

120 FERC ¶ 61,181
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Joseph T. Kelliher, Chairman;
Sudeen G. Kelly, Marc Spitzer,
Philip D. Moeller, and Jon Wellinghoff.

Transcontinental Gas Pipe Line Corporation

Docket No. CP06-421-001

ORDER DENYING REQUESTS FOR REHEARING
AND RECONSIDERATION

(Issued August 23, 2007)

1. On May 14, 2007, the Virginia Run Community Association, Inc. (VRCA) and Philip Cookson, Sylvia Ehinger, William Hassan, Bjarne Henderson, Melinda Welch, Philip Shapiro, Sandra Jones, John Enescu, Michelle Brooks, and Charles Caldwell (collectively known as the Virginia Run intervenors) filed a timely, joint request for rehearing of the order issued in *Transcontinental Gas Pipe Line Corporation*, 119 FERC ¶ 61,039 (April 12, 2007). In addition, the Fairfax County Board of Supervisors (Fairfax County Board) filed a request for reconsideration.

2. The April 12 Order authorized Transcontinental Gas Pipe Line Corporation (Transco) to construct and operate facilities in Pittsylvania, Campbell, and Fairfax Counties, Virginia in order to transport up to 165,000 dekatherms of natural gas per day to Baltimore Gas and Electric Company, Columbia Gas of Virginia, and Washington Gas Light Company.¹ For the reasons discussed below, we will deny the request for rehearing and the request for reconsideration.

I. Background

3. Among other things, the April 12 Order authorized Transco (1) to construct and operate approximately 12.67 miles of 42-inch diameter loop on its mainline from milepost (MP) 1,400.32 to the suction side to Transco's existing compressor station 165 at MP 1,412.99 in Pittsylvania County, Virginia; (2) to construct and operate approximately 3.72 miles of 42-inch diameter loop from MP 1,436.3 to a tie-in with Transco's existing 42-inch diameter Mainline D loop at the existing Brookneal meter

¹ On June 19, 2007, we denied the VRCA's and Virginia Run intervenors' joint request for stay of the construction of facilities in Fairfax County, Virginia. *Transcontinental Gas Pipe Line Corp.*, 119 FERC ¶ 61,284 (2007).

station at MP 1,440 in Campbell County, Virginia; and (3) to replace, by abandonment and removal, approximately 3.18 miles of existing 30-inch diameter pipeline (Mainline B) with approximately 3.43 miles of 42-inch diameter pipeline (the new facilities will be known as Mainline D) between an interconnect with Dominion Cove Point LNG Pipeline (Dominion) at MP 1,586.2 and an existing mainline valve setting at MP 1,589.6 in Fairfax County, Virginia.² Transco's proposals are known as the Potomac Expansion project.

4. As part of the facilities to be constructed in Fairfax County, Transco proposed, among other things, to install above-ground pig launcher and receiver facilities³ and a valve setting at MP 1,586.17 on a strip of land owned by the VRCA.⁴ Currently, Transco owns and operates two 30-inch diameter pipelines (Lines A and B) and one 36-inch diameter pipeline (Line C) on VRCA's land under a 1949 easement. Transco proposed to install the pig launcher and receiver facilities on Line B in order to retrieve the pigs from Line B and insert them into Line D. Transco's pigging facilities will be adjacent to an existing natural gas pipeline and pig launcher owned by Dominion, an electric transmission line owned by Dominion Virginia Power Company (Dominion Power), and a cell phone tower owned by T-Mobile, as well as homes in the Virginia Run community. Transco's and Dominion's pipelines are interconnected at this point.

5. Because of opposition to the pigging facilities from the Virginia Run community, Transco modified its proposals, in part, by eliminating the need for a pig receiver.⁵ Specifically, Transco proposed to install in 2007 the pig launcher and associated valves and piping for Line D as originally contemplated. The above-ground facilities for Line D include the launcher, two valve operators, and bypass piping. In addition, Transco proposed to construct a temporary 20-inch tap valve at Line A to connect Line B to Line A. The operator for this valve would be above grade and enclosed inside a 10-foot by 10-foot fenced area.

² We also authorized Transco to abandon in place an existing 0.25 mile portion of pipeline under road crossings in Fairfax County.

³ A pipeline "pig" is a device used to clean or inspect the pipeline. A pig launcher or receiver is an above-ground facility where pigs are inserted into or retrieved from the pipeline.

⁴ The VRCA is a community association of approximately 1,400 homes in Fairfax County.

⁵ See Transco's March 12, 2007 comments and its response to a data request filed on March 13, 2007.

6. Transco also proposed to remove the 20-inch tap valve and fenced area at Line A and install a piggable “Y” in 2008, as well as add a 30-inch mainline valve on Line A and a 30-inch mainline valve on Line B.⁶ The piggable “Y” would eliminate the need for a pig receiver and associated valves and piping for Line B by allowing pigs to pass from Line B to Line A.⁷

7. In its March 12 and 13 filings, Transco asserted that the piggable “Y” was “not a proven technology” and that it would need to confirm compatibility with its system once the detailed design for the piggable “Y” facilities was complete. In the event that the piggable “Y” did not work, Transco contended that it would have to modify the piggable “Y” facilities or revert back to its original proposal to install a pig receiver on Line B.

8. The April 12 Order authorized Transco’s modified proposals to construct and operate pig launcher facilities for Line D and to construct and operate temporary facilities to connect Line B to Line A, conditioned on Transco’s installing a piggable “Y” under section 2.55(a) of the regulations within 18 months of the date of the order in this proceeding or demonstrating that the piggable “Y” was not technologically feasible. Until the feasibility of the piggable “Y” was determined, we required Transco to submit to the Secretary of the Commission quarterly reports detailing the status of feasibility studies, as well as the construction progress for the piggable “Y.” In the event that Transco determined that the piggable “Y” was not technologically feasible, we required Transco to submit, for our approval, reports to justify its conclusion and file a revised plan.

9. The issues raised in the requests for rehearing and reconsideration of the April 12 Order are discussed below.

⁶ Due to design and delivery requirements, Transco states that the piggable “Y” cannot be delivered and installed in time to provide service to its expansion customers for the 2007-2008 winter heating season.

⁷ Under Transco’s original proposals, the fenced area around the pig launcher and receiver facilities totaled 13,125 square feet. Later, Transco reduced the enclosed area to 4,700 square feet – a 40-foot by 115-foot area for the pigging facilities and a 10-foot by 10-foot area around the Line A tap. Under the modified proposals in the March 12 and 13 filings, the fenced area will total 1,992 square feet which is an 85 percent reduction in the “footprint” of the above-ground facilities. Specifically, Transco proposed to enclose the above-ground facilities for Line D inside two fenced areas – an 817 square foot area around the launcher and a 663 square foot L-shaped area around the above-grade valve operators. In addition, Transco will enclose the above-ground portions of the mainline valves for the piggable “Y” inside a 512 square foot L-shaped area.

II. Discussion

A. Adequate Notice

1. The April 12 Order

10. Transco's July 25, 2006 notice for the Potomac Expansion Project did not mention that above-ground pig launcher and receiver facilities would be constructed in the VRCA community.⁸ The April 12 Order found that Transco met the minimum reporting requirements in section 157.6 of the regulations, but that the notice could have identified the locations of the above-ground facilities.

2. Requests for Rehearing and Reconsideration

11. The VRCA and the Virginia Run intervenors contend that we erred in finding that Transco met the minimum notice requirements under section 157.6(d)(3)(iii) because there was no description of the above-ground pig facilities or the purpose of the facilities. Further, they assert that we erred because section 157.5(b) makes the requirements of Part 157 a "forthright obligation" and because section 157.5(c) provides that Part 157 will be strictly applied to all applicants. In addition, the VRCA and the Virginia Run intervenors contend that our procedures here as to public notice and participation violate the National Environmental Policy Act of 1969 (NEPA)⁹ (which requires that relevant information be available to the public), the Administrative Procedure Act (APA)¹⁰ (which provides that an agency decision taken without required NEPA procedures is "contrary to law"), and the Council on Environmental Quality (CEQ) regulations¹¹ (which requires that an agency must "encourage and facilitate public involvement" and "involve the public" in preparing environmental documents). They state that the holding in *Fund for Animals v. Norton*, 281 F.Supp.2d 209 (D.D.C. 2003) (*Fund for Animals*) applies equally here and quote from *Hughes River Water Conservancy v. Glickman*, 81 F.3d 437 (4th Cir. 1996) (*Hughes River*) and *Sierra Nevada Forest Protection Campaign v. Weingardt*, 376 F.Supp.2d 984 (E.D. Ca 2005) (*Sierra Nevada*). Finally, they claim that the notice was inadequate because we held a public meeting on March 2, 2007, after the environmental assessment (EA) was issued and because Transco did not provide

⁸ Transco filed its application to construct and operate the Potomac Expansion Project on July 17, 2006.

⁹ 15 U.S.C. § 717 *et seq.*

¹⁰ 5 U.S.C. § 701 *et seq.*

¹¹ 40 C.F.R. Parts 1500-1508.

information about alternatives until after the EA was issued and the public comment period ended.

12. In its request for reconsideration, the Fairfax County Board contends that we should re-start this case from the beginning after Transco provides appropriate notice so that the Virginia Run homeowners can comment on Transco's proposals.

3. Commission Holding

13. The record in this proceeding shows that at least 70 residents of the Virginia Run community met with Transco representatives at a public meeting on November 28, 2006, to discuss Transco's proposals, including the above-ground pig facilities. After the meeting, we received nine motions to intervene, with one motion containing more than 200 signatures,¹² and over 100 comment letters. In January 2007, we mailed an EA that addressed issues concerning the pig facilities to the VRCA and affected residents. We received comments to the EA from the Virginia Run community that raised detailed and specific issues about safety, security, technological alternatives to pigs, the economic impact of the proposals on their community, compensation for landowners, and alternative sites for the pig facilities. On March 2, 2007, we held a public meeting, with approximately 420 people signing the attendance sheet, where Virginia Run residents again suggested alternative locations for the facilities and alternative technologies, expressed safety and security concerns, and discussed the potential impact on property values.

14. The record demonstrates that the residents of the Virginia Run community knew about Transco's proposed pig facilities and participated fully with comments about the facilities. The record, as discussed above, shows that the residents made informed comments even though Transco initially did not identify the location of the above-ground pig facilities. In fact, Transco changed its pig facility proposal in light of comments from the Virginia Run community on the application, the EA, and at public meetings. While Transco's original proposal was to construct pig launcher and receiver facilities and enclose these facilities inside a 13,125 square foot area, which was later reduced to 4,700 square feet, the April 12 Order approved modified proposals that authorized Transco to construct pig launcher facilities only on Line D, to temporarily interconnect Line B to Line A, and to install a piggable "Y" connecting Line B to Line A if feasible within 18 months, which reduced the area enclosed inside the fence to 1,992 square feet. For these reasons, we conclude that the intent of our notice regulations has been fulfilled and that

¹² Although the motions were filed after the deadline established for filing interventions, we granted the motions and allowed the Virginia Run intervenors to participate fully as parties in this proceeding.

our procedures do not violate NEPA, the CEQ regulations,¹³ or the APA.¹⁴ To now require at this point in the proceeding that Transco file a new notice that describes the above-ground pig facilities, and to re-start the case from the beginning with a new notice, would be a meaningless exercise considering these significant changes Transco has made to its proposals in response to the VRCA's and the Virginia Run intervenors' involvement in this proceeding. That said, we note that it is in the interest of everyone for applicants to provide as much detail in notices as is practicable in order to promote public knowledge and facilitate involvement in proposed projects.

15. The VRCA and the Virginia Run intervenors rely on three cases to support their position that they did not receive appropriate notice of Transco's proposal. In *Fund for Animals*, Maryland applied to the United States Fish and Wildlife Service (FWS) for a permit to kill mute swans. The FWS granted Maryland's request. The Fund for Animals, the plaintiff in the case, challenged the issuance of the permit. The case was voluntarily dismissed in exchange for Maryland's voluntary and temporary surrender of its permit, pending the preparation of an EA by the FWS. Subsequently, the FWS issued a draft EA, providing two weeks (nine working days) for the submission of written comments. The FWS published a final EA and issued a finding of no significant impact 15 days after the deadline for submitting written comments and 29 days after the issuance of the draft EA. The FWS issued a permit eleven days later. The plaintiffs brought an action for a preliminary injunction to enjoin Maryland from killing mute swans.

16. The court in *Fund for Animals* looked at the four factors that a plaintiff must meet to obtain a preliminary injunction.¹⁵ In examining one of the factors – the likelihood of success on the merits – the court quoted CEQ regulations that provide that environmental information must be made available to public officials and citizens before decisions are made and before actions are taken. The court pointed out that the FWS gave commenters only nine working days over a holiday during the summer to submit comments and

¹³ The CEQ regulations require an agency to encourage and facilitate public involvement. Here, as discussed, the public was involved through motions to intervene, comment letters, and a public meeting. We see no violation of the CEQ regulations.

¹⁴ The APA states that an agency decision taken without required NEPA procedures is contrary to law. There is no violation of the APA here because we complied with NEPA.

¹⁵ In order to succeed on a motion for a preliminary injunction, the court stated that the plaintiff must demonstrate (1) a substantial likelihood of success on the merits; (2) irreparable injury if the injunction is not granted; (3) that there will be no substantial injury to other interested parties; and (4) that the public interest would be served by the injunction.

concluded that the “FWS provided the public with insufficient information regarding the proposed action and its potential environmental impacts and insufficient time in which to comment on the draft EA”¹⁶ and noted that, in challenges to “similarly lacking public comment procedures” for EAs, courts had granted injunctive relief.¹⁷ It is this discussion that the VRCA and the Virginia Run intervenors cite.

17. In *Hughes River*, several municipalities and a conservation district proposed to construct a dam across the North Fork of the Hughes River in West Virginia. In brief, the National Resources Conservation Service and the Army Corps of Engineers issued a final environmental impact statement (EIS), but later did not prepare a supplemental EIS even though various parties requested one. The VRCA and the Virginia Run intervenors quoted a portion of the court’s discussion which stated that the EIS “ensures that relevant information about a proposed project will be made available to members of the public so that they may play a role in both the decision making process and the implementation of the decision.”¹⁸

18. *Sierra Nevada* consists of two cases in which the plaintiffs contend that the Forest Service violated NEPA by failing to circulate draft EAs or to involve the public in the preparation of the EA. The VRCA and the Virginia Run intervenors quoted a portion of the court’s discussion of the CEQ regulations which provide that an agency “provide opportunity for informed comments.”¹⁹

19. In *Fund for Animals*, the court was deciding whether to issue a preliminary injunction and, specifically, in the portion of the order relied on by the VRCA and the Virginia intervenors, the court examined if the plaintiff had a likelihood of success based on whether the FWS provided sufficient time to comment on the draft EA. Similarly, in *Hughes River* and *Sierra Nevada*, the courts discussed the preparation of the agency’s environmental documents. Essentially, each case asserted that NEPA requires federal agencies to follow certain procedures in preparing EAs or EISs and that agencies must make relevant information available to the public so that the public can play a role in the environmental analysis. The facts in the cited cases are not pertinent here, however, because this case does not involve issues relating to public involvement in the preparation of an EA or EIS. Rather, this case involves the adequacy of the notice of the application. Further, the facts in the cited cases provide no guidance on whether the initial notice of

¹⁶ 281 F.Supp.2d at 226.

¹⁷ *Id.*

¹⁸ 81 F.3d at 443.

¹⁹ 376 F.Supp.2d at 990.

the application was adequate. The cited cases do not support the VRCA's and the Virginia intervenors' contentions that the April 12 Order erred in regard to the notice.

20. We note, however, that in each of the cited cases, before deciding on the adequacy of the environmental documents involved, the courts made clear that NEPA seeks public involvement in the decision making process. Specifically, the courts emphasized, among other things, that "NEPA seeks informed public participation," "public scrutiny is essential," "the agency must encourage and facilitate public involvement," and "the agency must make diligent efforts to involve the public." In the same vein, when an applicant provides notice to the public that it has filed proposals with the Commission to construct and operate facilities, the purpose of the notice is to promote public knowledge and involvement in a proposed project. As discussed above and in the April 12 Order, we concluded that the notice was adequate here because the Virginia Run community knew about the proposed facilities and participated fully in this proceeding via motions to intervene, comments to the EA, and attendance at public meetings. Thus, there was no violation of NEPA, since the relevant information in this case was available to the public and the public was involved before the issuance of the April 12 Order.²⁰

21. The VRCA and the Virginia Run intervenors claim that the inadequacy of the notice was confirmed when staff held a public meeting in the Virginia Run community on March 2, 2007, after the January 16, 2007 issuance of the EA. Staff held the March 2 public meeting due to the considerable number of comments to the EA from Virginia Run residents concerning safety, security, technological alternatives to pigs, the economic impact of the proposals on the Virginia Run community, compensation for landowners, and alternative sites for the pig facilities. Further, we received requests to hold a public meeting from Congressman Frank Wolf and a nearby landowner. It is unclear how this confirms the inadequacy of the July 25, 2006 notice as the VRCA and the Virginia Run intervenors allege. This public meeting to address the Virginia Run residents' comments to the EA – which is not required by NEPA or our implementing regulations – allowed further participation in this proceeding by the residents.

22. Finally, the VRCA and the Virginia Run intervenors claim that the notice was inadequate because Transco did not provide information about alternatives until after the EA was issued and the public comment period ended. The purpose of the notice is to

²⁰ See *Providence Road Community Ass'n v. EPA*, 683 F.2d 80 (4th Cir. 1982). (A community association sought to enjoin the construction of a wastewater treatment plant, contending that they did not receive proper notice of public meetings. The court held that the notice was proper "even if it fell short of being as directed or as explicit as might be desired," but went on to state that even if the notice was not proper, the association would not prevail because their comments were received and considered by the Environmental Protection Agency before the agency reached its final decision.)

bring to the public's attention information about an applicant's proposed project. Interested parties may propose alternative site locations in motions to intervene or written comments to the application, in comments to the environmental analysis, or in public meetings. Here, residents of Virginia Run suggested two alternative sites prior to the issuance of the EA. Our staff examined these sites in the EA. In comments after the EA was issued, Virginia Run residents suggested three additional alternative sites, as well as alternative technologies. We issued data requests about the alternatives and Transco responded to the data requests on March 12 and 13. The April 12 Order addressed the alternative sites and technologies proposed in the comments to the EA.²¹ The notice was not inadequate because some alternatives were not addressed until after the EA was issued and the public comment period ended.

B. Discovery Motions

1. The April 12 Order

23. Several individual members of the Virginia Run intervenors filed discovery requests under Rule 406²² of the regulations and motions to compel discovery under Rules 406 and 410,²³ requesting that Transco provide written responses to data requests. The April 12 Order held that Transco did not have to comply with the discovery requests, holding that Rules 406 and 410 applied only to proceedings set for an evidentiary hearing under subpart E of Part 385 of the regulations.

2. Request for Rehearing

24. The VRCA and the Virginia Run intervenors contend that we erred in denying their discovery requests because it limited their ability to provide informed comments. They assert that our procedures in regard to discovery violate fundamental protections of due process guaranteed by the United States Constitution.

3. Commission Holding

25. Since the VRCA and the Virginia Run intervenors have not provided any new information that would persuade us to modify our April 12 holding, we reaffirm our holding that formal discovery is not available in this proceeding.

²¹ The VRCA and the Virginia Run intervenors claim that we violated NEPA by not having a public comment period on the alternatives suggested in the comments to the EA. NEPA contains no requirement for a public comment period in such circumstances.

²² 18 C.F.R. § 385.406 (2007).

²³ 18 C.F.R. § 385.410 (2007).

26. As we noted in the April 12 Order, in cases not set for hearing under subpart E of Part 385, interested members of the public are invited to file written comments or protests to the application or to our environmental analysis. To the extent our staff needs additional information to address these comments or protests or if intervenors seek information staff deems relevant to its analysis of a project that a company does not provide, staff will issue its own data requests seeking such information from the applicant. Our staff will review the comments or protests and information provided and will address these issues in the environmental analysis or the Commission order as appropriate.

27. In regard to this proceeding, Mr. Shapiro, one of the Virginia Run intervenors, submitted 16 questions to Transco in a discovery request filed on December 20, 2006. Mr. Cookson and Ms. Ehinger, Virginia Run intervenors, submitted three questions to Transco in a joint discovery request filed on December 29, 2006. In our March 8, 2007 data request, we included three of Mr. Shapiro's questions – Questions 5, 14, and 15 – and one of the Cookson/Ehinger questions – Question 2.²⁴ The information sought in four of Mr. Shapiro's questions – Questions 2, 7, 9, and 12 – were already in the record or were filed in the record by March 8.²⁵ The other questions in Mr. Shapiro's filing and in the Cookson/Ehinger filing requested information that staff concluded was not relevant to a decision in this proceeding.²⁶ In its March 8 data request, staff sought information

²⁴ Mr. Shapiro's Question 5 dealt with safety issues. We also asked safety related questions and requested that Transco outline its emergency response plan. In addition, Mr. Shapiro's Question 5 asked about the potential impact radius if there were a safety incident. We did not ask this question because we already knew how to calculate the radius. Mr. Shapiro's Questions 14 and 15 and the Cookson/Ehinger question 2 dealt with technological alternatives to pigs. We asked these questions in our data request.

²⁵ Mr. Shapiro's Question 2 related to the Cub Run bottom alternative, Question 7 asked about the area of Virginia Run land that would be affected by construction, Question 9 asked about Transco's July 26 notice, and Question 12 requested that Transco provide its plans for future construction in the Virginia Run community.

²⁶ In essence, Mr. Shapiro asked Transco to (1) provide documents relating to other locations where Transco contemplated siting the above-ground facilities before deciding to place the facilities in Virginia Run (Question 1); (2) provide information about the 2005 release of natural gas in Chantilly, Virginia (Questions 3 and 4); (3) indicate the amount of gas that flows through various diameter pipelines (Question 6); (4) provide prior plans that contemplated enclosing different sized areas inside the fence around the above-ground facilities (Question 8); (5) indicate when Transco decided to enclose the tap valve inside a fence (Question 10); (6) state Transco's understanding of its obligations with respect to the construction of facilities in a Class 3 high consequence
(continued...)

from Transco about safety issues and alternative technologies that were otherwise not in the record. Transco's responses to our data request, when combined with all of the other filings in this proceeding, provided the written evidentiary record necessary to resolve the issues presented here. The VRCA and the Virginia Run intervenors were not injured because we did not require Transco to answer all of their questions. Thus, we conclude that the discovery procedures in this case do not violate due process.

C. Alternatives

1. The No-Action Alternative

a. The EA

28. The EA considered the "no-action alternative" to the Potomac Expansion Project, but concluded that under this alternative the project's objectives would not be met, additional facilities at other locations would be required, or alternative energy forms would have to be used.

b. Request for Rehearing

29. The VRCA and the Virginia Run intervenors contend that we violated NEPA because the EA and the April 12 Order failed to consider a separate no-action alternative to the above-ground pig facilities. They assert that Transco does not require smart pigging at this time to comply with the Pipeline Safety Improvement Act of 2002,²⁷ claiming that the line is new and Transco does not have to inspect the line for seven years. The VRCA and the Virginia Run intervenors also assert that there are other methods to inspect the line that were not discussed, such as direct assessment and pressure testing.

area (Question 11); (7) provide documents that analyze the increased risk of leaks due to the introduction of gas into its system from the Dominion Cove Point LNG (Cove Point) terminal (Question 13); and (8) provide documents that explain each risk that the barbed wire on top of the fence around the pig facilities in Transco's original proposal was meant to address (Question 16).

Cookson/Ehinger's question 4 dealt with the dimensions, weight, and turning radius of Transco's vehicles on the right-of-way; the dimensions and weights of the pigs; the frequency of vehicular traffic once construction is complete; and the safety of pedestrians and joggers using the common area near the above-ground facilities.

²⁷ 49 U.S.C. § 192.921.

c. Commission Holding

30. The United States Department of Transportation (DOT) requires that the maximum time limit between pipeline inspections not exceed seven years. The DOT's regulations require that the pipeline operator use an inspection method best suited to address the threats identified to the pipeline. For the facilities in Fairfax County, Transco will conduct direct assessments, visual inspections, hydrostatic testing, and smart pigging prior to placing the pipeline into service.

31. A direct assessment involves placing an electric charge on the pipeline and recording the charge emitted from the pipeline through the ground. If a charge is captured through the ground, that may be an indication of an anomaly in the pipeline coating. Direct assessments only test the pipeline coating.

32. Visual testing merely assures that there are no obvious flaws in the pipeline's protective coating and that pipeline welds look secure. Visually inspecting the pipeline is only practicable for above-ground piping. Otherwise, Transco would be required to dig up the pipeline, which would increase disturbance along the pipeline corridor.

33. Hydrostatic testing, which involves pressure testing using water, is used prior to transporting pressurized gas in the pipeline to assure that there are no major leaks. Hydrostatic testing would require a large source of water and a discharge location for the water, which could cause a significant disruption in a community setting. The amount of water needed would depend on the testing pressure, distance, and diameter of the pipeline. Further, Transco would need to unearth and cut this section of pipe to install a test header. Hydrostatic testing only reveals existing leaks in the pipeline.

34. Smart pigging examines the wall thickness of the pipeline, stress fractures, internal corrosion, and the security of the welds. Smart pigging provides a greater level of detailed inspection than visual or hydrostatic testing, since these testing methods do not reveal potential failures from faulty welds, stress fractures, or internal corrosion issues. In the March 12 public meeting, a representative from DOT stated that smart pigging is the "most technologically [advanced] method to inspect a transmission pipeline" and "provides for the safe operation of pipelines."²⁸ For these reasons, we will accept Transco's proposals to smart pig its pipeline.

35. Thus, direct assessments, visual inspections and hydrostatic testing, the methods preferred by the VRCA and the Virginia Run intervenors, are not as practicable or as reliable as smart pigging in finding potential safety issues. Consequently, there was no

²⁸ March 2 Meeting Transcript at 15.

error in not examining the no-action alternative with respect to the above-ground pig facilities or in not examining the direct assessment or hydrostatic testing alternatives.²⁹

2. Multi-Diameter Pig Alternatives

a. The April 12 Order

36. The April 12 Order discussed multi-diameter (*i.e.*, dual-diameter) pigs and concluded that multi-diameter pigs would not be able to meet the project's design requirements and/or would result in additional environmental disturbance. In light of these facts, the April 12 Order found that the proposed above-ground facilities would be preferable.

b. Request for Rehearing

37. The VRCA and the Virginia Run intervenors assert that Transco should be required to develop a multi-diameter pig and reconfigure the project to eliminate the need for above-ground facilities. They assert that there is "ample time" to develop a multi-diameter pig, since inspections are not due for seven years and the cost of the pigs can be amortized over 42.5 years based on Transco's proposed depreciation rate.

c. Commission Holding

38. The April 12 Order examined a multi-diameter pig capable of moving between 30- and 42-inch diameter pipelines, a multi-diameter pig capable of moving between 30- and 36-inch diameter pipelines, and a multi-diameter pig capable of moving between 36- and 42-inch diameter pipelines. In each instance, we found that Transco's proposals were preferable to the multi-diameter pig alternatives because the alternatives would reduce pipeline throughput, increase costs, require additional facilities that would increase environmental disturbance, and/or were not reliable. The VRCA and the Virginia Run intervenors present no new evidence in their rehearing request to support their contentions that a multi-diameter pig is preferable. Moreover, their claim that there is ample time to develop a multi-diameter pig because inspections are not due for seven years is merely speculation. Thus, we will not require Transco to develop and install a multi-diameter smart pig.

²⁹ In addition, cleaning pigs, that clean the particles that drop out of the natural gas stream in the interior of the pipeline, are usually run at greater frequency than smart pigs.

3. Sites

a. The EA and April 12 Order

39. The EA determined that alternatives at Cub Run bottom and at a point 0.5 mile southwest of Transco's proposed site were not preferable. The April 12 Order found that site alternatives proposed in comments to the EA – the south-of-Route 29 alternative, the north-of-Route 29 alternative, and an upland area adjacent to Cub Run – also were not preferable. As part of the discussion about alternative sites, the EA and the April 12 Order stated that “[m]erely transferring similar impacts from one set of residents to another set of residents without environmental advantages is not sufficient justification for modifying a facility.”³⁰

b. Request for Rehearing

40. The VRCA and the Virginia Run intervenors assert that we should select the north-of-Route 29 alternative as the preferred site³¹ because it is uninhabited; heavily screened by trees from homes; accessible to Route 29, affording easy access for emergency vehicles and visibility from a high-trafficked road; and in a commercial area. If we do not approve the north-of-Route 29 alternative, they contend that we should select the south-of-Route 29 or the upland area adjacent to Cub Run alternatives. In connection with these assertions, the VRCA and the Virginia Run intervenors contend that we erred in stating that the alternatives would shift the adverse environmental impacts from one group of residential landowners to another group. They assert that this statement is inaccurate, since the alternatives involve primarily commercial and industrial landowners.

41. The VRCA and the Virginia Run intervenors assert that we violated sections 380.15(a), (b), and (f)(1) of the regulations. In addition, they contend that we are inconsistent in rejecting the alternatives because the above-ground facilities would be visible, while approving the highly visible location in the Virginia Run community. Finally, they cite *Florida Gas Transmission Co.*, 96 FERC ¶ 61,151 (2001), *order amending certificate and dismissing requests for reh'g and stay*, 99 FERC ¶ 61,314 (2002) (*Florida Gas*), where they assert that we approved an alternative location that impacted fewer property owners.

³⁰ EA at 40-41; April 12 Order at P 60.

³¹ This site is 0.65 mile southwest of Transco's proposed site in the Virginia Run community. In their pleadings, the Virginia Run intervenors refer to this site as “Alternative B.”

c. Commission Holding

42. The April 12 Order found that the north-of-Route 29 alternative was close to residences along Eagle Tavern Lane and Wetherburn Court.³² If the above-ground facilities were located at this site, the residences along Eagle Tavern Lane and Wetherburn Court would be slightly farther away from the facilities than the residences at the currently proposed location. Even so, as discussed in the April 12 Order, the facilities would be visible to some residents on Eagle Tavern Lane and Wetherburn Court, as well as one resident outside of the Virginia Run community and the Centreville Presbyterian Church. Moreover, locating the facilities at the north-of-Route 29 alternative site would require Transco to construct 0.65 mile of additional pipeline loop, resulting in increased environmental impacts and increased construction impacts on residents in the Virginia Run community living along the right-of-way. Further, constructing the extra segment of loop would require Transco to cross two existing pipelines, a powerline corridor, and a road.

43. The south-of-Route 29 alternative is 0.05 mile beyond the north-of-Route 29 site, or 0.7 mile from Transco's proposed site. As discussed in the April 12 Order, if the above-ground facilities were located here, the same environmental and construction impacts would occur as with the north-of-Route 29 alternative. In addition, Transco would need to cross Route 29, which would require Transco to clear more trees on the north and south sides of the highway since construction across major highways requires additional temporary workspace for bored crossings. Further, another resident and a church finalizing construction plans could be impacted.

44. The upland area adjacent to Cub Run alternative is within parkland operated by the Fairfax County Park Authority, but on the border between the parkland and Virginia Run. If the above-ground facilities were located at this site, the April 12 Order found the facilities would be visible to residents on Wetherburn Drive, as well as park users, and border a wooded area that is used for nature watching. In addition, the facilities would not be consistent with the intended use of the park and would create visual impacts on the surrounding area.

45. The April 12 Order found that the north-of-Route 29, south-of-Route 29, and upland area adjacent to Cub Run alternatives were not preferable to Transco's proposed site. In the request for rehearing, the VRCA and the Virginia Run intervenors presented

³² On May 29, 2007, Anita Persavich filed a petition signed by 57 other Virginia Run residents, supporting Transco's proposed location of the above-ground facilities and opposing the north-of-Route 29 alternative. After the March 2 public meeting, we also received comments opposing the north-of-Route 29 site.

the same information supporting the alternatives as was examined in the April 12 Order. We are not persuaded to overturn our findings. Thus, we did not err in finding that the alternatives were not preferable to Transco's proposed site.

46. The Virginia Run intervenors claim that their alternatives involve primarily commercial and industrial landowners. The south-of-Route 29 alternative site is on a horse farm. The upland area adjacent to Cub Run and the Cub Run bottom alternatives are in a park. The north-of-Route 29 alternative could be in a commercial area, but there is currently no ongoing commercial development taking place. As stated above and in the April 12 Order, the north-of-Route 29 alternative site would be close to, and visible by, residents on Eagle Tavern Lane and Wetherburn Court, as well as a church. Thus, we conclude that the alternatives are not in currently developing commercial or industrial areas.

47. The Virginia Run intervenors claim that we violated sections 380.15(a) (which requires the avoidance of siting impacts), 380.15(b) (which requires siting decisions to take landowner concerns into account), and 380.15(f)(1) (which provides for the selection of unobtrusive sites for above-ground facilities). We disagree. The finding that Transco's proposed site was preferable was based on a comparison of the construction and environmental impacts between the proposed site and each of the alternative sites. Further, there were landowner concerns about the north-of-Route 29 and south-of-Route 29 sites that, along with the landowner concerns about the proposed site, were taken into account as part of our examination of which sites were preferable.³³ Finally, the proposed site was the most unobtrusive site available since that location contains similar above-ground facilities, which will minimize the visual impact of Transco's facilities.³⁴ Thus, in our examination of the alternative sites, we took into account landowner concerns, avoidance of siting impacts, and the requirement to select an unobtrusive site as required by our regulations.

48. The VRCA and the Virginia Run intervenors contend that we were inconsistent in rejecting the alternatives because the above-ground facilities would be visible, while approving the highly visible location in the Virginia Run community. The facilities will be visible whether they are located at the proposed site or at one of the alternative sites. However, there are other industrial facilities near the proposed site that are not present at the alternative sites, which would minimize the visual impact of Transco's facilities.

³³ April 12 Order at P 59 and 60.

³⁴ *Id.* at P 62.

Also, in determining that the proposed site was preferable, we required Transco to develop, in consultation with the VRCA, a visual screening plan.³⁵ Thus, our findings were not inconsistent.

49. Finally, VRCA and the Virginia Run intervenors cite *Florida Gas*. In that case, we authorized Florida Gas to construct and operate approximately 166 miles of pipeline in Mississippi, Alabama, and Florida. As part of the proposals, we authorized Florida Gas to construct a compressor station in Osceola County, Florida despite opposition from local officials and numerous landowners. After receiving the authorization, Florida Gas filed an amendment to move the compressor station “to accommodate the wishes of the residents located in the area.” Florida Gas stated that the Florida Department of Transportation required it to move a section of pipeline due to the construction of a highway intersection and that by changing the operational parameters at the suction and discharge side of the compressor station while keeping the horsepower at the same level, it was operationally feasible to move the compressor station to a new site near the highway intersection. Florida Gas noted that the new site would not hinder its ability to deliver its firm requirements. The *Florida Gas* order found that the new location was environmentally preferable, impacted far fewer property owners, and therefore authorized the construction of the compressor station at the new location.

50. Florida Gas was able to move the compressor station to an environmentally preferable site because it could change the operational parameters of the compressor station without losing the ability to provide service. Here, as discussed above, the alternative sites were not environmentally preferable and the alternative designs would cause increased environmental impacts or a loss of throughput, or both. Thus, we find that our decision here is not inconsistent with the *Florida Gas* case.

D. The Piggable “Y” Connection

1. The April 12 Order

51. The April 12 Order authorized Transco to construct and operate pig launcher facilities for Line D and to construct and operate temporary facilities to connect Line B to Line A, conditioned on Transco’s installing a piggable “Y” to connect Line B to Line A under section 2.55(a) of the regulations within 18 months of the date of the order in this proceeding or demonstrating that the piggable “Y” is not technologically feasible.

³⁵ On June 1, 2007, Transco submitted the visual screening plan that it developed after consultation with the VRCA for the review and written approval of the Director of the Office of Energy Projects. Transco contends that the plan “incorporates virtually all of the VRCA’s requested screening measures.”

2. Request for Rehearing

52. The VRCA and the Virginia Run intervenors contend that we should require Transco to use the piggable “Y.” They claim that Transco is “predisposed” to reject the piggable “Y” and that because of Transco’s dominant position in the market, its service suppliers are unlikely to provide a report of technological feasibility that is inconsistent with Transco’s wishes. The VRCA and the Virginia Run intervenors assert that if the Commission mandates the use of a “Y” connection, Transco’s service suppliers will develop technologically feasible solutions. They contend that the mandate should only be modified if Transco, after public notice and opportunity for interested parties to comment, can bear the burden of proof that a “Y” connection is not feasible. Further, they claim that Transco should not be permitted to avoid consideration of its project by filing under section 2.55(a).

3. Commission Holding

53. The claims that Transco is predisposed to reject the piggable “Y” alternative, that Transco’s service suppliers are unlikely to provide a report of technological feasibility, and that technologically feasible solutions will be developed only if we mandate the use of a piggable “Y” connection are mere speculation. There is nothing in the record to support these claims. Since it is not known if the piggable “Y” connection is technologically feasible at this time, we will not modify the April 12 Order to mandate a piggable “Y.”

54. The VRCA and the Virginia Run intervenors contend that Transco will avoid Commission consideration of its proposals by constructing the piggable “Y” under section 2.55(a). The contentions are unfounded. The April 12 Order requires Transco to submit to the Secretary of the Commission quarterly reports detailing the status of the feasibility studies and the construction progress of the piggable “Y.” If Transco determines that the piggable “Y” is not feasible, the April 12 Order required Transco to file reports justifying its conclusion and a detailed plan for an alternative design that would be subject to approval by the Director of the Office of Energy Projects. These filings will be available in e-library and interested parties can comment on them.

E. Safety

1. The April 12 Order

55. The April 12 Order used a DOT formula to calculate the area that could be impacted by a pipeline incident. Based on a 1987 DOT report, the April 12 Order also concluded that the probability of an incident at the above-ground facilities was unlikely.

2. Request for Rehearing

56. The VRCA and the Virginia Run intervenors contend that we violated NEPA and the APA by not informing the public of the potential impact radius of a pipeline rupture until issuing the April 12 Order; by relying on a 20-year old DOT study to conclude that the probability of an incident is unlikely; by not discussing Transco's pipeline rupture in Chantilly, Virginia in 2005, a pipeline rupture in Texas earlier this year, and a 1994 rupture in Edison, New Jersey; and by not discussing whether Transco's other pipelines, as well as Dominion Power's electric transmission line, through the Virginia Run community could ignite.

3. Commission Holding

57. In their February 16, 2007 comments to the EA, the VRCA and the Virginia Run intervenors claimed that the EA was inadequate because it did not specify the area that would be impacted by a pipeline incident. The April 12 Order responded to these comments and discussed the safety issues associated with pipeline operations. The April 12 Order identified the potential impact zone if there were an incident based on a DOT formula. The order also stated that (1) pipeline companies can avoid catastrophic failures by adhering to federal safety regulations; (2) the DOT requires pipeline companies to institute monitoring programs designed to detect leaks and other potential issues before they become significant; (3) the area of impact for a particular incident would depend on the pipeline pressure at the time of the incident, the time required to close valves and isolate the pipeline, and the size of the pipe breach; and (4) based on historic trends, the probability of an incident occurring at the pig facilities was unlikely.³⁶

58. The VRCA and the Virginia Run parties did not cite any specific section in NEPA that would require the Commission to respond to their comments prior to the issuance of the order in this proceeding. The EA and April 12 Order demonstrate that the Commission thoroughly considered safety issues and there was no violation of NEPA or the APA by not informing the public of the impact radius until issuing the April 12 Order. Moreover, we did not violate NEPA or the APA by relying on the 1987 DOT report about pipeline safety because that is the most recent report issued by the DOT.

59. As to the 2005 Chantilly incident, an employee of an affiliate of Transco struck a pipeline while doing maintenance. There were no fires, explosions, or injuries, but

³⁶ April 12 Order at P 47. *See also* EA section 3.7 at 35-37. The April 12 Order also stated that a certificate holder must design, install, inspect, test, construct, operate, replace, and maintain its facilities in accordance with the regulations adopted by the DOT to ensure the safe transportation of natural gas by pipelines. April 12 Order at P 46. *See also* EA section 3.7 at 32-35.

nearby residents and school children were evacuated as a safety precaution.³⁷ As to the 1994 New Jersey incident, the National Transportation Safety Board concluded that the probable cause of the pipeline rupture was mechanical damage to the exterior surface of the pipe, which may have occurred in 1986, that reduced wall thickness and likely created a crack that grew through metal fatigue. DOT's safety regulations requiring internal inspections at least once every seven years and smart pigging technology were designed to prevent this type of occurrence. The proposed Potomac Expansion Project replaces an existing segment of pipeline in the Virginia Run community with a pipe of a larger diameter. The probability of striking the new pipeline while doing maintenance will be no different from the risk of striking the existing pipeline. However, the new pipeline will have thicker-walled pipe that will reduce the risk of a rupture associated with maintenance activities. Further, Transco will construct the proposed facilities in compliance with the DOT's latest safety regulations. Thus, we do not believe that the 2005 Chantilly incident or the 1994 New Jersey incident are relevant to a determination of whether the facilities to be constructed in the Virginia Run community are safe.

60. The VRCA and the Virginia intervenors also mention a pipeline rupture that occurred in Texas earlier this year. They did not provide a specific date or location for the incident. We could not find any mention of an incident in Texas on the official DOT Office of Pipeline Safety's webpage.³⁸ However, we found cites to an incident on pipelines near a gas well in Parker County, Texas on several public domain Internet websites,³⁹ which may be the incident that the VRCA and the Virginia Run intervenors mention. The reports indicated that the pipelines were carrying liquid products, such as propylene. From the information presented and from the lack of any mention on the DOT's webpage, it appears that the lines may be local gathering lines regulated by the State of Texas and not regulated by the Commission or the DOT.⁴⁰ Given that, the lines would not be subject to the same Commission and DOT safety measures that would apply in this proceeding to the Potomac Expansion Project. Thus, we do not believe this incident has any relevance to our decision in this proceeding.

61. As to a rupture igniting Transco's other pipelines and Dominion Power's electric transmission line, the probability of a rupture igniting these facilities will not be significantly different because a new pipeline is replacing an existing line. As stated, the

³⁷ 71 Fed. Reg. 2613 (January 17, 2006).

³⁸ <http://ops.dot.gov>

³⁹ <http://www.foxnews.com/story/0,2933,258357,00.html> (Fox News) and http://www.keiberginc.com/web_news_files/pipeline-explosion-pr1.pdf (AP/CBS News).

⁴⁰ The Commission does not regulate liquid products pipelines.

new pipeline will have thicker-walled pipe that will reduce the risk of a rupture. In addition, we note that the new pipeline will be buried at least three feet underground and will be at least 45 feet from adjacent pipelines, making the probability of a rupture impacting the nearby facilities unlikely. Further, Transco will construct the proposed facilities in compliance with the DOT's safety regulations.

62. Thus, for the reasons stated above, we find that the EA and the April 12 Order adequately examined the safety issues related to the facilities to be constructed in the Virginia Run community.

F. Emergency Access

1. Request for Rehearing

63. The VRCA and the Virginia Run intervenors claim that in case of an emergency, the residents of every home within 400 feet of Transco's proposed facilities will have to leave the area via Wetherburn Drive, a long dead-end street. They assert that the Commission violated NEPA by failing to make any findings on how residents on Wetherburn Street will be evacuated in an emergency. They also contend that the Commission violated NEPA by not inviting the Fairfax County Government to appear in this proceeding to present studies on fire risks, evacuation, and emergency management because there is no evidence in the record that emergency responders could respond to an emergency involving Transco's facilities.

2. Commission Holding

64. As stated in the April 12 Order, under the DOT's regulations, Transco must establish an emergency plan that includes procedures to minimize hazards in a natural gas pipeline emergency. The plan includes receiving, identifying, and classifying emergency events; establishing and maintaining communications with local fire, police, and public officials, and coordinating emergency response; emergency shutdown of the system and safe restoration of service; making personnel, equipment, tools, and materials available at the scene of the emergency; and protecting people first and then property and making them safe from actual or potential hazards. If an accident were to occur, Transco contended that it would isolate the affected pipeline section by closing the block valves that control the flow of gas, which would limit the amount of gas that could escape. The April 12 Order addressed Transco's emergency plan and concluded that it was adequate.⁴¹ The VRCA and the Virginia Run intervenors presented no new information that would persuade us to overturn the decision in the April 12 Order.

⁴¹ April 12 Order at P 49.

65. The order also addressed the possible evacuation of Wetherburn Drive by local emergency responders in case of an incident.⁴² In its pleadings, Transco stated that local emergency responders would be in charge of any evacuations that are necessary and the emergency responders would establish a safe perimeter and control access to the site. Transco also stated that it communicates with local emergency responders on a frequent basis through an annual letter, face-to-face meetings, table-top drills, and training provided by local Transco personnel. Transco also stated that it developed an interactive emergency response training course that is provided to local emergency responders. The April 12 Order properly evaluated and considered emergency response plans and did not violate NEPA.

66. Fairfax County knew about Transco's proposals and participated in this proceeding with environmental comments and a request for reconsideration. The fact that Fairfax County did not submit filings about Transco's emergency plan or the abilities of its emergency responders does not constitute a violation of NEPA.

G. Property Values

1. The April 12 Order

67. Many comments on Transco's proposals referenced local real estate appraisals, asserting that property values in close proximity to the above-ground facilities would drop drastically. The April 12 Order found that extent of the impact on property values was speculative.

2. Request for Rehearing

68. The VRCA and the Virginia Run intervenors contend that they presented evidence that showed that the proposed facilities would have a negative economic impact on Virginia Run through the loss of property values and degradation of the community. They assert that the April 12 Order erred in dismissing these concerns as "speculative" without pointing to any contrary evidence. They also claim that the Commission violated NEPA by not taking these concerns into account when discussing alternatives.

3. Commission Holding

69. Property values are highly dependent on a number of different factors, including the strength of the economy and real estate market, the quality of amenities offered in the area, and the subjective needs and desires of potential purchasers. The existence of an

⁴² *Id.*

above-ground pig facility near a residence may not necessarily result in a drop in the value of the property if these other factors remain strong. On the other hand, abutting properties could experience a drop in value.

70. The real estate appraisals filed in this proceeding are the estimates of local real estate agents. The April 12 Order found that additional above-ground facilities in the community may impact real estate values, but that the extent of the impact remains speculative. Any potential impact of the additional above-ground facilities on real estate values is particularly speculative as the area in question already has an above-ground pig launcher, electric transmission line, and cell phone tower. NEPA does not require an agency to prepare a detailed environmental analysis to document a decline in property values where the analysis found the potential decline was unquantifiable.⁴³ Thus, we conclude that the April 12 Order did not err.

H. Cumulative Impacts

1. Request for Rehearing

71. The VRCA and the Virginia Run intervenors contend that the EA inadequately addressed the issue of cumulative impacts because it implied there were greater environmental impacts but failed to identify or address them. They assert that no consideration was given to cumulative impacts on safety, economic and social impacts, and other environmental considerations and that there was no discussion of past projects and how the projects interact with each other. They cite *National Resources Defense Council v. Forest Service*, 421 F.3d 797 (9th Cir. 2005) (*NRDC*). Also, they contend that the Commission failed to address reasonably foreseeable future actions, such as the proposal to increase the send-out capacity of the Cove Point terminal.⁴⁴

2. Commission Holding

72. The VRCA and the Virginia Run parties contend that the EA implied that there were greater impacts from the project but failed to address them. Specifically, they cited language from the EA that stated that:

Cumulative impacts could result from the construction of other projects in the same vicinity and time frame In such a situation, although the

⁴³ *Town of Norfolk v. EPA*, 761 F.Supp. 867, 887-88 (D.Mass. 1991), *aff'd without opinion*, 960 F.2d 143 (1st Cir. 1992).

⁴⁴ *Dominion Cove Point LNG, LP*, 115 FERC ¶ 61,337 (2006), *order on reh'g*, 118 FERC ¶ 61,007 (2007) (*Dominion*).

impact associated with each project might be minor, the cumulative impact resulting from all the projects being constructed in the same general area may be greater.

73. This general statement, which constitutes the first paragraph of the cumulative impacts discussion in the EA, merely states the general proposition that cumulative impacts may be greater if there are other projects being constructed in the area. The second paragraph of the cumulative impact discussion made clear that there are no other planned residential, commercial, or business developments in any of the areas where the proposed project will be constructed that would result in cumulative impacts for the project. The EA did not imply that there were greater impacts.

74. The VRCA and Virginia Run intervenors rely on *NRDC* to claim that the cumulative impacts analysis is inadequate. In *NRDC*, plaintiffs challenged an EIS prepared by the Forest Service for a new land and resource management plan for the Tongass National Forest in Alaska. In addressing concerns about the cumulative impacts analysis, the court stated that an EIS must include a “useful analysis of the cumulative impacts of past, present, and future projects in sufficient detail to be useful to the decision maker in deciding whether, or how, to alter the program to lessen cumulative impacts.”⁴⁵ Further, the court stated that the EIS must at a minimum provide a “catalog of past projects and a discussion of how these projects . . . have harmed the environment.”⁴⁶

75. A cumulative impact analysis must identify (1) the area in which the effects of the proposed project will be felt; (2) the impacts that are expected in that area from the proposed project; (3) other past, present, and reasonably foreseeable actions that have or are expected to have impacts in the area; (4) the impacts or expected impacts from these other actions; and (5) the overall impact that can be expected if the individual impacts are allowed to accumulate.⁴⁷ In its memorandum providing Federal agencies guidance on cumulative impact analysis, the CEQ advised that agencies have substantial discretion in determining the appropriate level of their cumulative impact analysis.⁴⁸ The CEQ stated that an agency should relate the scope of its analysis to the magnitude of the

⁴⁵ *NRDC*, 421 F.3d at 814 (quoting *Muckleshoot Indian Tribe v. Forest Service*, 177 F.3d 800, 810 (9th Cir. 1999)) (internal quotation marks omitted).

⁴⁶ *NRDC*, 421 F.3d at 814 (internal quotation marks omitted).

⁴⁷ *TOMAC v. Norton*, 433 F.3d 852 (D.C. Cir. 2006); *Fritiofson v. Alexander*, 772 F.2d 1225 (5th Cir. 1985).

⁴⁸ CEQ, Memorandum on Guidance on Consideration of Past Actions in Cumulative Effects Analysis at 2, June 24, 2005 (CEQ Memorandum).

environmental impacts of the proposed action.⁴⁹ Thus, proposed actions that are finalized with a finding of no significant impact (such as Transco's Potomac Expansion Project) usually involve only a limited cumulative impact analysis to confirm that the effect of the proposed action does not reach a point of significant environmental impacts.⁵⁰

76. The cumulative impact analysis in the EA examined the area along the proposed route when it stated that there were no currently planned residential, commercial, or business developments along the route. The analysis determined that the proposals could cumulatively add visual impacts to the surrounding environment due to past construction on Virginia Run's easement. Although not specifically stated in the cumulative impacts section, the EA made clear that other impacts would be minimal because the project merely replaces or loops existing pipelines on an existing right-of-way. Further, since the analysis determined that there were no planned residential, commercial, or business developments along the route, there was no reason to discuss the impacts of these projects. Finally, the EA stated that the impact of the project would be limited to the visual impact of the above-ground facilities which would be mitigated by appropriate visual screening, as required by the EA and the April 12 Order.

77. Although brief, the cumulative impact analysis here identified the five issues that the courts require to be examined and properly found that the proposals could cumulatively add visual impacts to the surrounding environment. Further, the EA was not inconsistent with the *NRDC* case since agencies can conduct an adequate cumulative effects analysis by focusing on the current aggregate effects of past actions without delving into the historic details of individual past actions.⁵¹ Thus, we find that the cumulative impacts analysis in the EA was adequate.

78. The VRCA and the Virginia Run intervenors contend that the cumulative impacts analysis failed to discuss the *Dominion* case. In that case, we authorized Dominion to expand the capacity of its Cove Point liquefied natural gas terminal in Maryland and its pipelines in Maryland, Pennsylvania, New York, and West Virginia. The *Dominion* order, however, did not authorize Dominion to construct any facilities on its pipeline through the Virginia Run community.⁵² Further, Dominion does not have any proposals

⁴⁹ *Id.* at 3.

⁵⁰ CEQ Memorandum at 3.

⁵¹ *Id.* at 2.

⁵² In 2006, Dominion constructed pig launcher facilities on its line in the Virginia Run community under section 2.55(a) of the regulations.

in any other case on file with the Commission to construct facilities in Virginia Run or Fairfax County. Thus, the cumulative impacts analysis did not err by failing to discuss the *Dominion* case.

I. EA or EIS

1. The EA and April 12 Order

79. Our staff prepared an EA for the Potomac Expansion Project. In their comments to the EA, the VRCA and the Virginia Run intervenors stated that the Commission should have prepared an EIS for the project, including the pigging facilities, because, they contended, the project involved a major federal action significantly affecting the quality of the human environment.

80. In response, the April 12 Order cited section 380.6(a)(3) of the regulations under which an EIS will normally be prepared for “[m]ajor pipeline construction projects under section 7 of the Natural Gas Act using right-of-way in which there is no existing natural gas pipeline.”⁵³ The April 12 Order found that an EIS was not required, since the proposals do not involve major construction or construction in a new right-of-way.⁵⁴

2. Request for Rehearing

81. The VRCA and the Virginia Run intervenors argue that constructing “the \$73 million Potomac Expansion Project, including the above-ground facilities,” constitutes a major federal action significantly affecting the quality of the human environment and therefore NEPA and CEQ regulations require the Commission to prepare an EIS for the project. They maintain that the April 12 Order’s conclusion “in one summary statement that a \$73 million construction project is not ‘major’ does not provide the reasoned analysis, based on substantial evidence, required by NEPA.”⁵⁵

3. Commission Holding

82. Our regulations provide that staff may first prepare an EA when it believes that a project, even one to be constructed entirely in new right-of-way, may not be a major federal project significantly affecting the quality of the human environment.⁵⁶ In this

⁵³April 12 Order at P 45.

⁵⁴ *Id.*

⁵⁵ Rehearing request at 42.

⁵⁶ 18 C.F.R. § 380.6(b) (this regulation comports with the CEQ’s regulations implementing NEPA which defines an EA as a “concise public document” that briefly

case, one of the three proposed segments of pipeline, the 3.18-mile replacement loop in Fairfax County, is to be constructed entirely within Transco's existing right-of-way. The other two segments, the 12.67-mile loop in Pittsylvania County and the 3.72-mile loop in Campbell County, will parallel Transco's existing mainline, overlapping 30 feet of the existing right-of-way and extending the permanent right-of-way by an additional 35 feet for the length of each segment. The project includes new and replacement above-ground facilities on all of the segments (pig launchers and receivers and valve settings), all of which will be located where Transco has existing above-ground facilities.

83. Under these circumstances, staff chose to first prepare an EA to determine whether the project constituted a major federal action significantly affecting the quality of the human environment that would require preparation of an EIS. The CEQ regulations state that an "EA shall include brief discussions of the need for the proposal, alternatives, the environmental impacts of the proposed action and alternatives, and a listing of agencies and persons consulted."⁵⁷ In preparing the EA, we received and considered comments from the Fairfax County Park Authority, the U. S. Army Corps of Engineers (COE), the National Oceanic and Atmospheric Administration's National Marine Fisheries Service, the Virginia Department of Environmental Quality, Fairfax and Pittsylvania Counties, Virginia, and a number of landowners.⁵⁸ Staff also consulted the Center for Plant Conservation's National Plant Collection Profile, the U. S. Department of Agriculture's State Soil Geographic Database for Virginia, the COE's Threatened and Endangered Species Identification, the U. S. Geological Survey's Earthquake Hazards Program, and the Virginia Fish and Wildlife Information Service. The EA analyzed land requirements, construction methods, geology and soils, water resources and wetlands, vegetation, fisheries, wildlife, and threatened and endangered species, cultural resources, land use, recreation and visual resources, air quality and noise, reliability and safety, cumulative impacts and alternatives.

84. Based on its analysis, the EA concluded that if Transco constructed the proposed project in accordance with its application, supplements, and our mitigation measures, approval of the project would not constitute a major federal action significantly affecting the quality of the human environment. In the April 12 Order, we agreed with the EA's conclusion, issued a certificate to Transco to construct the project, and conditioned the certificate on Transco's compliance with the EA's environmental conditions, as amended

provides sufficient evidence and analysis for determining whether the federal agency should prepare an environmental impact statement or a finding of no significant impact (40 C.F.R. § 1508.9)).

⁵⁷ 40 C.F.R. § 1508.9.

⁵⁸ EA at section 1.3.

by the order.⁵⁹ Environmental Condition 1 required Transco to “follow the construction procedures and mitigation measures described in its application, supplements (including responses to staff data requests), and as identified in the EA, unless modified by this order.”⁶⁰

85. Courts have found that a federal agency may use mitigation measures as a mechanism to reduce environmental impacts below the level of significance that would require an EIS when the adequacy of proposed mitigation measures is supported by substantial evidence.⁶¹ Mitigation measures have been found to be sufficiently supported when they are likely to be “adequately policed,” such as when they are included as mandatory conditions imposed on licenses.⁶²

86. Not only have we conditioned Transco’s certificate on its compliance with the mitigation measures in the EA, but we have required certain actions by Transco to ensure its compliance with the mitigation measures and to demonstrate that compliance to the Commission. For example, Environmental Condition 8 requires Transco to file with the Commission biweekly status reports prepared by the required head environmental inspector describing current construction status, work planned for the following reporting period, and any schedule changes for stream crossings or work in other environmentally sensitive areas; a listing of all problems encountered and each instance of noncompliance observed by the inspector during the reporting period; a description of corrective actions implemented in response to all instances of noncompliance, the effectiveness of all corrective actions implemented; a description of any landowner/resident complaints relating to compliance with the order and the measures taken to satisfy their concerns and copies of any correspondence received by Transco from other federal, state, or local permitting agencies concerning any noncompliance and Transco’s response.⁶³

⁵⁹ April 12 Order, Ordering Paragraph G.

⁶⁰ April 12 Order, Appendix B.

⁶¹ See, e.g., *National Audubon Society v. Hoffman*, 132 F.3d 7, 17 (2d Cir. 1997) (citing *Friends of the Ompompanoosuc v. FERC*, 968 F.2d 1549, 1556-57 (2d Cir. 1992)) (*National Audubon Society*); *Abenaki Nation of Mississquoi v. Hughes*, 805 F. Supp. 234, 245 (D. Vt. 1992), *aff’d* 990 F.2d 729 (2d Cir. 1993) (*Abenaki*).

⁶² *Abenaki*, 805 F. Supp. at 239 n.9.

⁶³ See also Environmental Condition 6 requiring, among other things, Transco to file a plan describing how it will implement the mitigation measures and incorporate them into construction contracts, the number of environmental inspectors assigned to the project, the training and instructions it will give to all personnel involved with

87. Finally, the VRCA and the Virginia Run intervenors argue that to prove the Commission's decision not to prepare an EIS is contrary to law, they must show only that there is a "substantial possibility that the project may have a significant impact on the environment, not that it clearly will have such an impact."⁶⁴ They contend that they have made such a showing. We disagree.

88. We have addressed their arguments on rehearing that the EA's and the April 12 Order's discussions of alternatives, cumulative impacts, safety considerations, and economic impacts were inadequate. As demonstrated by the analysis in the EA, the April 12 Order, and this order, we have taken the requisite "hard look" at the possible effects of Transco's proposal,⁶⁵ identified the relevant areas of environmental concern, and, where the impact could be more than insignificant, imposed mitigation measures to reduce to a minimum any environmental impact caused by the proposal.⁶⁶ Therefore, we find that there is not a substantial possibility that the project may have a significant impact on the environment. Accordingly, we find that an EIS was not required for Transco's proposal and we will deny the VRCA and the Virginia Run intervenors' request for rehearing on this issue.

construction, and procedures if noncompliance occurs. For each discrete facility Transco must provide a chart and dates for the completion of all required surveys and reports, the mitigation training of onsite personnel, the start of construction, and the start and completion of restoration of the site; and Environmental Condition 7 requiring Transco to employ at least one full-time environmental inspector to be responsible for ensuring and documenting compliance with all of the April 12 Order's environmental conditions and any such conditions imposed by other federal, state, or local agencies, and evaluating the construction contractor's implementation of the environmental mitigation measures required in the contract.

⁶⁴ Rehearing request at 42 (quoting *National Audubon Society*, 132 F.3d at 18).

⁶⁵ See, e.g., *Kleppe v. Sierra Club*, 427 U.S. 390, 410 n. 21 (adopting the "hard look" standard of review to determine whether an agency's decision not to issue an EIS is appropriate (citing *Natural Resources Defense Council v. Morton*, 458 F.2d 827, 838 (D.C. Cir. 1972)); and *National Audubon Society*, 132 F.3d at 14 (court must determine whether a federal agency took a "hard look" at the possible effects of the proposed action).

⁶⁶ See, e.g., *Cabinet Mountains Wilderness v. Peterson*, 685 F.2d 678; (D.C. Cir. 1982) (citing *Maryland-National Capital Park and Planning Comm'n v. United States Postal Service*, 487 F.2d 1029, 1040 (D.C. Cir. 1973) (describing the four criteria used by the D. C. Circuit Court of Appeals for reviewing an agency's decision to forego preparation of an EIS)). See also *Idaho v. ICC*, 35 F.3d 585 (D.C. Cir. 1994).

J. Certificate Policy Statement

1. Request for Rehearing

89. VRCA and the Virginia Run intervenors contend that the Commission violated the Certificate Policy Statement, which requires that a project only be approved where the “public benefits to be achieved from the project can be found to outweigh the adverse impacts.”⁶⁷ They conclude that the Commission cannot make this finding because it relied on invalid environmental conclusions and inaccurate information.

2. Commission Holding

90. Under the Certificate Policy Statement, we will not authorize the construction of a project unless we first find that the overall public benefits outweigh the potential adverse consequences. The Certificate Policy Statement explains that the “[s]trength of the benefits showing will need to be proportional to the applicant’s proposed exercise of eminent domain procedures.”⁶⁸ However, this balancing analysis is essentially an economic test that focuses on the property rights of the landowners on whose property the proposed facilities will be located and precedes an environmental analysis.⁶⁹

91. The April 12 Order determined that Transco’s proposed facilities will be constructed almost entirely within existing pipeline and utility rights-of-way. Since almost all of the construction will be on existing rights-of-way, minimizing the potential need for Transco to exercise its right of eminent domain, the April 12 Order found that any impacts on landowners and communities near the pipeline route would be minimal. For these reasons, we conclude that the April 12 Order properly balanced project needs and benefits against adverse environmental impacts, as required by the Certificate Policy Statement.⁷⁰

⁶⁷ *Certification of New Interstate Natural Gas Pipeline Facilities*, 88 FERC ¶ 61,227 at 61,747 (1999), *order on clarification*, 90 FERC ¶ 61,128, *order on clarification*, 92 FERC ¶ 61,094 (2000) (Certificate Policy Statement).

⁶⁸ 88 FERC at 61,749.

⁶⁹ *Id.*

⁷⁰ Transco has filed an action for eminent domain against the VRCA. *Transcontinental Gas Pipe Line Corp. v. Virginia Run Community Ass’n and 9,713.88 Square Feet of Land*, Case No. 1:07-cv-00521-CMH-TRJ (E.D. Va.).

III. Fairfax County Board's Comments

A. Stream Crossing

92. The Fairfax County Board contends that the construction of the proposed project has the potential to cause large scale fluctuations in water levels and the suspension of sediments in three stream crossings in Cub Run Stream Valley Park. The Fairfax County Board also points out that the FWS expressed concern about the potential impact to mussel species that may require the relocation of mussels out of the area of impact.

93. Transco agreed to conduct a dry crossing of Cub Run that would reduce sedimentation in the stream.⁷¹ Further, Transco agreed to relocate mussels out of the area impacted by construction.⁷² This should alleviate the Fairfax County Board's concerns.

B. Water Levels

94. The Fairfax County Board contends that Transco will remove approximately 1.4 million gallons of water from Cub Run, which it will return later, as part of a pressurized test of the new line. The Fairfax County Board asserts that Transco must ensure that adequate minimum base flow is maintained during withdrawal and that return flows do not cause stream erosion.

95. Transco will use its Wetland and Waterbody Construction and Mitigation Procedures (Procedures) which require it to screen the intake hose, maintain adequate flow rates to protect aquatic life, provide for all waterbody uses, and provide for downstream withdrawals of water by existing users. In addition, Transco must discharge the hydrostatic test water in accordance with the Procedures, which require Transco to use energy dissipation devices as well as install sediment barriers to prevent erosion, streambed scour, suspension of sediments, or excessive streamflow. Further, Transco must follow its National Pollution Discharge Elimination System permit.

C. Wetland Restoration

96. The Fairfax County Board contends that Transco must take proper care during the construction and restoration of the wetlands in Cub Run Stream Valley Park and Ellanor C. Lawrence Park and that necessary corrective maintenance action during the first two years after the project's completion is critical to minimize wetland impact.

⁷¹ EA at 17.

⁷² Transco's May 1, 2007 letter.

97. We believe that the reduced width of the right-of-way through wetland areas, as well as the construction techniques outlined in Transco's Procedures, will minimize construction related impacts. Further, according to its Procedures, wetland revegetation will not be considered successful until Transco restores at least 80 percent of the type, density, and distribution of the vegetation in adjacent undisturbed wetland areas. If revegetation is not successful at the end of three years, the Procedures require Transco to develop and implement, in consultation with a professional wetland ecologist, a remedial revegetation plan to actively revegetate the wetland. Under the Procedures, Transco will continue revegetation efforts until wetland revegetation efforts are successful.

The Commission orders:

The requests for rehearing and reconsideration are denied.

By the Commission. Commissioner Wellinghoff dissenting in part with a separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Transcontinental Gas Pipe Line Corporation

Docket No.CP06-421-001

(Issued August 23, 2007)

WELLINGHOFF, Commissioner, dissenting in part:

In its application, Transco proposed to construct an above-ground pig launcher and receiver. This aspect of the project created significant controversy, in response to which Transco modified its proposal to study the feasibility of installing a piggable “Y” connection. A piggable “Y” connection would reduce the area that is fenced in the Virginia Run community from 4,700 to 1,902 square feet. Transco also stated that in the event that studies demonstrate that the piggable “Y” is not technologically feasible, it would either modify its plans for the piggable “Y” facilities or revert back to its original plan. In the April 12 Order, the Commission recognized these commitments and required Transco to file quarterly reports detailing the status of its studies. If the piggable “Y” was found to be infeasible, we further directed Transco to “submit, for our approval, reports to justify its conclusion and submit a revised plan.”¹

On rehearing, the VRCA and the Virginia Run intervenors claim that Transco is “predisposed” to reject the piggable “Y” and that because of Transco’s dominant position in the market, its service suppliers are unlikely to provide a report of technological feasibility that is inconsistent with Transco’s wishes. They contend that Transco should be required to use the piggable “Y” connection unless, after public notice and opportunity for interested parties to comment, Transco can bear the burden of proof that a “Y” connection is not feasible. Further, they claim that Transco should not be permitted to avoid additional Commission consideration of its project by filing under section 2.55(a) of the Commission’s regulations.

The Commission generally denies rehearing. Of particular note, while installation of a piggable “Y” under section 2.55(a) of the regulations would comport with the provisions of the April 12 order, the April 12 Order required Transco to file a detailed plan for any alternative to that design for prior review and approval by the Director of the

¹ 119 FERC ¶61,039 at P38 (2007).

Office of Energy Projects (OEP). These filings will be available in e-library, and interested parties can comment on them.

It is noteworthy that in a number of instances, Transco complied with the letter of the law, but failed to provide complete information to the public. For example, while the notice of Transco's application met the minimum reporting requirements of section 157.6 of our regulations, it did not identify the above-ground pig launcher and receiver. In December 2006, some parties sought information from Transco by requesting written responses to 19 data requests, three of which dealt with technological alternatives to pigs. Months of arguing ensued about the respective parties' rights and obligations. A full written evidentiary record concerning alternative technologies was developed only after Transco provided responses to a March 2007 staff data request.

The use of an above-ground pig launcher and receiver continues to be a very contentious issue. Transco's commitment to explore a piggable "Y" connection as a mitigation measure was important to my decision to support this project. Therefore, particularly in light of the above-noted discrepancies, I would have gone further than the Commission and provided additional procedural safeguards such that any significant change in plans concerning the piggable "Y" connection, including reversion to the original plan, must be approved by the Commission itself, after notice and an opportunity for interested parties to comment.

For this reason, I respectfully dissent in part.

Jon Wellinghoff
Commissioner