

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Docket No. CP13-499-000  
Docket No. CP13-502-000

**REQUEST FOR REHEARING ON BEHALF OF THE CAPITAL REGION BOARD OF  
COOPERATIVE EDUCATIONAL SERVICES**

Pursuant to Rule 713 of the Commission's Rules of Practice and Procedure [18CFR Section 385.713], the Capital Region Board of Cooperative Educational Services hereby requests that the Federal Energy Regulatory Commission grant a rehearing of the final decision by the Commission in this proceeding, the "Order Issuing Certificates and Approving Abandonment", issued December 2, 2014 (the "Order"). The persons to whom communication regarding this Request should be addressed and upon whom service of all pleadings or other documents in this proceeding should be made are:

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As grounds for this Request, it is respectfully asserted:

**STATEMENT OF FACTS REGARDING  
ALBANY-SCHOHARIE-SCHENECTADY-SARATOGA BOARD OF  
COOPERATIVE EDUCATION SERVICES**

1. Albany-Schoharie-Schenectady-Saratoga Board of Cooperative Educational Services ("Capital Region BOCES") is a public educational service agency serving the school districts in the Counties of Albany, Schoharie, Schenectady and Saratoga in the State of New York. Capital Region BOCES provides educational leadership, services and support to meet the

needs of students in the four county area and the school districts therein. Capital Region BOCES is the sixth largest Board of Cooperation Educational Services in New York State, and delivers more than 300 educational and administrative services to its 23 component school districts and to the City School District of Albany. Capital Region BOCES was formed in 1953 to serve these districts and it employs about 1,100 staff members who provide a wide range of services.

2. Career and technical education is one of the divisions of Capital Region BOCES. The career and technical education division includes three campuses. One of these campuses, the Capital Region Career and Technical School, is located at 174 State Route 30A, Schoharie, New York. The Schoharie campus (the "School") will be directly impacted by this proposed pipeline project.

3. The School is on a parcel of land that is about 63 acres in size. Over 200 students are enrolled in various programs at the School, which provides focused studies and degrees in eight programs. The facility was custom built in 1972 so as to provide a specialized curriculum in two of these eight program areas: commercial construction and heavy equipment; and, residential construction and heavy equipment. Approximately 60 students are enrolled in the two construction/heavy equipment programs at the School, whose continuity and viability are threatened by this proposed project.

4. On any given school day, approximately ten pieces of heavy equipment are in operation at the School in outdoor classes, including two backhoes, two bulldozers, two excavators, a farm tractor, a skid steer, a dump truck and trailer, and a roller. Other outdoor construction training includes the use of various compactors, chainsaws and rigging, hauling and logging activities. Students learn to operate each piece of equipment, engaged in digging, trenching, earth moving, compaction, tree felling and other heavy equipment activities. Outdoor

topics of study include workplace safety and management, tools use and maintenance, site development, layout, blue prints and codes, soils identification, structures, utilities, concrete and form construction, rough framing, as well as operation and preventive maintenance of compaction equipment, backhoes, bulldozers and excavators.

5. The Schoharie campus of the School is fully used and occupied, from the bus loop, School building, maintenance buildings and outdoor class rooms, all the way to the edge of the property along Route I-88.

6. Although the parcel of land upon which the Schoharie campus of the School is located is 63 acres, approximately 50% of that acreage is not usable by the School because the parcel is bisected by a flood-prone creek and associated deep gorge running north to south and then under State Route 30A. The creek and gorge cannot be crossed by heavy equipment and therefore, the easterly half of the acreage is not capable of being used as a portion of the outdoor classroom. Thus, the usable acreage is only about 30 (thirty) acres, of which about 7 (seven) acres are buildings and lots. All of this outdoor, useable acreage, about 23 acres, is used in the School's curriculum at the Schoharie campus.

7. The highly specialized, unique elements of the School's Schoharie campus are irreplaceable elsewhere. The custom School building contains features that are not found in other school buildings including several large storage bays with overhead doors for the ten pieces of heavy equipment; large classrooms with vaulted ceilings where operation and maintenance of the heavy equipment can be taught indoors; and, specialized storage areas for safety equipment and outdoor gear.

8. The outdoor teaching areas have taken years to develop and construct. These areas include well established earthen features, including berms, inclines and ponds, where the

different functions and operational modes of heavy equipment can be taught in a controlled, safe, instructional setting.

9. The School is also located on an established bus route, so it can be served by a broad geographic region which is necessary to the missions of Capital Region BOCES and the School.

10. The Order proposes to take, through condemnation proceedings, nearly 6 acres of the approximately 23 acres of useable outdoor classroom area. The pipeline company's forceful taking of 20-25% of the School's outdoor classroom area will destroy the curriculum, as there is simply no substitute for the teaching acreage that will be lost.

#### **ANALYSIS OF THE IMPACT TO THE SCHOOL**

11. Capital Region BOCES filed a timely Motion/Notice of Intervention with comments upon the Draft Environmental Impact Statement (DEIS) on April 2, 2014 [eLibrary num=2014-0402-5149](Submission ID: 469607).

12. The DEIS acknowledged that the environmental impact analysis of this project is incomplete and therefore requires a further, publicly available environmental impact analysis with respect to avoidance measures and impacts upon the School. Specifically, the DEIS found:

**The safety and welfare of the students was the primary concern raised by the commentators. We requested information from Constitution regarding the crossing of this property, but it is not clear when and how the school would be impacted.**

DEIS § 4.8.4, page 4-129.

13. Indeed, the DEIS found that the Commission has already documented unmitigated and unavoided impact on the School: "The pipeline route would cross the parcel owned by the School and in an area where excavation and construction activities are being conducted as part of the School's curriculum." Id.

14. The Commission's findings in the DEIS are carried forward to the conclusions and recommendations of that document. Specifically, FERC staff's recommended mitigation with respect to the School is as follows:

Prior to construction, Constitution shall coordinate with the Schoharie Career and Technical Education School, Board of Educators, and file with the secretary for the review and written approval of the director of OEP, impact avoidance, minimization, or mitigation measures designed to ensure that the pipeline and access road PAR73a (near MP120.6) do not conflict with or hinder the school's ability to implement current or future curriculum activities.

DEIS § 5.2, Finding No. 41, page 5-23.

15. Constitution has not met with the Capital Region BOCES Board. The Board and the public have not seen what may have been filed by Constitution with OEP. Thus, the recommendation has not been taken.

**THE SHORTCOMINGS OF THE  
FINAL ENVIRONMENTAL IMPACT STATEMENT (FEIS)  
IN SUPPORT OF THE ORDER**

16. The FEIS acknowledges that, at Land Parcel ALT-Q-NY-SC-020.000 (Mile Post 120.6), the School observed that the pipeline was a "threat to the safe operation of the school" and would "interfere with students' training with heavy equipment." FEIS p. 3-75. The Commission made the following assessment and recommendation concerning the School's concerns:

Constitution stated that it would remove access road PAR-73A from the school's property thereby preventing any impacts associated with the road. In addition, Constitution adopted a minor route variation that moved the route away from the student training area about 180 feet farther to the north property line except in the vicinity of a ravine. **However, we conclude that a temporary safety fence and signage installed along the southern edge of the construction right-of-way and a permanent fence and signage installed along the southern edge of the permanent right-of-way could prevent inadvertent contact between a student training with heavy equipment and the pipeline.** We conclude that avoidance of this parcel is not practical due to development and homes along Highway 30A/30 and the number of new parcels that would be affected. Further, this

revised route minimizes impacts on the school property to the extent possible. **Based on our analysis, we recommend that Constitution adopt the impact avoidance measure described above regarding safety fencing.**

See Table 3.4.3-2(Id.)(emphasis in original)

This portion of the FEIS is critically flawed in fundamental respects. The Administrative Record is devoid of any study, analysis, report or findings in support of the conclusion that a pipeline route other than through the School outdoor classroom is unavailable. The Administrative Record is devoid of any study, analysis, report or findings that the proposed location of the pipeline will be safe, given the proximity of the School and the daily operation of many pieces of heavy earth moving equipment within proximity to the proposed pipeline location. The soft "recommendations" of the FEIS, suggesting that the impact on the School may be mitigated by fencing, are meaningless. Jurisprudence under the National Environmental Policy Act (NEPA) is devoid of any suggestion that mere hortatory language in an FEIS mitigates environmental impact.

### **THE TERMS OF THE ORDER**

17. The Order exacerbates the failings of the FEIS by failing to impose any mandatory conditions to mitigate impact upon the School. That is, the Order fails to even mention the School, the School property, the impact on the School or any mitigation measures associated with the pipeline crossing the School classroom property.

### **BASIS FOR REHEARING**

18. Capital Region BOCES maintains that the crossing of the School classroom property is not required by the public convenience and necessity and that the Commission failed to meet its obligation under NEPA by preparing an inadequate FEIS in support of the Order that fails to evaluate the impact of the project upon the operation and safety of the School.

**CONCISE STATEMENT OF THE ALLEGED ERRORS**

19. The Order is insufficient as a matter of law because it does not evaluate or assess a minor route deviation that would put the pipeline beyond the School's Schoharie campus, either within the I-88 corridor or through some other pathway. Although the Commission had directed the pipeline company to assess minor route deviations to protect other special land uses such as water wells and mines, no effort is made in the Order to avoid and protect the School's academic resources.

20. The Order fails to acknowledge that the School is a high consequence area that ought to be avoided because at any given point in time there could be over 200 people on campus, including dozens of students outside near or along the pipeline, using heavy equipment.

21. The proposed location of the pipeline, within a school that trains young students in the use of heavy equipment, will intimidate the students and teachers, raise concern among parents, restrict academic freedom, stigmatize the School and will thus have a socioeconomic impact upon the public services provided by the School. The Order did not take a hard look at these impacts.

22. The Order fails to scrutinize, assess or even consider the geotechnical impact of students operating ten pieces of large heavy equipment in proximity to the pipeline, including trenchers and compactors. The Schoharie campus of the School is a heavily used, dynamic environment. It is not a static land use. Ongoing, future impacts from the geotechnical force of the heavy equipment in proximity to the proposed pipeline must be scrutinized. The administrative record reveals that this analysis was not done prior to issuance of the Order.

23. The DEIS specifically noted that the School's outdoor heavy equipment training grounds are a "special interest area," see DEIS § 4.8.4, but the Order fails to document why the area could not be avoided.

24. Since the DEIS acknowledges, in its own words, that the impact from the project upon the School is unknown, the Order cannot simply defer to the Office of Energy Projects to somehow "work it out" prior to construction. This violates the National Environmental Policy Act. It certainly cannot be said that the Commission has taken a "hard look" at the environmental impacts of the Project upon the School at the same time it documents that it has not looked at all.

25. The Order fails to impose any mandatory conditions upon Constitution to mitigate the impact to the School.

#### **STATEMENT OF ISSUES**

26. The forced taking of 5.6 acres used as a classroom by a public teaching institution; the loss of over 20% of the outdoor classroom area in a uniquely designed, special land use area; the lack of any documentation of ways to avoid the taking of School property, mitigate the impacts upon the School, minor route deviations and other alternatives analysis fully establishes that the environmental analysis in support of the Order is inadequate, and the Order itself falls short of directing any mandatory conditions that specifically protect the School, students, faculty and equipment. See Natural Resources Defense Council v. Morton, 458 F2d 827, 838 (DC Cir. 1972).

27. NEPA demands that the Commission not defer a detailed analysis to the future or rely upon soft recommendations, when the impacts of the pipeline company's proposed taking of



the School property are reasonably foreseeable and capable of analysis at the current time. Pacific Rivers Council v. United States Forest Service, 689 F3d 1012 (9<sup>th</sup> Cir. 2012).

28. The public disclosure objectives of NEPA require that the full impact and alternatives analysis be published, not rationalized in a post-approval discussion with one of the Commission's offices, beyond public scrutiny, just prior to construction. See North Carolina Wildlife v. North Carolina Department of Transportation, 677 F3d 596 (4<sup>th</sup> Cir. 2012).

29. The Order simply does not explain how alternatives were screened and selected for detailed evaluation, and why others were eliminated, when they decided to cut through and condemn the School property. Id.

30. The Order does not impose any conditions in Appendix A of the Order that protect the School. Id.

### CONCLUSION

WHEREFORE, Capital Region BOCES, owner and operator of the School, respectfully requests that the Commission grant that the Order be reheard.

Dated: December 31, 2014

Respectfully submitted,

McNamee, Lochner, Titus & Williams

By: \_\_\_\_\_ /s/

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document by electronic mail upon each person designated with an electronic mail address in the official service list for docket Nos. CP13-499-000 and CP13-502-000 by the Secretary to the Commission and by the U.S. Postal Service.

Respectfully submitted,

/s/

Kathleen L. Hill

Secretary

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