeast Energy Direct (“NED”) pipeline in the analysis of the Projects.⁴

The Commission finalized the EIS in October 2014. The FEIS corrected a limited number of the problems Intervenor noted in the DEIS, but still falls far short of the analysis required under NEPA. As discussed in greater detail below, the FEIS does not include an adequate analysis of the two proposed Projects’ indirect and cumulative effects and impermissibly bases its conclusion that the Projects’ significant environmental impacts could be mitigated adequately on substantially incomplete information. The FEIS also underestimates potential air quality and climate change impacts and neglects the long-term impacts of forest fragmentation. Moreover, the FEIS impermissibly dismisses the no action alternative.

Despite the significant deficiencies in the Commission’s environmental analysis and the Applicants’ failure to have obtained many key permits, including a Section 401 Water Quality Certification from New York State, FERC issued an Order approving both projects on December 2, 2014.⁵ The Order issues a certificate of public convenience and necessity authorizing the construction and operation of the Pipeline Project, a blanket construction certificate for the Pipeline Project, a blanket construction and transportation certificate for the Pipeline Project, and a certificate of public convenience and necessity for the Wright Interconnect Project. Order ¶¶ A–D. The Order also adopts the findings of the FEIS and conditions the Order on the terms of the FEIS and an additional list of enumerated requirements. *Id.* ¶¶ 146, E–N. The Order does

³ Catskill Mountainkeeper, et al., Comments on Draft Environmental Impact Statement for Constitution Pipeline and Wright Interconnect Projects, Docket Nos. CP13-499-000; CP13-502-000; PF12-9 (Apr. 7, 2014), Accession No. 20140407-5417 (“Intervenor’s Comments on DEIS”).

⁴ Catskill Mountainkeeper, et al., Comments on the Preliminary Migratory Bird and Upland Forest Plan for the Proposed Constitution Pipeline Project, Docket No. CP13-499-000 (Jun. 13, 2014), Accession No. 20140613-5185; Comments of Delaware-Otsego Audubon Society on Draft Migratory Bird and Upland Forest Plan under CP13-499 3 (Jun. 13, 2014), Accession No. 20140613-5094; Catskill Mountainkeeper, et al., Additional Information for *Constitution Pipeline*, Docket No. CP13-499 (Jul. 21, 2014), Accession No. 20140721-5007; Catskill Mountainkeeper, et al., Supplemental Comments on Draft Environmental Impact Statement *Constitution Pipeline and Wright Interconnect Projects*, Docket Nos. CP13-499; CP13-502; PF12-9 (Oct. 20, 2014), Accession No. 20141020-5181. Supplemental Comments on Draft Environmental Impact Statement for Constitution Pipeline and Wright Interconnect Projects, Docket Nos. CP13-499-000; CP13-502-000; PF12-9 (Jul. 7, 2014), Accession No. 20140707-5033.

⁵ Order Issuing Certificates and Approving Abandonment, 149 FERC ¶ 61,199 (Dec. 2, 2014), Accession No. 20141202-4011.

not define the lifespan of the Projects. The FEIS states that construction is expected to last 9–12 months for the Pipeline Project, and 9 months for the Wright Interconnect Project, FEIS at 2-29; and the Order states that Constitution has a 15-year Capacity Lease Agreement with Iroquois for the use of the interconnect, with an option to extend for 5 years, Order ¶ 14.

For the reasons set forth below, Intervenors seek a rehearing and rescission of the Commission’s decision to grant the Section 7 Authorization on the grounds that FERC violated the CWA in issuing the Order before the New York Department of Environmental Conservation (“NYSDEC”) finalized a Water Quality Certification, failed to comply with NEPA in its analysis of the Pipeline and Wright Interconnect Projects, and that neither proposed Project is in the public convenience and necessity.

II. BASIS FOR REHEARING

Intervenors maintain that the Projects are not required by the public convenience and necessity and that the Commission failed to meet its obligations under NEPA by preparing an inadequate FEIS that fails to evaluate the Projects’ potentially significant impacts on human health, and violated the CWA by authorizing the Projects prior to the issuance of New York State’s Water Quality Certification.

A. Concise Statement of the Alleged Errors in the Order

1. *The Commission violated the Clean Water Act by issuing the Certificate prior to the issuance of New York State’s Section 401 Water Quality Certification.* The CWA clearly prohibits FERC from issuing the Order in advance of the grant of the required Section 401 certification and the Commission does not have the authority to curtail the states’ power provided by the CWA.

2. *The Commission erred in concluding that the environmental consequences of induced gas production were not indirect effects of the Projects that the Commission must consider in its environmental review.* Additional natural gas production in the Marcellus Shale region is a reasonably foreseeable consequence of the demand-creating Projects. Thus, the Commission erred in failing to consider the environmental consequences of this development.

3. *The Commission erred in concluding that the Projects’ cumulative impacts are not significant.* FERC failed to take a hard look at the Projects’ impacts against the backdrop of past and present activities.

4. *The Commission erred in concluding that the Projects’ significant environmental impacts will be avoided or adequately minimized.* The Commission lacks too much of the information needed to conclude that the mitigation measures in the FEIS and Order will sufficiently minimize the Projects’ environmental effects. In particular, there is insufficient information to conclude that the impacts to water quality and species will be mitigated sufficiently.

5. *The Commission failed to evaluate the Pipeline and Wright Interconnect Projects’ air quality impacts.* That most of the Projects’ emissions would not trigger “major” source

requirements under the Clean Air Act is not a sufficient basis for assuming that the Projects would have no significant effect on air quality.

6. *The Commission failed to evaluate the Pipeline and Wright Interconnect Projects' climate impacts.* The Projects' full amount of greenhouse gas emissions is not considered and the impacts of those emissions are underestimated.

7. *The Commission improperly ignored the long-term impacts of the Pipeline Project's fragmentation of interior forest habitats.* FERC's analysis underestimates the permanent impacts that fragmenting interior forest may have on species, and its mitigation measures are insufficient to sufficiently address these significant impacts.

8. *The Commission's evaluation of the no action alternative is fatally flawed and incorporates an impermissibly narrow definition of the Projects' purpose and need.*

9. *The Commission erred in issuing the Order because the Projects are not required by the public convenience or necessity.*

B. Statement of Issues

The subsections below correspond to the numbered paragraphs in Part II.A, above, and set forth the Intervenors' position with respect to the identified issues.

1. The Commission violated the Clean Water Act by issuing the Certificate prior to the finalization of New York State's Section 401 Water Quality Certification.

Among the many permits the Applicants had not obtained at the time the Commission issued its Order was the New York State Section 401 Water Quality Certificate. Order ¶ 119. In fact, although the NYSDEC has deemed the application complete, the Applicants still have not obtained this authorization from the NYSDEC. Section 401 of the CWA plainly requires "no [federal] 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). The Supreme Court has stated that, consistent with the State's primary enforcement responsibility under the CWA, Section 401 "requires States to provide a water quality certification *before* a federal license or permit can be issued...." *PUD No. 1 of Jefferson Cnty. v. Wash. Dept. of Ecology*, 511 U.S. 700, 707 (1994) (emphasis added). In recognition of this clear and binding precedent, the D.C. Circuit also has held that "without [Section 401] certification, FERC lacks authority to issue a license." *City of Tacoma v. FERC*, 460 F.3d 53, 68 (D.C. Cir. 2006).

Nevertheless, the Order issues a certificate of public convenience and necessity, a blanket construction certificate, and a blanket transportation certificate to the Applicants while acknowledging that the required Section 401 certification has not been obtained from New York

State.⁶ Order ¶¶ A–D, 119. These authorizations are premature under the unambiguous terms of Section 401.

The fact that the Order conditions the Applicants’ ability to commence construction on the future receipt of the Section 401 certification does not cure FERC’s violation of the CWA. *See* Order at Envtl. Conditions ¶ 8. The clear language of the CWA prohibits the granting of *any* license or permit. 33 U.S.C. § 1341(a)(1). The statute does not make exceptions for licenses or permits that are conditioned on the subsequent grant of the 401 Certification. Moreover, it is wholly unreasonable to allow some of the activities authorized by the Order to proceed, including numerous eminent domain proceedings, when the Projects could be prohibited from moving forward if New York refuses to give the Applicants a Section 401 certification.

In addition, the Commission’s issuance of even a conditional license is incompatible with the design and intent of the CWA, which assigns the States the role of primary regulator under the statute. Section 401 allows states to condition Water Quality Certifications on measures designed to ensure compliance with effluent limitations and other state regulations. *Id.* at § 1341(d). The state’s conditions, in turn, are required to “become a condition on any Federal license or permit subject to the provisions of this section.” *Id.* In order for New York State to play this primary role, the Section 401 Certification must come before the Order.

The terms of the Order also violate the CWA by attempting to limit the state’s power and require that “[a]ny state or local permits issued with respect to the jurisdictional facilities authorized herein must be consistent with the conditions of this certificate.” Order ¶ 147. The NGA does not provide FERC with the power to curtail state rights under the CWA. *See* 15 U.S.C. § 717b(d)(3); *see also Dominion Transmission, Inc. v. Summers*, 723 F.3d 238, 243 (D.C. Cir. 2013) (finding in a case involving the construction of a facility under 15 U.S.C. § 717f(c) that Congress expressly saved the states’ powers under the Clean Air Act from preemption). The Order therefore exceeds the Commission’s statutory authority and impermissibly curtails New York State’s ability to grant or withhold a Certification under Section 401 of the CWA, including conditioning the Certification on more stringent measures than are contained in the Order to prevent the Projects from posing an unacceptable risk to New York’s water quality.

The Order thus not only was issued prematurely but also contains terms that violate the CWA. *See City of Tacoma*, 460 F.3d at 67 (“The Clean Water Act gives a primary role to states to block... local water projects ... FERC’s role [under CWA Section 401] is limited to awaiting, and then deferring to, the final decision of the state.”) (internal quotations omitted). FERC therefore lacked the authority to issue the Order without New York’s Water Quality Certification. The Commission must correct its error by rescinding the Order until such time as the Applicants are able to obtain a Section 401 Certification from New York State. Once the Certification is granted, its terms must be incorporated into the newly-issued Order.

⁶ These certificates constitute a “license or permit” within the definition provided by EPA regulations, because they are granted to permit an “activity which may result in any discharge into the navigable waters of the United States,” namely, construction and operation of the Pipeline Project. *See* 40 CFR 121.1(a).

2. The Commission erred in concluding that the environmental consequences of induced gas production and transportation infrastructure were not indirect effects of the Projects that the Commission must consider in its environmental review.

The Commission’s FEIS and Order unlawfully conclude that the environmental consequences of the industrial development that reasonably will be induced by the Projects are not indirect effects that must be evaluated under NEPA. FEIS at 4-232; Order ¶¶ 98–101. The indirect effects of a project that must factor into the NEPA review include “growth inducing effects and other effects related to induced changes in the pattern of land use, population density or growth rate, and related effects on air and water and other natural systems, including ecosystems.” 40 C.F.R. § 1508.8(b). Under this standard, agencies routinely are required to consider the environmental consequences induced by approval of an infrastructure project. *See, e.g., N. Plains Res. Council, Inc. v. Surface Transp. Bd.*, 668 F.3d 1067, 1081–82 (9th Cir. 2011) (finding that NEPA review must consider induced coal production at mines, which was a reasonably foreseeable effect of a project to connect two rail lines that would carry coal, especially where the company proposing the railway line anticipated induced coal production in justifying its proposal); *Mid States Coal. for Progress v. Surface Transp. Bd.*, 345 F.3d 520, 549–50 (8th Cir. 2003) (environmental effects of increased coal consumption due to construction of a new rail line to reach coal mines were reasonably foreseeable and required evaluation under NEPA).

Throughout the FEIS and the Order, however, the Commission refuses to undertake the analysis of the indirect effects of the Pipeline and Wright Interconnect Projects required by NEPA. Instead, FERC wrongly concludes that anticipated future natural gas drilling in the area of the Projects, above and beyond current production levels, is not sufficiently connected to the Projects to warrant consideration. Order ¶¶ 99–101; FEIS at 4-232. The Commission offers four equally faulty reasons for dismissing these impacts. First, FERC claims it can evaluate indirect effects of the proposed projects only if the “exact location, scale, and timing of future facilities is known.” FEIS at 4-232. Second, the Commission concludes that because the Pipeline Project is one of numerous pipelines capable of transporting natural gas in New York State, there is no causal connection between the Pipeline Project and induced future gas development along the route of the Pipeline Project. Order ¶ 99. Third, FERC accepts Constitution’s unsupported assertion that there is adequate natural gas production in Pennsylvania to fully supply the Pipeline Project. *Id.* ¶ 100. Fourth, the Commission argues that additional production is not causally related to the Pipeline Project because natural gas development “will continue and indeed is continuing, with or without the proposed projects.” *Id.* As is explained below, all four rationales demonstrate FERC’s fundamental misunderstanding of NEPA’s mandate to analyze the effects of the induced industrial growth—including impacts from new gas development and from the installation and operation of a new gas distribution system—that are reasonably foreseeable in light of the Commission’s approval of the Pipeline and the Wright Interconnect Projects.

a. The Commission need not know the exact location, scale, and timing of future Marcellus Shale development to examine the proposed Projects' indirect effects.

Even if it cannot know the exact consequences at each and every wellhead, FERC is obligated under NEPA to undertake an evaluation of reasonably foreseeable natural gas development induced by the availability of the proposed pipeline's transportation capacity. To meet NEPA's goal of ensuring that decisionmaking goes forward in full view of the environmental consequences, agencies are required to engage in "[r]easonable forecasting and speculation." *City of Davis v. Coleman*, 521 F.2d 661, 676 (9th Cir. 1975). FERC, thus, has an obligation to forecast the consequences of additional natural gas production and transportation infrastructure that is reasonably foreseeable in light of the approval of the two Projects. "The government's inability to fully ascertain the precise extent of the effects of [the activity] is not . . . a justification for failing to estimate what those effects might be before irrevocably committing to the activity." *Ctr. for Biological Diversity v. Bureau of Land Mgmt.*, 937 F. Supp. 2d 1140, 1158 (N.D. Cal. 2013) (quoting *Conner v. Burford*, 848 F.2d 1441, 1450 (9th Cir. 1988)).

The availability of new infrastructure to transport the gas to market creates an inducement for future gas development along the pipeline route that FERC cannot ignore. *See, e.g., City of Davis*, 521 F.2d at 676 (EIS for a highway project needs to analyze the impact of induced development despite uncertainty about pace and direction of development). Nevertheless, the Commission insists that "[a] more specific analysis of Marcellus Shale upstream facilities is outside the scope of this analysis because the exact location, scale, and timing of future facilities are unknown." FEIS at 4-232. As Intervenors explained in their comments on the DEIS, the high demand for gas drilling in the Marcellus Shale region and the requirements by EPA and likely other agencies for green completions of new well development will increase incentives to construct wells within close proximity of existing pipeline systems. Intervenors' Comments on DEIS at 19, n. 33⁷; *see also* 77 Fed. Reg. 49,490, 49,492 (Aug. 16, 2012). In addition, significant cost savings are associated with siting well pads as close as possible to transmission pipeline receipt points. Moreover, tools exist to facilitate an analysis of induced natural gas development, even in the absence of specific location and timing. For example, NYSDEC has generated information regarding future gas development that can be used to project future development patterns.⁸ Because of the development in Susquehanna and surrounding counties, there also is a significant amount of information available from Pennsylvania.⁹ FERC cannot ignore the ample evidence of the Projects' reasonably foreseeable inducement of increased natural gas production and infrastructure development and must consider the associated environmental impacts—including the increased air, water, and climate pollution, and habitat fragmentation—in its environmental review.

⁷ Citing to The Nature Conservancy, *Natural Gas Pipelines: Excerpt from Report 2 of Pennsylvania Energy Impacts Assessment* (Dec. 16, 2010), *available at* <http://www.nature.org/ourinitiatives/regions/northamerica/unitedstates/pennsylvania/ng-pipelines.pdf>.

⁸ *See* NYSDEC Revised Draft Supplemental Generic Environmental Impact Statement on The Oil, Gas and Solution Mining Regulatory Program: Well Permit Issuance for Horizontal Drilling and High-Volume Hydraulic Fracturing to Develop the Marcellus Shale and Other Low-Permeability Gas Reservoirs 7-112–7-113 (Sept. 2011), *available at* <http://www.dec.ny.gov/data/dmn/rdsgeisfull0911.pdf>.

⁹ *See, e.g., supra* note 7.

b. The Commission erred in dismissing the Projects' indirect effects based on the presence of other natural gas pipelines in the area.

The Commission dismisses the potential causal link between the proposed Projects and the additional use of hydraulic fracturing because other pipelines also may carry natural gas in the same area. That Constitution's pipeline "will represent only approximately 2.5 percent of the total miles of interstate pipeline in New York," Order ¶ 99, does not relieve the Commission of its obligation under NEPA to evaluate the impacts of natural gas infrastructure that are the reasonably foreseeable result of the Pipeline Project. The existence of other pipelines does not alter the fact that the 650,000 Dth per day of additional capacity created by the Pipeline Project has the potential to induce additional natural gas production and infrastructure development, especially over the undefined, but likely decades-long, life of the Projects.

Moreover, FERC's claim that "any of these pipelines could serve to transport newly-developed [gas] supplies" is inaccurate. *See id.* The Pipeline Project would serve an area that currently has little major pipeline infrastructure. *See* FEIS 3-15. In light of the likely requirement that high-volume hydraulic fracturing gas wells connect to existing infrastructure, the existence of this pipeline will allow natural gas development in an area where it otherwise may not be permitted or would otherwise be too expensive to develop. Given the unlimited lifespan of the Pipeline Project, it therefore is eminently foreseeable that the presence of Constitution's pipeline could induce the development of wells pads and gathering infrastructure.

c. The Pipeline Project likely will require additional natural gas production to satisfy its capacity over the life of the Projects.

The Commission relies upon Constitution's unsupported assertion that there is enough natural gas being produced in Pennsylvania to supply the Pipeline Project without any new production as grounds for denying the potential for any indirect effects of the Projects. *See* Order ¶ 100. This claim not only has no basis in the record, but also is improbable given the unlimited lifespan of the Pipeline Project. The total amount of natural gas being produced in Pennsylvania may be sufficient to fill the proposed pipeline's capacity at present, but much of that gas already is being transported in other pipelines to other end destinations. Constitution has not demonstrated that the entities that will subscribe to its capacity have sufficient current production to fill their portion of the Pipeline Project's capacity for even a year without drilling any new wells.

In addition, the Commission has imposed no time limit on the operation of the proposed Projects. Even assuming that the Pipeline Project would operate only until the end of the initial 15-year primary term of the lease agreement between Constitution and Iroquois, it is unlikely that existing wells will be able to supply sufficient natural gas over that time period. In fact, Cabot Oil & Gas Corporation ("Cabot"), which has committed to supplying 500,000 Dth per day to the Pipeline Project, FEIS 1-3, has extensive additional commitments to markets that will not be served by the Pipeline Project. For example, Cabot has entered into a 20-year supply commitment to ship approximately 350,000 Dths of natural gas per day to the Dominion Cove

Point liquefied natural gas export terminal in Maryland.¹⁰ Cabot is likely to transport this natural gas south from its holdings via the proposed Atlantic Sunrise pipeline. Cabot also has agreed to supply “a meaningful portion” of Piedmont Natural Gas’s supply commitments via Transco-Williams’s proposed Leidy Southeast project, beginning in December 2015 and lasting for fifteen years.¹¹ Recently, Cabot confirmed “new long-term firm sales” of 125 million cubic feet per day, or 45.6 billion cubic feet (“bcf”) per year to be transported via the Leidy Southeast Project, likely fulfilling their commitment to Piedmont.¹² A July 2013 presentation from Cabot suggests that the Constitution and Piedmont commitments are long term. In the presentation, Cabot noted that by 2015, it plans to fulfill 615 million cubic feet per day in long-term sales contracts of 8–15 years duration, the approximate amount of these two commitments.¹³ Finally, Cabot has agreed to sell WGL Midstream 500,000 million British thermal units (“MMBtus”) per day, or 182.5 bcf per year, via Transco’s proposed Atlantic Sunrise Project, commencing on Atlantic Sunrise’s in-service date in late 2017 and lasting through 2032 (Cabot owns 850,000 MMBtu per day of firm capacity on Atlantic Sunrise, allowing it to ship gas both to Cove Point for export and to WGL Midstream).¹⁴ When factoring in other existing customer

¹⁰ Press Release, Cabot Oil & Gas Corporation Provides Corporate Update, Announces Agreement to Provide Natural Gas to Dominion Cove Point LNG Terminal (Dec. 19, 2013), *reprinted in PR Newswire, available at* <http://www.prnewswire.com/news-releases/cabot-oil--gas-corporation-provides-corporate-update-announces-agreement-to-provide-natural-gas-to-the-dominion-cove-point-lng-terminal-236538531.html>.

¹¹ Piedmont Natural Gas supplies natural gas to residential and business customers in North Carolina, South Carolina, and Tennessee. Piedmont Natural Gas, About Piedmont, *available at* <http://www.piedmontng.com/about/aboutpng/home.aspx>. On Piedmont’s January 2013 investors’ conference call on 2012 earnings, Piedmont CEO Tom Skains announced the company had entered a supply agreement with Cabot. Under the agreement, Cabot will provide natural gas to Piedmont’s customers in the Carolinas via the proposed Williams-Transco Leidy Southeast Project. Delivery is expected to begin in December 2015 and last for 15 years. Given confidentiality provisions in the agreement, Skains did not disclose specific amounts of gas or energy, but did state Cabot would provide “a meaningful portion of our annual gas supply commitments.” *See generally* Thomson Reuters Streetevents, Edited Transcript, PNY-Q4 2012 Piedmont Natural Gas Earnings Conference Call at 5, 11 (Jan. 3, 2013), *available at* <http://phx.corporate-ir.net/External.File?item=UGFyZW50SUQ9MTY4NTE0fENoaWxkSUQ9LTF8VHlwZT0z&t=1>.

¹² SA Transcripts, *Cabot Oil & Gas’ CEO Discusses Q1 2014 Results - Earnings Call Transcript*, Seeking Alpha (Apr. 24, 2014, 2:10 PM), *available at* <http://seekingalpha.com/article/2162053-cabot-oil-and-gas-ceo-discusses-q1-2014-results-earnings-call-transcript>, submitted herewith (“Cabot Q1 2014 Results”). According to a recent Piedmont 10-K Report, Piedmont delivered 410.7 million dth of natural gas, or approximately 410.7 bcf of natural gas to customers in the fiscal year ending October 2014. Piedmont Natural Gas Company, Inc., Annual Report (Form 10-K) at 6 (Dec. 23, 2014), *available at* <http://services.corporate-ir.net/SEC/Document.Service?id=P3VybD1hSFIwY0RvdWwyRndhUzUwWlclcmQybDZZWEprTG1OdmJTOWtiM2R1Ykc5aFpDNXdhSEEvVWdOMGFxOXVQVkJFUmlacGNHRm5aVDA1T1RZM05URXdKbk4xWW50cFpEMDFOdz09JnR5cGU9MiZmbj1QaWVkbW9udE5hdHVyYWxHYXNfMTBLXzlwMTQxMjZlLnBkZg==>. 410.7 million dth is equivalent to 410.7 million MMBtu, which is equivalent to 410.7 bcf (using a value of 1,000 Btu per cubic feet of gas). Cabot’s commitment to supply 45.6 bcf via the Leidy Southeast project could be a “meaningful portion” of Piedmont’s annual sales. If Piedmont is not the intended customer of the 45.6 bcf per year of sales via the Southeast Leidy project announced by Dinges in the April 2014 conference call, then Cabot’s agreement with Piedmont could represent another significant customer commitment, lasting for 15 years from 2015 through 2030.

¹³ Cabot Oil & Gas Corp., Marcellus Marketing Supplementary Materials, Jul. 24, 2013, *available at* <http://www.cabotog.com/pdfs/Marcellus-Marketing-Supplementary-Materials.pdf>. 615 million cubic feet per day is roughly equivalent to 224.5 bcf per year, close to the sum of the Constitution commitment and the Leidy Southeast commitment (182.5 bcf + 45.6 bcf = 228.1 bcf).

¹⁴ News Release, Cabot Oil & Gas Corporation Announces New Agreements for Long-Term Sales and Pipeline Takeaway (Feb. 20, 2014), *available at* <http://phx.corporate-ir.net/phoenix.zhtml?c=116492&p=irol-newsArticle&ID=1902094&highlight=>. Bcf calculated assuming 1,000 Btu per cubic foot.

commitments,¹⁵ it is reasonably foreseeable that Cabot will need to drill additional wells to fulfill its commitment to Constitution.

Indeed, between January and September of 2014 (the most recent period Cabot reported to the Securities and Exchange Commission), Cabot produced 364.3 bcf of natural gas, largely from their Pennsylvania wells.¹⁶ Assuming consistent production across all months, Cabot will likely produce 485.7 bcf in 2014, which is less than the four firm commitments discussed in the preceding paragraph. Thus, Cabot may need to drill new wells or reopen temporarily closed wells to meet the commitment to Constitution.

Recent reports also suggest that output from unconventional natural gas wells sharply declines after the first few years of production. One report documented a 60 to 80 percent decline at unconventional wells in shale formations after a single year.¹⁷ Referred as the “Red Queen” effect, the decline in production at unconventional wells means that companies may be forced to drill additional wells to continue to achieve the same levels of natural gas production.¹⁸ One source predicts that “more than 6,000 U.S. wells would be needed each year to offset declines, at an annual cost of \$35 billion.”¹⁹

FERC should endeavor to understand whether and to what extent Cabot and other current and future customers will have to develop additional production capacity to be transported in the Pipeline Project. NEPA requires that the Commission take a hard look at the effects of this induced development and include an analysis of the environmental impacts in the FEIS. That such development is undertaken pursuant to regulation by state authorities, *see* Order ¶100, does not eliminate FERC’s responsibility under NEPA to account for the environmental effects of drilling and fracturing at each and every newly developed or serviced well induced by projects under its jurisdiction. *See Calvert Cliffs v. U.S. Atomic Energy Comm’n*, 449 F.2d 1109,1125 (D.C. Cir. 1971) (“[O]bedience to water quality certification . . . is not mutually exclusive with the NEPA procedures. It does not preclude performance of the NEPA duties . . . [but] essentially establish a *minimum condition* for the granting of a license.” (emphasis in original)).

d. The Commission misapplied the causation test.

FERC is not free to ignore indirect upstream effects of the Projects under NEPA simply because there are other causes of natural gas development. NEPA provides that natural gas production that is a reasonably foreseeable consequence of the Projects must be evaluated as part of the FEIS. Nevertheless, in its Order, FERC refuses to consider the environmental consequences of the likely increases in natural gas production in the area that the two Projects will encourage and facilitate. Before FERC will consider the effects of additional production, it

¹⁵ Cabot has not provided detailed customer information in its investor relations materials or filings with the Securities and Exchange Commission. However, in early 2014 Cabot disclosed that it has natural gas and liquids transportation agreements with many pipelines. These agreements are worth \$1.713 billion. Cabot Oil and Gas Corp., Annual Report (Form 10-K) at 87 (Feb. 28, 2014).

¹⁶ Cabot Oil and Gas Corp., Quarterly Report (Form 10-Q) at 22 (Oct. 24, 2014).

¹⁷ Jennifer Hiller, Red Queen Effect Can Make Production Slow Down in a Hurry, FuelFix, Oct. 30, 2013, *available at* <http://fuelfix.com/blog/2013/10/30/red-queen-effect-can-make-production-slow-down-in-a-hurry/>.

¹⁸ *Id.*

¹⁹ *Id.*

demands proof that natural gas development will not continue without the proposed project. *See* Order ¶ 100 (“[N]atural gas development... will continue and indeed is continuing, with or without the proposed projects.”). According to FERC, because the natural gas industry is alive and well in the area, and likely will continue with or without the proposed Projects, “there is an insufficient causal link for any additional development...to be considered an indirect impact of the projects”. *Id.*

The Commission’s approach misinterprets NEPA’s requirement that FERC consider reasonably foreseeable indirect effects of the two Projects. Certainly, as the Commission recognizes, Constitution’s and Iroquois’ Projects are dependent on having natural gas to transport. In this way, natural gas production is an essential predicate to the Pipeline and Wright Interconnect Projects moving forward. Nothing in NEPA, its regulations, or applicable case law limits the requirement to evaluate the indirect effects of the development following from a project to those situations where the project is responsible for causing all, as opposed to some, of the development in the area. Intervenors are not asking FERC to attribute the impacts of the entirety of regional production to the two proposed Projects, but they are asking for analysis of the impacts associated with the reasonably foreseeable increased production needed to sustain the Projects over their lifetime.

While the Commission accepts that it is self-evident that the Projects require natural gas inputs, it unlawfully fails to account for the likely increase in natural gas production in the Marcellus shale region needed to fill the pipeline’s capacity (not to mention the likely gathering lines that will be developed to get the gas to the Pipeline Project). The Projects propose to transport 650,000 Dth per day of natural gas through a 124-mile pipeline over at least a 15-year period. FEIS 4-233; *see* Order ¶ 33. As discussed above, it is reasonably foreseeable that over the life of the Projects, additional natural gas development will be required to fill the capacity of the Pipeline Project and that additional gathering lines will be constructed to link new wells to the Pipeline Project. This is precisely the type of indirect effect that the Commission is required to analyze under NEPA. *See, e.g., Border Power Plant Working Group v. Dept. of Energy*, 260 F. Supp. 2d 997, 1013 (S.D. Cal. 2003) (noting that, in authorizing an electric transmission line, an agency was required to consider the environmental consequences of generating the additional electricity to be carried on those lines); *City of Davis*, 521 F.2d at 674–77 (stating that environmental review for highway project needed to analyze impact of induced development despite uncertainty about pace and direction of development). The FEIS therefore must be revised to account for the fact that the Pipeline and Wright Interconnect Projects will induce natural gas production in the Marcellus Shale and cause reasonably foreseeable changes to pipeline infrastructure to transport gas to the Pipeline Project.

3. The Commission’s analysis of the Projects’ cumulative impacts is inadequate.

While the FEIS includes a subsection containing a limited discussion of some of the cumulative impacts of the Projects, FEIS 4-233–4-258, its treatment of cumulative impacts falls short of what is required by NEPA—namely, a comprehensive analysis of the incremental impacts of the Projects when considered in addition to other past, present, and reasonably foreseeable future actions. *See* 40 C.F.R. § 1508.7; *see also Oregon Natural Res. Council Fund v. Brong*, 492 F.3d 1120, 1132–33 (9th Cir. 2007) (“One of the specific requirements under

NEPA is that an agency must consider the effects of the proposed action in the context of all relevant circumstances, such that where ‘several actions have a cumulative . . . environmental effect, this consequence must be considered’”) (quoting *Neighbors of Cuddy Mountain v. U.S. Forest Serv.*, 137 F.3d 1372, 1378 (9th Cir. 1998)). Assessing the impacts of a proposed action within the context of existing and foreseeable effects in the same area yields “a realistic evaluation of the total impacts” and ensures that an EIS does not impermissibly “isolate a proposed project, viewing it in a vacuum.” *Grand Canyon Trust v. Fed. Aviation Admin.*, 290 F.3d 339, 342 (D.C. Cir. 2002).

In particular, the FEIS does not take a hard look impacts of the Projects against the backdrop of past and present activities. The statute requires analysis of “the cumulative harm that results from [the proposed action’s] contribution to *existing adverse conditions or uses* in the area [E]ven a slight increase in adverse conditions that form an existing environmental milieu may sometimes threaten harm that is significant. One more factory . . . may represent the straw that breaks the back of the environmental camel.” *Grand Canyon Trust*, 290 F.3d at 343 (quoting *Hanly v. Kleindienst*, 471 F.2d 823, 831 (2d Cir. 1972)) (emphasis added). Without an accurate account of either the baseline impacts of other actions or the incremental impact of the Projects, the Commission cannot assess the overall impact that can be expected if the individual impacts are allowed to accumulate—the very essence of the cumulative impact analysis. *See Klamath-Siskiyou Wildlands Ctr. v. Bureau of Land Mgmt.*, 387 F.3d 989, 994–996 (9th Cir. 2004) (“Sometimes the total impact from a set of actions may be greater than the sum of the parts.”). The Marcellus Shale region has experienced substantial development of natural gas production and transportation infrastructure that has caused significant negative cumulative effects on air and water quality, created GHG emissions, and severely fragmented forests.

NEPA requires that FERC engage in a detailed and useful *analysis* of cumulative effects, not just a recitation of impacts. *See Brong*, 492 F.3d at 1133, n. 19 (“[An agency] cannot fulfill its responsibility to conduct a cumulative effects *analysis* by merely reciting what effects have occurred, no matter how many pages it fills by doing so [T]he time, type, place, and scale of past activities must be included.”). The FEIS purports to assess the impacts of other past, present, or reasonably foreseeable actions in the area around the Projects, but fails to provide sufficiently detailed analysis or data to support its conclusions. Furthermore, the FEIS impermissibly relies entirely on presumed compliance with permitting requirements to justify its conclusion that no cumulative impacts will result from the Projects. These inadequacies render the cumulative impacts analysis legally insufficient.

For example, the FEIS contains a section that purports to describe the environmental impacts of the wells required to supply the 650,000 Dth per day to be transported in the Pipeline Project. FEIS 4-233. While it is encouraging that the Commission was willing and able to quantify the number of wells needed to produce that amount of natural gas, simply listing a wide potential range of wells and associated acreage disturbed by the wells’ development does not satisfy the need to establish a baseline and assess cumulative impacts under NEPA. First, the ranges provided in the FEIS are too broad to allow for a meaningful analysis of their cumulative effects. While providing almost no explanation for its calculations, FERC states that between 74 and 2,135 wells have been developed to supply the 650,000 Dth per day required by the Pipeline Project and that between 355 and 10,248 acres have been disturbed as a result. *Id.* The vast

difference between the upper and lower values in these ranges makes a meaningful discussion of cumulative effects very challenging. The effects, for example, to species of a loss of 355 and 10,248 acres of forest are night and day. At a minimum, if FERC cannot narrow these ranges, it must analyze the worst-case scenario.

Second, it also is clear from the limited explanation provided that the ranges in the FEIS are based on an incorrect assumption about the nature of natural gas development. The Commission states that the numbers are based on the assumption attributed to the NYSDEC that “a newly drilled well has a lifespan of 30 years.” *Id.* However, as discussed above, studies conducted more recently than the NYSDEC’s 2011 Revised Draft Supplemental Generic Environmental Impact Statement, cited by the Commission, raise serious doubts about the long-term productivity of wells and significant questions about whether the range of wells provided by FERC is a substantial underestimate. *See supra* Section III.B.2.c.

Even accepting the figures provided by FERC, however, the FEIS fails to include a meaningful analysis of the cumulative impacts of the assumed well development and lost acreage. The Commission contents itself with providing these figures without using them in any kind of meaningful analysis of how these adverse conditions, combined with the impacts of the Projects and the environmental impacts of the other nearby projects, will affect the air, water, and habitat quality in the surrounding area. Similarly, FERC includes a description of the Northeast Energy Direct pipeline and the Leatherstocking pipeline projects but does not conduct an assessment of the combined impacts of these pipelines with the Projects.

Instead, FERC shirks its responsibility to conduct an analysis of the cumulative impacts and wrongly concludes that the Projects would not have an adverse impact on the environment. This reasoning ignores the very purpose of a cumulative impacts analysis. Under NEPA, the Commission is required to consider the incremental impact of the Projects’ effects *when added* to the impacts caused by those Marcellus Shale development activities. *See Brong*, 492 F.3d at 1132–33. Even if the Commission concludes that the amount of habitat lost because of Pipeline Project’s construction does not constitute a significant adverse impact, the additive impact of this habitat loss along with the destruction of habitat caused by past, present, or reasonably foreseeable gas development activities and other development activities in the region *could* constitute an adverse impact. This is precisely the analysis that NEPA requires agencies to undertake and that FERC has refused to perform.

The FEIS also improperly concludes that proposed construction practices and conditions on the permits issued for various aspects of the Projects will avoid, minimize, or sufficiently mitigate any potential impacts. As discussed above, the Applicants’ adherence to permitting conditions does not eliminate FERC’s responsibility to conduct an analysis under NEPA. *See Calvert Cliffs*, 449 F.2d at 1124. Moreover, this conclusion finds no support in the facts. Indeed, other FERC-authorized pipeline projects for which state permits were granted have resulted in adverse impacts to water resources, as evidenced by the numerous notices of violation

issued.²⁰ In addition, Cabot, the supplier of the majority of the gas proposed for transport along the pipeline and an affiliate of one of the co-owners of Constitution, has a record of permit violations in Pennsylvania. Since the beginning of 2010, Cabot has been cited with 394 violations at unconventional well sites (accounting for over 10 percent of total violations in the state).²¹ Williams Fields Services Company, the operator of one of the two compressor stations that will power the flow of gas through the pipeline and an affiliate of one of the co-owners of Constitution, also has a history of violations at its facilities, including those associated with a fire at the Williams Central Compressor Station last May²² and resulting in \$388,694 in fines for 2013 alone.²³ Rather than blindly accepting the Applicants' promises of regulatory compliance, the Commission must take into account the high likelihood that permit conditions will be violated and that best management practices will not be implemented effectively.

4. The Commission erred in concluding that the Project's significant environmental impacts will be avoided or adequately minimized.

FERC has not supported its conclusion that the Projects' significant impacts will be sufficiently mitigated to the extent that the Projects are "environmentally acceptable actions." Order ¶ 146; FEIS at 5-1. In order for mitigation measures to support a finding that the Projects' impacts will be reduced to less than significant levels, the mitigation plan and measures must be "clearly described" and must be "enforceable."²⁴ The Commission cannot satisfy these criteria, given the substantial amount of missing information and state and federal determinations that have yet to be completed, and thus FERC's conclusions under NEPA are invalid. *See, e.g., N. Plains Res. Council*, 668 F.3d at 1083 (stating that "plans to conduct surveys and studies as part of its post-approval mitigation measures" do not constitute a "sufficiently 'hard look'" under NEPA).

²⁰ *See, e.g.,* Tennessee Gas Pipeline Co., LLC, Monthly Status Report, Northeast Upgrade Project 3, FERC Docket No. CP11-161-000 (filed Apr. 2, 2014) (listing problems with BMPs and instances of non-compliance with permit conditions); Beth Brelje, DEP, *Tennessee Gas continue talks about fines*, Pocono Record, Nov. 27, 2012, available at <http://www.poconorecord.com/apps/pbcs.dll/article?AID=/20121127/NEWS/211270320/-1/rss01> (reporting hundreds of violations).

²¹ *Oil & Gas Reports*, Pa. Dep't of Env'tl. Prot., available at http://www.portal.state.pa.us/portal/server.pt/community/oil_and_gas_reports/20297. Total violations were calculated by clicking "Oil and Gas Compliance Report," selecting the inspection period between 1/1/2010 and 3/1/2014, setting "OPERATOR" to "CABOT OIL & GAS CORP (43513)," and setting "UNCONVENTIONAL ONLY (PF INPSECTIONS)" to "Yes."

²² Joseph Kohut, *Fire, possible explosion at Susquehanna gas compressor station thought to be accidental*, THE TIMES TRIBUNE, May 16, 2013, available at <http://thetimes-tribune.com/news/fire-possible-explosion-at-susquehanna-gas-compressor-station-thought-to-be-accidental-1.1489789>.

²³ Laura Legere, *DEP fined oil and gas companies \$2.5 million last year*, StateImpact Pennsylvania, Feb. 27, 2014, <http://stateimpact.npr.org/pennsylvania/2014/02/27/dep-fined-oil-and-gas-companies-2-5-million-last-year/>. *See also Williams Compressor Station, Windsor NY is (again) on Fire*, NY Friends of Clean Air and Water, Jan. 6, 2013, available at <http://nyfriendsofcleanairandwater.blogspot.com/2014/01/williams-compressor-station-windsor-ny.html> (listing incident at Williams facilities).

²⁴ CEQ, Memorandum For Heads of Federal Agencies, Appropriate Use of Mitigation and Monitoring and Clarifying the Appropriate Use of Mitigated Findings of No Significant Impact 7 & n.18 (2011), available at http://energy.gov/sites/prod/files/NEPA-CEQ_Mitigation_and_Monitoring_Guidance_14Jan2011.pdf ("Mitigation commitments needed to lower the level of impacts so that they are not significant should be clearly described ... in any other relevant decision documents related to the proposed action.").

Constitution has yet to file a number of expressly requested studies, analyses, and other plans that are essential to the public review and governmental decision-making required under NEPA. Until the Applicant provides the Commission with complete information regarding the full suite of environmental impacts caused by the Projects, the Commission is in no position to reach any conclusion about the significance of such impacts. *See id.* at 1083. (“[A]nalyzes must occur before the proposed action is approved, not afterward. . . . Once a project begins, the pre-project environment becomes a thing of the past and evaluation of the project’s effect becomes simply impossible.”) (internal citations omitted); *LaFlamme v. FERC*, 852 F.2d 389, 400 (9th Cir. 1988) (“[T]he very purpose of NEPA’s requirement that an EIS be prepared for all actions that may significantly affect the environment is to obviate the need for speculation by insuring that available data is gathered and analyzed prior to the implementation of the proposed action.”) (internal citations omitted).

In addition to the substantial amount of surveying information that has not yet been gathered due to landowners refusing access to their properties, the list of missing information includes the following:

- geotechnical feasibility studies for all trenchless crossing locations, FEIS at 4-4;
- identification of all water wells and springs within 150 feet of the proposed pipeline and contractor yards, *id.* at 4-38–4-39;
- surveys for all proposed contractor yards concerning water wells, waterbodies, and wetlands, *id.* at 4-40;
- final upland forest mitigation plan, *id.* at 4-72–4-73;
- results of invasive plant surveys and planned locations of weed wash stations, *id.* at 4-75;
- site-specific blasting plans that include protocols for in-water blasting and the protection of aquatic resources and habitats, *id.* at 4-97;
- specific information regarding water withdrawals for hydrostatic testing, including timing restrictions, *id.* at 4-97–4-98;
- impact avoidance or effective impact minimization or mitigation measures for dwarf wedgemussels, *id.* at 04-103–4-104;
- surveys for Northern monkshood, *id.* at 4-105;
- impact avoidance or effective impact minimization or mitigation measures for Northern monkshood, *id.*;
- bald eagle survey results, *id.* at 4-108;
- bald eagle mitigation plan, *id.*;
- impact avoidance or effective impact minimization or mitigation measures for bat species, *id.* at 4-110;
- survey results for state-listed species and mitigation measures, *id.* at 4-114;
- classification of unsurveyed residential structures, *id.* at 4-127;
- impact avoidance or effective impact minimization or mitigation measures for specialty crops, *id.* at 4-135; and

- updated acoustical analysis for Direct pipe crossings 1–5, including site-specific plans, *id.* at 4-197–98.

There also is little to no data in the record on thermal impacts to streams and wetlands as a result of the loss of vegetation and buffers or on the impact of raised ground temperatures on soil chemistry downstream of compressor stations where pipeline temperatures can exceed 85 degrees Fahrenheit. *See, e.g., id.* at 4078.

The Commission is not permitted to approve the Projects and then conduct its study of the Projects’ environmental effects. *Nat’l Parks & Conservation Ass’n v. Babbitt*, 241 F.3d 722, 734 (9th Cir. 2001). The missing information listed above “is precisely the information and understanding that is required *before* a decision that may have a significant impact on the environment is made,” *id.* at 733, particularly when the Commission’s ultimate finding under NEPA is based on the assumption that significant environmental impacts will be mitigated. Indeed, while mitigation measures often are necessary, alone they are not sufficient to meet the FERC’s NEPA obligations to determine the projected extent of the environmental harm to enumerated resources *before* a project is approved. *See N. Plains Res. Council*, 668 F.3d at 1084. “Mitigation measures may help alleviate impact *after* construction, but do not help to evaluate and understand the impact *before* construction.” *Id.* (emphasis in original). Reliance on mitigation measures cannot presuppose approval or assume that—regardless of what effects the Projects may have—there are mitigation measures that might counteract those effects without first understanding the extent of the problem. *See id.* at 1084-85.

a. There is substantial missing information on the mitigation of significant impacts to water bodies.

FERC concluded that “the 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.” Order ¶ 77. But Constitution has not provided substantial information about the crossing method it will use, as well as other construction details, which are necessary for FERC to be able to conclude that it has taken a hard look at whether the Projects’ significant impacts to waterbodies are being mitigated adequately.

For example, in the FEIS, FERC refers to Constitution’s use of the “dry crossing” method, but does not specify which type of dry crossing will be used where. FEIS at 2-20–2-21; 4-52 (“Constitution would use a dry crossing method (i.e., dry open-cut, flume, dam and pump, or cofferdam crossing method)...”). Different dry crossing methods can have different impacts and without a site-specific identification of which dry crossing method will be used at each waterbody crossing, the Commission has no basis for concluding what the Pipeline Project’s impacts will be or whether they will be mitigated sufficiently.

As noted above, geotechnical data for the feasibility of using Direct Pipe trenchless crossing method remains outstanding. Order at Environmental Condition 14. If the data reveals that this method of crossing is not feasible at any of the 21 crossings where the FEIS directs that trenchless crossing occur, other crossing methods may be required, creating significantly greater adverse environmental effects. For example, FERC bases its conclusion that impacts to

Schoharie Creek, a major waterbody the Pipeline Project will cross, will be mitigated based on the assumption that Direct Pipe trenchless crossing will be used. FEIS at 2-22–2-23. But Constitution has not yet submitted the geotechnical data to show that this type of crossing is even feasible. Similarly, Constitution has not provided any specific details regarding its water blasting activities, which also could have substantially different adverse effects, depending on what methods are used at each watercrossing.

In addition, the FEIS contains almost no discussion of stormwater management or the potential impacts of runoff on waterbodies near the Projects. While the FEIS identifies the increase in sediment mobilization that can be expected to result from Pipeline Project construction activities, it dismisses these impacts as merely temporary, thus discounting their significance. FEIS at 4-54–4-58; *see also* Intervenor’s Comments on DEIS at 11–12. The FEIS therefore includes no meaningful evaluation of the effect of stormwater runoff caused by the Pipeline Project. The FEIS notes that the best management practices identified in Constitution’s ECPs will protect against increased erosion and sedimentation, but fails to conduct an analysis of the adequacy of the individual BMPs or to recommend additional stormwater mitigation measures. Constitution’s attempt to have its ECPs serve as the Stormwater Pollution Prevention Plan (“SWPPP”) for the Pipeline Project should be rejected. Construction plans are no substitute for a SWPPP, which focuses specifically on detailed stormwater evaluation and control measures.²⁵ The information provided to FERC to date therefore is insufficient to enable the Commission to ascertain the extent of the potential impacts of stormwater on waterbodies surrounding the Projects or whether these impacts will be mitigated sufficiently.

b. There is substantial missing information on impacts to species.

The FEIS and Order similarly lack sufficient information about the impacts of the Projects on species. As noted above, surveys and mitigation plans for numerous species, including bald eagles, have not been completed. In addition, the consultation processes with Fish & Wildlife are ongoing. Fish & Wildlife has not indicated whether it concurs with FERC’s assessment of the impacts of the Projects. And only one day prior to the issuance of the Order, FERC staff sent a new letter to Fish & Wildlife, changing their recommendation under Section 7 of the Endangered Species Act.²⁶ Although FERC previously had concluded that the Pipeline Project is not likely to adversely affect three listed species, on December 1, 2014, the Commission determined that the Pipeline Project is likely to adversely affect the federally proposed northern long-eared bat and requested a conference opinion for this species. The Commission plainly does not have the information necessary to determine whether the Projects’ impacts to species will be significant and whether mitigation measures will be sufficient.

²⁵ Indeed, NYSDEC called for the inclusion of a SWPPP “as an appendix to the draft EIS, describing the proposed erosion and sediment control practices and, where required, post-construction stormwater management practices, that will be used and constructed to reduce the pollutants in stormwater discharges.” NYSDEC, Comments on the Scope of Environmental Impact Statement for the Constitution Pipeline Project 2–3 (Nov. 7, 2012), FERC Docket No. PF12-9-000.

²⁶ Letter from D. Swearingen, FERC, to T. Sullivan, U.S. Fish & Wildlife (Dec. 1, 2014), Docket CP13-499-000, Accession No. 20141201-3021.

5. The Commission failed to evaluate the Pipeline and Wright Interconnect Projects' significant impacts to air quality.

The FEIS concludes that the Projects' construction and operation-related impacts "are not expected to result in a significant impact on local or regional air quality." FEIS at 4-186. This conclusion appears, however, largely to be based on the assessment that the Projects' emissions would not, for the most, part trigger "major" source requirements under the Clean Air Act's Prevention of Significant Deterioration, Non-attainment New Source Review ("NNSR"), and Title V programs. This determination fails to acknowledge that the Projects nevertheless will emit substantial amounts of certain pollutants. In particular, the Wright Interconnect Project will emit 99.6 tons per year of NO_x and 111.3 tons per year of carbon monoxide ("CO"). That these emissions either may not be considered "major" for the purposes of these separate regulatory regimes under the Clean Air Act is not in itself sufficient to give rise to a determination that the emissions will not have a significant impact for the purposes of NEPA.²⁷ Similarly, the fact that the compressor facility would be subject to certain monitoring and performance testing measures under the Clean Air Act, *id.*, also is not a sufficient basis to conclude that the emissions would not have significant impacts. *See Calvert Cliffs*, 449 F.2d at 1124. For these reasons, as well as those described below, FERC's assessment of the air quality impacts of the Projects does not comply with NEPA.

a. The FEIS does not adequately evaluate the Projects' air quality impacts from construction.

FERC largely dismisses the impacts of the air pollution that will be generated by the construction of the Pipeline Project and the expansion of the Wright Interconnect Project. The FEIS reasons that the Projects' construction-related emissions would not have a significant impact on local or regional air quality because "pipeline construction moves through an area relatively quickly [and therefore] air emissions are typically intermittent and short term." FEIS at 4-186. FERC takes this approach despite the fact that the estimated emissions from construction substantially exceed the tons-per-year threshold for major sources for multiple pollutants emitted, including NO_x, VOCs, CO, and particulate matter. In addition, the fact that construction may move relatively quickly results in the release of these substantial emissions over the course of significantly less than a year. If the same amounts were emitted over a longer period of time, they would hit the "major source" threshold.²⁸

NEPA's ultimate goal is the protection of the environment as a means of promoting human health. *See* 42 U.S.C. § 4321; *Rhodes v. Johnson*, 153 F.3d 785, 787 (7th Cir. 1998). FERC therefore cannot dismiss the emissions of large quantities of pollutants known to be harmful to human health with no analysis of the potential health effects to workers and members of the community who live near the construction sites. These populations will experience relatively concentrated doses over time periods significantly shorter than a year of potentially harmful amounts of pollutants known to cause serious health effects. This failure is especially disturbing given that Pennsylvania and New York are located in the Northeast Ozone Transport

²⁷ *See, e.g.*, Gregg Macey et. al, Air concentrations of volatile organic compounds near oil and gas production: a community-based exploratory study, 13 *Envtl. Health* 82 (2014).

²⁸ *Compare* EPA, Who Has to Obtain a Title V Permit, *available at* <http://www.epa.gov/oaqps001/permits/obtain.html> *with* FEIS at 4-181.

Region, and NO_x and VOCs are precursors to ozone. This is an inappropriate abdication of FERC's responsibility to consider all direct and indirect effects under NEPA.

b. The FEIS' general conformity analysis is inadequate.

The general conformity analysis focuses on Schoharie County in New York. Schoharie County requires an initial analysis to determine whether general conformity is applicable because it is designated non-attainment for the 1997 8-hour ozone standard. FEIS at 4-178. The analysis contained in the FEIS on the emissions of NO_x and VOCs that will be generated during the construction of the Pipeline Project and the Wright Interconnect Project in Schoharie County is insufficient to conclude that air quality impacts will not be significant.²⁹

In particular, the general conformity analysis in the FEIS contains several unexplained discrepancies with the general conformity analysis contained in the DEIS. The DEIS stated that the construction-related emissions in Schoharie County were 97.0 tons of NO_x and 15.0 tons of VOCs. DEIS at 4-165. While these emissions levels did not trigger a further conformity review, because neither exceeded the *de minimis* threshold level requiring a conformity review, FERC acknowledged in the DEIS that the emissions of NO_x came very close to the 100 ton applicability threshold. DEIS at 4-165. The DEIS further stated that, “[s]hould the project construction schedule change, there is a possibility that emissions may exceed the 100 tpy threshold for conformity for a single year.” *Id.* at 4-166. Because the NO_x emissions were so close to the applicability threshold and “to ensure that the projects’ construction schedule does not trigger General Conformity,” the DEIS recommended that the Applicants should each file a Construction Emission Plan prior to the beginning of construction for written approval by the Director of Office of Environmental Protection. *Id.*

In the FEIS, however, the construction emissions in Schoharie County are significantly lower—69.3 tpy of NO_x and 10.0 tpy of VOCs. No explanation is provided as to why the projected emissions have decreased from the DEIS to the final. *See* FEIS at 4-179. Moreover, based on the fact that the projected construction emissions in the FEIS are well below the 100 tpy threshold for NO_x, the final EIS concludes that no Construction Emission Plan is needed. *Id.* This unexplained change in the estimated levels of construction emissions and the decision not to require a Construction Emission Plan therefore is unsupported in the FEIS and cannot form the basis for FERC's conclusions regarding air quality impacts under NEPA.

6. The Commission failed to evaluate the Pipeline and Wright Interconnect Projects' climate impacts.

The FEIS fails to evaluate the full extent of the GHGs that will result from the Projects and also neglects to analyze the climate impacts of those emissions. At no point in the FEIS did FERC tabulate the total amount of GHGs. Instead, it provided separate amounts for (1) the operation of the existing Wright Compressor Station and proposed compressor station (176,945 tons per year), FEIS at 4-183; (2) vented and fugitive emissions from the operation of the existing Wright Compressor station and the proposed modifications (28,021 tons per year), *id.* at 4-182; (3) vented and fugitive emissions from Constitution's pipeline (4,997 tons per year), *id.*;

²⁹ Emissions resulting from operation of the Wright compressor station are exempt from general conformity analysis because the proposed facilities would be subject to minor source NNSR requirements.

(4) construction emissions from the Pipeline Project (60,856.7 tons per year); and (5) construction emissions from the modified Wright Compressor Station Project (25.2 tons per year), *id.* This totals in 60,881.9 tons per year during construction, 209,963 tons per year of operation, and potentially 3,149,445 tons per year over only 15 years of operation. Critically, none of the above numbers accounts for the release of stored GHGs that will result from disturbing 439.7 acres of interior forest, permanently eliminating 217.7 acres of interior forest, and disturbing 95.3 acres of wetlands. It is well-recognized that elimination of carbon sinks such as forests is a critical factor in exacerbating the global concentrations of GHGs,³⁰ and yet the Commission ignored this source of GHG emissions entirely.

Even with respect to the emissions the Commission quantified, rather than giving appropriate weight to this amount, and despite the fact that the Wright Compressor Station will be a major source of GHGs under the Clean Air Act, the Commission dismisses GHG emissions from the Projects as unimportant because “[t]he GHG emissions for both construction and operation of the pipeline are very small (about 0.001 percent) when compared with the U.S. Greenhouse Gas Inventory . . . [and t]he GHG emissions for both construction and operation of the compressor facility are also very small (about 0.003 percent) when compared to the U.S. Greenhouse Gas Inventory.” *Id.* at 4-186. The Council on Environmental Quality specifically has urged agencies to reject this line of reasoning: “the statement that emissions from a government action or approval represent only a small fraction of global emissions is more a statement about the nature of the climate change challenge, and *is not an appropriate basis for deciding whether to consider climate impacts under NEPA.*”³¹

FERC’s analysis also failed to take a hard look at the potential climate impacts of the Projects’ GHG emissions. Prior to the publication of the FEIS, Intervenor drew the Commission’s attention to *High Country Conservation Advocates et al. v. U.S. Forest Serv. et al.*, where the District Court ordered the Bureau of Land Management to evaluate the impacts of a project’s GHG emissions using a tool known as the social cost of carbon.³² 2014 WL 2922751, at * 11 (D. Colo. June 27, 2014). The court held that “a ‘hard look’ has to include a ‘hard look’ at whether [the use of the social cost of carbon], however imprecise it might be, would contribute to a more informed assessment of the impacts than if it were simply ignored.” It is not reasonable “to ignore a tool in which an interagency group of experts invested time and expertise.” *Id.*

³⁰ IPCC, Agriculture, Forestry and Other Land Use (AFOLU), Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 825 (2014), *available at* <http://mitigation2014.org/report/publication/>; *see also* Council on Env’tl. Quality, Draft Guidance on Consideration of Greenhouse Gas Emissions and the Effects of Climate Change n.1 (Dec. 18, 2014), *available at* http://www.whitehouse.gov/sites/default/files/docs/nepa_revised_draft_ghg_guidance.pdf (“Also for purposes of this guidance, ‘emissions’ includes releases of stored GHGs as a result of destruction of natural GHG sinks such as forests and coastal wetlands, as well as future sequestration capability.”) (“CEQ Draft GHG Guidance”).

³¹ CEQ Draft GHG Guidance, at 9 (emphasis added).

³² The social cost of carbon assigns a dollar cost to the emission of one metric ton of CO₂ in order to better understand the effects of continuing to increase the concentration of GHGs in the atmosphere. IPCC, Social, Economic and Ethical Concepts and Methods, Contribution of Working Group III to the Fifth Assessment Report of the Intergovernmental Panel on Climate Change 249 (2014), *available at* <http://mitigation2014.org/report/publication/>.

The FEIS notably does make very limited use of the social cost of carbon to calculate the Project's social cost of GHG emissions for 2015 at between \$1,638,708 and \$8,330,100, depending on the discount rate used. FEIS at 4-256. These figures ignore, however, the long (and undefined) lifespan of the Projects. It is entirely arbitrary to quantify the cost of only one year of GHG emissions for likely decades-long Projects, particularly when the cost of carbon emissions rises dramatically over time.³³ Calculating the Projects' social cost of carbon over even 10 years of their operation would yield significantly higher cost figures. Moreover, there is no indication in the FEIS or the Order that the Commission did anything more than complete the calculation for 2015. It is not sufficient for FERC to determine the social cost of carbon for a single year of the Projects and then fail to meaningfully use this value in its analysis.

7. The Commission improperly ignored the long-term and permanent impacts of the Project's fragmentation of interior forest habitats.

The Commission does not dispute that the Pipeline Project would have a "long-term to permanent" impact by "reducing the size of unfragmented forest tracts and [creating] open habitats." FEIS at 4-88. In fact, the Pipeline Project will cross 36 miles of interior forest habitat and bisect 129 interior forest blocks of over 35 acres in size. The Pipeline Project's right of way will cause 55 of these 129 interior blocks, to cease to be interior forest, resulting in a loss of 43% of remaining prime critical breeding habitat blocks for forest-interior birds in the area of the Pipeline Project. The FEIS and Order acknowledge this loss but conclude that "Constitution minimized the potential for these long-term effects by collocating the proposed workspace with other existing rights-of-way in certain areas for *approximately 9 percent of the proposed alignment*, and by reducing the construction right-of-way to 100 feet in interior forest areas, where able." *Id.* (emphasis added). These mitigation measures not only are inadequate to address the long-term effects of the fragmentation of interior forest habitats, but also demonstrate the Commission's failure to evaluate the full breadth of long-term impacts that will result from the Pipeline Project's destruction of forest habitat.

Intervenors stressed in their supplemental comments that "... the ridgetop areas targeted for the pipeline contain much of the last remaining large unfragmented forest in the region," and that "... this project stands as the largest single act of forest disturbance in decades."³⁴ The construction and operation of the Pipeline Project will create corridors through once-intact forest blocks, converting areas adjacent to those forests (300 feet on either side) into edge habitat. Intervenors' Comments on DEIS at 12. The FEIS fails to take a hard look at this reality, including the cumulative impacts to forests and species that have resulted from significant recent development of natural gas infrastructure. *See supra* Section II.B.3. Rather, the FEIS dismisses the effects of the Pipeline Project's forest fragmentation by stating that while "[f]orest habitat (and interior forest habitat in particular) can takes[sic] decades to become established... creation of additional edge habitat could benefit certain foraging mammal species, such as white-tailed deer and raccoons." *Id.* at 4-89. Unlike the migratory species of birds likely to be affected by

³³ See EPA, The Social Cost of Carbon, *available at* <http://www.epa.gov/climatechange/EPAactivities/economics/scc.html> (calculating a \$10 increase in the social cost of carbon between 2015 and 2040, using the most conservative discount rate of 5%).

³⁴ Comments of Delaware-Otsego Audubon Society on Draft Migratory Bird and Upland Forest Plan under CP13-499 3 (Jun. 13, 2014), Accession No. 20140613-5094.

the loss of interior forest habitat, there is no support in the record, nor could there be, that white-tailed deer or raccoons have experienced any population decline where a further loss of habitat could pose a jeopardy to the species.³⁵

In addition, the forest types that will be lost to the Pipeline Project conservatively serve as habitat for nearly 60 species of birds, 26 of which are showing multi-decade population declines in New York. *See id.* at 14. The FEIS significantly underestimates the negative impacts of the Pipeline Project on birds, however, by focusing on only “special species” that have been “afforded an additional level of protection” by state or federal agencies. FEIS at 4-98. The U.S. Fish & Wildlife Service raised similar concerns about the breadth of species considered in the Commission’s and Constitution’s analysis.³⁶ Despite these concerns, the FEIS adopted the DEIS’s analysis on this issue and failed to conduct any additional review of the impacts to the broader range of affected species. *See* FEIS § 4.7.

The mitigation measures called for by the FEIS also are grossly inadequate to address the significant impacts from the eliminating vast amounts of rare interior forest. Most of the mitigation measures in the FEIS and the Order are aimed at minimizing *construction* impacts and do nothing to address the Pipeline Project’s long-term fragmentation of the forest habitat. Reducing the right of way by 10 feet will have no effect on the adjacent interior forest, which still will become degraded breeding habitat. In addition, the Migratory Bird and Upland Forest Plan proposed by Constitution underestimates the impacts of forest fragmentation by assuming that 35-acre interior forest blocks are sufficient to support bird species identified in the vicinity of the Project, without providing any scientific basis for this assumption.³⁷ Moreover, the fund the FEIS requires Constitution to establish will not compensate for the clearing of contiguous mature forest. It will take lifetimes to recreate these woodlands that are critical to bird species currently at risk, and FERC has offered no evidence that the species can survive the loss of habitat for that long period.

8. The Commission failed to properly consider the no action alternative and used an impermissibly narrow definition of the Projects’ purpose and need.

The Commission failed to meet its obligation to evaluate the no action alternative. While the Commission purported to weigh the costs of approving versus not approving the Projects, it failed to give appropriate consideration to the benefits associated with the no action alternative and compared that and other alternatives to an impermissibly narrow statement of the Projects’ purpose and need that in essence foreclosed FERC from accepting any alternative except the Projects.

³⁵ In fact, there is a significant body of evidence that overbrowsing of forest understory by high populations of deer reduce abundance and species richness of many of the same birds impacted by fragmentation—actually worsening the effects of forest fragmentation on bird species. *See, e.g.,* D.S. deCalesta, *Effects of white-tailed deer on songbirds within managed forests in Pennsylvania*, *Journal of Wildlife Mgmt.* 58, 711–18 (1994) (finding that species’ richness of intermediate canopy-nesting songbirds declined 27% and abundance declined 37% between the lowest and highest deer density plots studied).

³⁶ *See, e.g.,* Letter from D. Stilwell, U.S. Fish & Wildlife Services, to K. Bowman, FERC, 4 (July 31, 2014).

³⁷ *Id.* at 6–7; *see also* Catskill Mountainkeeper, et al., *supra* note 4 at 5.

a. The Commission failed to evaluate the benefits of the no action alternative.

The no action alternative analysis contained in the FEIS and incorporated in the Order fails to weigh appropriately the environmental benefits of the status quo against the adverse environmental impacts of the Project. Although FERC admits that, under the no action alternative, “the short- and long-term environmental impacts from the projects would not occur,” FEIS at 3-3, the FEIS does not adequately address the full range and extent of the adverse environmental impacts from the Projects and thereby grossly underestimates the environmental benefits that would result from the no action alternative.

The Commission must “compare the environmental consequences of the status quo to the consequences of the proposed action.” *Ctr. for Bio. Diversity v. U.S. Dept. of Interior*, 623 F.3d 633, 642 (9th Cir. 2010). The status quo that must be analyzed as part of the no action alternative includes the fact that critical interior ridge-top forest habitat will remain intact, 289 waterways will remain uncrossed, and the air and climate pollution associated with the two Projects will remain un-emitted. The FEIS contains no comparison between this status quo and the effects of the Projects, instead the no action section simply describes a number of options for meeting energy demand, but rejects each as impractical. FEIS at 3-3–3-13. This type of discussion does not allow “policymakers and the public to compare the environmental consequences of the status quo to the consequences of the proposed action.” *See id.* The Order adds nothing to FERC’s analysis, relying solely on the FEIS for the Commission’s consideration of the no action alternative. *See* Order ¶ 108.

b. The Commission violated NEPA and the NGA by narrowly defining the Project’s purpose in order to reject all other alternatives.

Although the Commission articulates a broader purpose of the Projects at the beginning of the FEIS,³⁸ in the analysis of the alternatives, FERC determined that to be considered feasible, all alternatives to the Projects must “be capable of meeting” the requirements of the two shippers, Cabot and Southwestern Energy Services Company, that have signed precedent agreements with Constitution for proposed gas volumes. FEIS at 3-14. With this narrow purpose in mind, FERC rejected all available alternatives to the Projects, including the no action alternative, because no proposal except the Projects would suffice.

³⁸ “[T]he purpose of the proposed projects is to: (1) deliver 650,000 [Dth] of natural gas from Susquehanna County, Pennsylvania to the interconnect with the [Tennessee Gas Pipeline] and Iroquois systems at the existing Wright Compressor Station; (2) provide new natural service for areas currently without access to natural gas; (3) 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; (4) 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 (5) 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 [GHG] emissions and other pollutants.” FEIS at 1-2.

FERC cannot interpret the Projects' purpose and need so narrowly that every conceivable alternative is ruled out by definition. *See Simmons v. U.S. Army Corps of Eng's*, 120 F.3d 664 (7th Cir. 1997) (cautioning agencies not to put forward a purpose and need statement that is so narrow as to "define competing 'reasonable alternatives' out of consideration (and even out of existence)"); *Nat'l Parks & Cons. Ass'n v. Bureau of Land Mgmt.*, 606 F.3d 1058, 1072 (9th Cir. 2009) (finding a purpose and need statement that included the agency's goal to address long-term landfill demand, and the applicant's three private goals was too narrowly drawn and constrained the possible range of alternatives in violation of NEPA). Only Constitution and Iroquois' Projects offer the means of meeting the two shippers' requirements, and thus all alternatives are bound to fail in comparison. Such narrow statements of purpose and need undermine the NEPA process and will not be upheld. *Env'tl. Prot. Info. Ctr. v. U.S. Forest Serv.*, 234 F. App'x 440, 443 (9th Cir. 2007) (agencies cannot "define[] the objectives of the project so narrowly that the project [is] the only alternative that would serve those objectives"). Similarly, defining the Projects' purpose as serving the needs of two customers contravenes the NGA's overriding purpose "to protect consumers against exploitation at the hands of natural gas companies." *United Distrib. Co. v. FERC*, 88 F.3d 1105, 1122 (D.C. Cir. 1996) (citation omitted). Neither NEPA nor the NGA allows FERC to reject all alternatives except the Projects in order to promote the pecuniary interests of four private corporations.

9. The Commission erred in issuing the Order because the proposed Projects are not required by the public convenience or necessity.

The NGA charges FERC with determining whether or not the construction and operation of the Projects are required by the public convenience and necessity. *See* 15 U.S.C. § 717f(c). In assessing whether the Pipeline and Wright Interconnect Projects will be in the public convenience and necessity, FERC must balance the stated public benefits from the Projects against their adverse impacts. *See Certification of New Interstate Natural Gas Pipeline Facilities, Statement of Policy*, 88 FERC ¶ 61,227, 61,748 (Sept. 15, 1999). The stated interests must outweigh the adverse effects caused by the Projects for FERC to approve it. *See id.* at 61,748, 61,750; *see also Millennium Pipeline Co.*, 141 FERC ¶ 61,198, 2012 WL 6067320, at *4 (Dec. 7, 2012).

As discussed above, the Projects are likely to have significant adverse environmental impacts on water quality, forest habitats, imperiled species, and air quality (including GHG emissions). The Projects also are likely to induce additional drilling for natural gas in the nearby Marcellus Shale, with foreseeable negative consequences for air, water, land, and communities. The Projects, both directly and indirectly, also will contribute to climate change.

FERC has not taken an adequately hard look at the Projects' many impacts, and failed to justify its conclusion that the associated significant impacts will be mitigated sufficiently. The FEIS and the Order have not demonstrated that adverse effects on landowners and the surrounding communities are less than any alleged public benefits of the Projects. This scant analysis cannot support a conclusion that the Projects' negative impacts are outweighed by their benefits.

III. COMMUNICATIONS

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

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IV. CONCLUSION

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

Respectfully submitted on this 30th day of December, 2014,

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